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**LOS ANGELES
SUPERIOR COURT**

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2 MICHAEL J. STRUMWASSER (Bar No. 58413)
3 DANIEL J. SHARFSTEIN (Bar No. 210806)
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10 BEVERLY O'NEILL

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 NORM RYAN,

14 Plaintiff,

CASE NO. BC272211

15 v.

16 SHELBA POWELL, individually and in her
17 official capacity as City Clerk for the City of
18 Long Beach; CITY OF LONG BEACH; and
19 DOES 1 through 10, inclusive,

20 Defendants.

21 DAN BAKER and BEVERLY O'NEILL,

22 Real Parties in Interest.

23 BEVERLY O'NEILL,

24 Cross-Complainant,

**CROSS-COMPLAINT FOR INJUNCTIVE
RELIEF**

25 v.

26 SHELBA POWELL, individually and in her
27 official capacity as City Clerk for the City of
28 Long Beach; CITY OF LONG BEACH,

Defendants.

DAN BAKER and NORM RYAN,

Real Parties in Interest.

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CROSS-COMPLAINT FOR INJUNCTIVE RELIEF

1 Cross-Complainant Beverly O'Neill alleges as follows:

2 **I. INTRODUCTION**

3 1. Cross-Complainant hereby brings this action against Defendants Shelba Powell, in her official
4 capacity as City Clerk of the City of Long Beach, and the City of Long Beach for injunctive relief under
5 Code of Civil Procedure section 526(a) to restrain Defendants from printing any ballot, sample ballot or
6 voter information pamphlet for the June 4, 2002, General Election for the office of the Mayor of the City
7 of Long Beach, or from using any funds, services, and resources of the City of Long Beach to do so, unless
8 the names of Beverly O'Neill and Dan Baker appear as the only two candidates on the ballot.

9 **II. PARTIES**

10 2. Cross-Complainant Beverly O'Neill is the Mayor of the City of Long Beach. Mayor O'Neill
11 is a resident and taxpayer and is registered to vote in the City of Long Beach. She has been elected to two
12 full terms as Mayor and placed first as a write-in candidate in the April 9, 2002, mayoral primary
13 nominating election.

14 3. Defendant Shelba Powell is the City Clerk of the City of Long Beach. Cross-Complainant is
15 informed and believes that she is the city official responsible for committing the wrongful acts alleged
16 herein. Cross-Complainant is further informed and believes that Powell resides in the County of Los
17 Angeles, State of California.

18 4. The City of Long Beach is a municipal corporation organized under the laws of the State of
19 California as a Charter City in the County of Los Angeles that receives and expends public funds and has
20 committed the wrongful acts alleged herein in the County of Los Angeles, State of California.

21 5. Real Party in Interest Dan Baker is a City Councilmember and Vice-Mayor of the City of Long
22 Beach. Councilmember Baker finished second in the April 9, 2002, mayoral primary nominating election.

23 6. Real Party in Interest Norm Ryan is a resident of Long Beach and is registered to vote there.
24 Ryan placed third in the April 9, 2002, mayoral primary nominating election.

25 **III. FACTUAL ALLEGATIONS**

26 7. Mayor O'Neill was elected to office in 1994 and was re-elected to a second full term in office
27 in 1998. Still enjoying tremendous popular support and desiring to continue to serve the people of the City
28 of Long Beach, Mayor O'Neill decided to seek nomination to a third term in office.

1 8. Since the City Charter's enactment in 1921, the City of Long Beach has employed a primary
2 nominating election followed by a general run-off election for its municipal elective offices, including for
3 the election of Mayor. Under this two-stage system, "[c]andidates for elective offices . . . to be voted for
4 at any general municipal election, shall be nominated by the City at large at the primary nominating
5 election." (Long Beach City Charter, § 1904.) "In the event that no candidate for nomination to an
6 elective office receives a majority of the votes cast for all candidates for nomination to such office at any
7 primary nominating election, the two candidates receiving the highest number of votes for any given office
8 at the primary nominating election shall be the candidates and the only candidates for such office whose
9 names shall be printed upon the ballots to be used at the general municipal election." (*Id.*; § 1905.)

10 9. In 1992, a term-limits initiative added section 214 to article II of the City Charter, which
11 provides in relevant part:

- 12 (a) Notwithstanding any other previously enacted provision of law or of the Charter,
13 the City Clerk, or other election official authorized by law, shall not accept or
14 verify the signatures on any nomination paper for any person, nor shall he or she
15 certify or place on the list of certified candidates, nor print or cause to be printed
16 on any ballot, ballot pamphlet, sample ballot or ballot label, the name of any person
17 who either:

18 * * *

- 19 (3) Is elected to two full terms as Mayor after November 3, 1992 and thereafter
20 seeks to become a candidate for Mayor

21 * * *

- 22 (b) **Write-In Candidacies.** Nothing in this article shall be construed as prohibiting
23 any qualified voter of this City from casting a ballot for any person by writing the
24 name of that person on the ballot, or from having such ballot counted or tabulated,
25 nor shall any provision of this article be construed as prohibiting any person from
26 standing or campaigning for any elective office by means of a write-in campaign.
- 27 (c) **Construction.** Nothing in this article shall be construed as preventing or
28 prohibiting the name of any person from appearing on the ballot at any direct
primary or general election unless that person is specifically prohibited from doing
so by the provisions of Section 214(a) of this Article, and to that end Section 214(a)
shall be strictly construed. This act shall be liberally construed to accomplish its
purposes.

10 Pursuant to City Charter section 214, Mayor O'Neill ran for her third term as a write-in
11 candidate. She timely filed a statement of write-in candidacy and submitted the requisite number of
12 signatures on her nomination papers pursuant to California Elections Code sections 8600 and 8062.

1 11. Although six other candidates for Mayor appeared on the April 9, 2002, primary election
2 ballot, Mayor O'Neill received the highest number of votes — 11,032, or approximately 28% of the total.
3 Councilman Baker finished second, with 9,628 votes (25%), and Norm Ryan finished third, with 8,909
4 votes (23%). Because no candidate for nomination to the office of Mayor received a majority of the votes
5 cast at the primary nominating election, a run-off election between the two candidates receiving the highest
6 number of votes must be held at the general municipal election scheduled for June 4, 2002.

7 12. Even though Mayor O'Neill received the highest number of votes, and even though City
8 Charter section 1905 mandates that "*the two candidates receiving the highest number of votes for any*
9 *given office at the primary nominating election shall be the candidates and the only candidates for such*
10 *office whose names shall be printed on the ballots to be used at the general municipal election*" (*ibid.*
11 (emphasis added)), Defendants Powell and City of Long Beach refuse to place Mayor O'Neill's name on
12 the June ballot. Instead, Defendants seek to place only the name of the second-place finisher, Dan Baker,
13 on the general election runoff ballot.

14 13. Although Defendants contend that the term limits provision of the City Charter bars the name
15 of Mayor O'Neill from being printed on the June run-off election ballot, the only resolution to the conflict
16 between City Charter sections 214 and 1905 that is consistent with and gives effect to the legislative intent
17 underlying both provisions is to construe the City Charter to require Mayor O'Neill or any other termed-
18 out candidate to run as a write-in candidate in the primary nominating election, but to permit her name to
19 appear on the run-off election ballot if she has succeeded, as here, in being nominated for that election as
20 one of two candidates receiving the highest number of votes in the primary. Defendants' construction of
21 the City Charter would negate the entire structure and purpose of the primary-general election scheme that
22 has defined elections in the City of Long Beach since 1921. By placing only the second-place finisher on
23 the ballot, Defendants would short-circuit the entire concept of a *run-off* election and instead convert the
24 general election into a coronation.

25 14. Immediate injunctive relief is necessary in this case because the City Attorney's office has
26 informed counsel for Mayor O'Neill as well as the Court that the Court's decision is needed by April 29,
27 2002, because that is the last day that the City can send the ballots to be printed in time for the election.
28

1 **FIRST CAUSE OF ACTION**

2 **(For Injunctive Relief Pursuant to Code Civ. Proc., § 526(a))**

3 **(Against all Defendants)**

4 15. The allegations set forth above in paragraphs 1 through 14 inclusive, are incorporated into this
5 cause of action by reference as if set forth in full.

6 16. Cross-Complainant is informed and believes that Defendants intend to use City resources for
7 the purposes of printing ballots for the June 4, 2002, general mayoral election that lists Dan Baker as the
8 only candidate for Mayor.

9 17. Because Mayor O'Neill finished first in the primary nominating election, she is entitled to be
10 listed on the runoff election ballot. If the City of Long Beach does not place Mayor O'Neill on the general
11 election ballot for Mayor, her constitutional right to free and fair elections will be infringed and Cross-
12 Complainant's right to vote will be diminished and her vote diluted.

13 18. Defendants' conduct is causing and will continue to cause immediate and irreparable injury
14 to Cross-Complainant unless restrained by this Court, and Cross-Complainant has no adequate remedy at
15 law.

16 WHEREFORE, Cross-Complainant prays for judgment against Defendants as follows:

17 1. For an injunction that the above named Defendants, and each of them, and their officers, agents,
18 employees, representatives, and all persons acting in concert or participating with them are restricted and
19 enjoined from:

20 a. Printing any ballot, sample ballot or voter information pamphlet for the June
21 4, 2002, General Election for the office of Mayor of the City of Long Beach without the
22 names of Beverly O'Neill and Dan Baker as the only two candidates whose names appear
23 on the ballot;

24 b. Using any funds, services, and resources of the City of Long Beach to print
25 any ballot, sample ballot or voter information pamphlet for the June 4, 2002, General
26 Election for the office of Mayor of the City of Long Beach without the names of Beverly
27 O'Neill and Dan Baker as the only two candidates whose names appear on the ballot.
28

- 1 2. For an award of reasonable attorneys' fees and costs incurred by Cross-Complainant in this
2 action.
3 3. For such other and further relief as the Court deems just and proper.
4

5 Dated: April 22, 2002

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Fredric D. Woocher
Michael J. Strumwasser
Daniel J. Sharfstein

8
9 By 
Daniel J. Sharfstein

10 *Attorneys for Cross-Complainant*
11 **BEVERLY O'NEILL**

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