

Case No.

IN THE COURT OF APPEAL OF CALIFORNIA

SECOND APPELLATE DISTRICT

NORM RYAN,

Petitioner,

vs.

SUPERIOR COURT OF LOS ANGELES COUNTY.

Respondent,

SHELBA POWELL, CITY CLERK OF THE CITY OF LONG BEACH,
CITY OF LONG BEACH, DAN BAKER and BEVERLY O'NEILL,

Real Parties in Interest.

Los Angeles County Superior Court Case No. BC 272,211
Hon. Dzintra Janavs, Judge

**EMERGENCY PETITION FOR WRIT OF MANDATE IN THE FIRST INSTANCE
OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

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NORM RYAN

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FRIENDS OF NORM RYAN and NORM RYAN,

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I INTRODUCTION

This case presents an issue of immediate urgency involving the threatened deprivation of constitutional and statutory rights arising out of Respondent Superior Court of Los Angeles County's Order of April 25, 2002, denying the application of Petitioner Norm Ryan, a candidate for nomination for the office of mayor of the City of Long Beach, to enjoin the City of Long Beach and its City Clerk from printing any ballots that do not contain the names of Norm Ryan and Dan Baker as the only two candidates on the ballot for the City of Long Beach's June 4,

2002 general mayoral election.¹

The Superior Court's Order — which allows the City to place Dan Baker as the *sole* name on the general election ballot — threatens to significantly impair the constitutional rights of voters. “The right to vote freely for the candidate of one’s choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 553, 555 (1964). The Order also contravenes the fundamental rights of Norm Ryan as a candidate under the City Charter and California election law.

As recognized by the California Supreme Court, “the right to hold public office, either by election or appointment, is one of the valuable rights of citizenship The exercise of this right should not be declared prohibited or curtailed except by plain provision of law. Ambiguities are to be resolved in favor of eligibility to office” *Carter v. Commission on Qualifications for Judicial Appointments*, 14 Cal. 2d 179, 182 (1939); see generally *Helena Rubenstein Internat. v. Younger*, 71 Cal. App. 3d 406, 408 (1977).

Petitioner Norm Ryan was a candidate for nomination for mayor of Long Beach on the April 9, 2002 primary nominating election ballot (“Nominating Election Ballot”). Mr. Ryan sought unsuccessfully to enjoin the City from printing any ballots not containing the names of Norm Ryan and Dan Baker as the only two candidates for mayor on the June 4, 2002 municipal general election ballot (“General Election Ballot”).

Ryan and Baker are the two candidates for *nomination* on the April Ballot who got the most votes after Mayor Beverly O’Neill — who is a “termed-out incumbent” and therefore

¹See April 25, 2002 Order denying preliminary injunction (“Order”) attached hereto as Exhibit A.

ineligible to have her nomination paper accepted by the City Clerk or name appear on "any ballot" under section 214(a) of the Long Beach City Charter.²

The official results of the April 9 Nominating Election for Mayor are as follows: Long Beach Mayor Beverly O'Neill - 11,032 (write-in) votes (28.3%); City Councilmember Dan Baker - 9,628 votes (24.7%); Norm Ryan - 8,909 votes (22.8%); Ray Grabinski - 7,490 votes (19.2%); John Stolpe - 751 votes (1.9%); David Wong - 625 votes (1.6%); and Bob Livingstone - 539 votes (1.3%). The City Attorney's office has informed counsel for Petitioner that the City's "drop dead" date for transmitting ballots to the printer is Monday, April 29 at 4:00 p.m., or 5:00 p.m. at the latest.

Should a peremptory writ not issue, the City will print the voter pamphlets and the ballots which contain only one name on the ballot for Mayor. The resulting effect would be a devastating infringement on the state and federal constitutional rights of free speech, free and fair elections and the right to vote of thousands of voters in Long Beach, and the adulteration of the electoral process — by the City's failure to list Norm Ryan's name on the ballot as required by the provisions of the Long Beach City Charter and the California Elections Code.

II PETITION FOR PEREMPTORY WRIT OF MANDATE IN THE FIRST INSTANCE OR OTHER APPROPRIATE RELIEF

1. Authenticity of Exhibits

All exhibits accompanying this petition are true copies of the original documents on file with respondent court. The exhibits are incorporated herein by reference as though fully set forth in this petition.

²The relevant provisions of the Long Beach City Charter referred to in this memorandum (§§ 202, 214, 1905, 1907 and 1910) are attached hereto as Exhibit B.

2. Beneficial Interest of Petitioner; Capacities of Respondent and Real Parties in Interest

Petitioner Norm Ryan ("Mr. Ryan") is a candidate for the April 9, 2002 Primary Nominating Election for Mayor of the City of Long Beach. Mr. Ryan is an investment banker with Wedbush Morgan Securities and was the candidate who received the second-highest number of votes among qualified candidates in the nominating election for mayor, and third-highest number of votes overall.

Respondent is the Superior Court of the County of Los Angeles.

Real Parties in Interest are Shelba Powell, the City Clerk of the City of Long Beach, the City of Long Beach ("City"), Dan Baker ("Baker") and Beverly O'Neill. Baker is a Member of the City Council and the Vice Mayor of the City of Long Beach. Baker is the candidate who received the highest number of votes among qualified candidates in the nominating election for mayor and the second-highest number of votes overall. O'Neill is the current Mayor of the City of Long Beach and, because she is serving the end of her second term, is a "termed-out incumbent" ineligible to have her name appear on "any ballot" or have her nomination paper accepted for Mayor of the City of Long Beach. Long Beach City Charter ("City Charter") § 214(a).

3. Chronology of Pertinent Events

On April 9, 2002 the City of Long Beach held a Primary Nominating Election for Mayor of the City of Long Beach. The official results of the April 9 Nominating Election for Mayor are as follows: Long Beach Mayor Beverly O'Neill - 11,032 (write-in) votes (28.3%); City Councilmember Dan Baker - 9,628 votes (24.7%); Norm Ryan - 8,909 votes (22.8%); Ray Grabinski - 7,490 votes (19.2%); John Stolpe - 751 votes (1.9%); David Wong - 625 votes

(1.6%); and Bob Livingstone - 539 votes (1.3%).

On April 16, City Attorney Robert Shannon wrote a memorandum to the Mayor and City Council stating that the names of Mayor O'Neill and Norm Ryan "cannot be placed on the ballot." See April 16, 2002 Memorandum from City Attorney Robert Shannon to Mayor and City Council ("Shannon Memorandum") attached hereto as Exhibit C.

On April 18, Mr. Ryan filed a complaint in the Superior Court and made an ex parte application for an Order to Show Cause re Preliminary Injunction ("OSC") requesting, *inter alia*, that the City be enjoined from "printing any ballot, sample ballot or voter information pamphlet for the June 4, 2002 General Election for the office of Mayor of the City of Long Beach without the names of Norm Ryan and Dan Baker as the only two candidates whose names appear on the ballot." The Court, Judge Dznitra Janavs presiding, issued an OSC re preliminary injunction and set a briefing schedule and a hearing on the application for April 25.

On April 22, 2002 Mayor O'Neill filed a cross-complaint in this action seeking that her name be placed on the ballot along with Baker's by virtue of the fact that she received the most (write-in) votes at the primary election.

On April 25, the Court held a hearing on the OSC re preliminary injunction and denied Mr. Ryan's request for relief. The Court also heard argument on Mayor O'Neill's request to have her name placed on the ballot and denied Mayor O'Neill's request as well.

4. Basis for Relief

The outcome of this proceeding will decide whose names will appear on the June 4 General Election Ballot for Mayor. The issue presented in this petition is whether the City must place the name of Norm Ryan on the ballot, given the facts that (a) he was the candidate who received the second-highest number of votes of those candidates eligible to be nominated and (b)

the City has properly concluded that Mayor O'Neill's name will not be listed on the ballot.

What makes this situation unusual is the first-place finish of Mayor O'Neill, a "termed-out incumbent" who ran a write-in campaign because — under Long Beach's term limits law, section 214(a) of the Long Beach City Charter — she was ineligible to have her name placed on the ballot, or even submit nomination papers. Because Mayor O'Neill is not eligible to be on the ballot under the terms of section 214(a), and based on the City's conclusion that Norm Ryan is also ineligible because he "received the third highest number of votes in the primary election," (Shannon Letter, Exhibit C), the City will, unless otherwise ordered, place only the name of Dan Baker on the ballot.

Norm Ryan submits that because Mayor O'Neill was not eligible to be nominated in the primary nominating election under section 214(a), it was Dan Baker and Norm Ryan who finished first and second respectively among the qualified candidates. Mayor O'Neill's only effect on the primary election was that she could have won the race for Mayor in the primary election — had she received a majority of the votes cast — but otherwise, her presence in the primary nominating election had no effect under section 214(a).

Alternatively, to the extent that the City maintains that Mayor O'Neill was *nominated* for Mayor in the primary nominating election (see April 23, 2002 Long Beach City Council Resolution, page 4, Exhibit D hereto), but is nonetheless ineligible to have her name placed on the ballot because of the prohibition in section 214(a), Norm Ryan submits that this creates a *vacancy* on the ballot, which would require his name to be listed on the ballot as the person who received the next highest votes in the primary nominating election. This result would be necessitated by Elections Code sections 8807 and 8141, because the Long Beach City Charter has no provisions for dealing with ballot vacancies. Section 1910 of the City Charter expressly

adopts the provisions of the Election Code governing municipal elections where the Charter is otherwise silent — and these election code sections provide that the ballot vacancies be filled by going to the name of the person who received the next highest votes until the positions on the ballot are filled.

Norm Ryan's petition implicates the fundamental right to free and fair elections and right to free speech under the First and Fourteenth Amendments to the United States Constitution, and Article I, sections 2 and 3 of the California Constitution, as applied in *Gould v. Grubb*, 14 Cal. 3d 661 (1975).

5. Absence of Other Remedies

Delay of review of the present order which permits the City Clerk to print Baker's name as the only name on the general election ballot until after final judgment would be an inadequate remedy. The election is set for June 4, and the City Attorney's office has stated that the City will send the absentee ballot applications to the printer on April 29 at 4:00 p.m., or 5:00 p.m. at the latest. Writ relief is essential to avoid an unfair and adulterated election process with only one name on the general election ballot. Petitioner has no other adequate remedy other than the relief sought in this petition. Should the Court fail to issue the requested relief, Petitioner's rights, and the rights of the voters of Long Beach, to free and fair elections will be irretrievably tainted.

6. Prayer

Petitioner prays that this Court:

- a. Issue a peremptory writ of mandate in the first instance directing respondent Superior Court to set aside and vacate its April 25, 2002 Order denying Petitioner's application for a preliminary injunction, in the action entitled *Norm Ryan v. Powell*, Los Angeles Superior

Ct. No. BC 272,211, and directing the Superior Court to enter a new and different order granting Petitioner's application for a preliminary injunction prohibiting the City of Long Beach and its City Clerk from printing any ballot or voter information pamphlet for the June 4, 2002 general mayoral election without listing the name of Norm Ryan as a candidate.

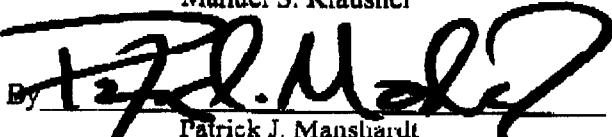
b. Award Petitioner his costs pursuant to Rule 56.4 of the California Rules of Court.

c. Grant such other relief as may be just and proper.

DATED: April 26, 2002

MANUEL S. KLAUSNER
PATRICK J. MANSHARDT

By 
Manuel S. Klausner

By 
Patrick J. Manshardt
Attorneys for Petitioner NORM RYAN

VERIFICATION

I, Norm Ryan, declare as follows:

I am the Petitioner herein. I have read the foregoing Petition for Emergency Writ of Mandate in the First Instance or Other Appropriate Relief and know of its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 26, 2002 at Los Angeles, California.


NORM RYAN