

**SUPERIOR COURT OF CALIFORNIA,**

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - August 31, 2022

EVENT DATE: 09/01/2022

EVENT TIME: 01:30:00 PM

DEPT.: C-74

JUDICIAL OFFICER: Keri Katz

CASE NO.: 37-2022-00033446-CU-WM-CTL

CASE TITLE: MARKS VS PAES [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Hearing on Petition

CAUSAL DOCUMENT/DATE FILED:

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Petitioner Jordan Zev Marks' petition for writ of mandate is DENIED.

Petitioner is running for the office of "Assessor/Recorder/County Clerk." Petitioner submits evidence that Petitioner delivered his Ballot Designation Worksheet to the San Diego County Registrar of Voters with Proposed Ballot Designation: "Assessor Taxpayer Advocate" and with Alternate Ballot Designation 1: "Chief Deputy Assessor." Petitioner submits evidence that the designation "Assessor Taxpayer Advocate" was rejected by Respondent and that the designation "Chief Deputy Assessor" was accepted. Petitioner seeks a writ of mandate commanding Respondent to accept his proposed ballot designation of "Assessor Taxpayer Advocate."

As applicable to the facts of this case, Elections Code § 13107 [Ballot designations] provides:

(a) . . . . immediately under the name of each candidate, and not separated from the name by any line . . . . may appear at the option of the candidate only one of the following designations:

. . . .

(3) No more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents.

. . . .

(e) The Secretary of State and any other elections official shall not accept a designation of which any of the following would be true:

(1) It would mislead the voter.

. . . .

Under 2 CCR. 20714 [Proposed Ballot Designations Submitted Pursuant to Elections Code § 13107, Subdivision (a)(3)]:

Proposed ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(3), shall be subject to the following provisions:

(a) The terms "profession," "vocation," or "occupation," as those terms are used in Elections Code § 13107, subdivision (a)(3), are defined as follows:

(1) "Profession" means a field of employment requiring special education or skill and requiring knowledge of a particular discipline. . . .

(2) "Vocation" means a trade, a religious calling, or the work upon which a person, in most but not all cases, relies for his or her livelihood and spends a major portion of his or her time. . . .

(3) "Occupation" means the employment in which one regularly engages or follows as the means of making a livelihood. . . .

(b) "Principal," as that term is used in Elections Code § 13107, subdivision (a)(3), means a substantial involvement of time and effort such that the activity is one of the primary, main or leading professional, vocational or occupational endeavors of the candidate. The term "principal" precludes any activity which does not entail a significant involvement on the part of the candidate. Involvement which is only nominal, pro forma, or titular in character does not meet the requirements of the statute.

. . . .

(c) In order for a ballot designation submitted pursuant to Elections Code § 13107, subdivision (a)(3), to be deemed acceptable by the Secretary of State, it must accurately state the candidate's principal professions, vocations or occupations, as those terms are defined in subdivisions (a) and (b) herein. Each proposed principal profession, vocation or occupation submitted by the candidate must be factually accurate, descriptive of the candidate's principal profession, vocation or occupation, must be neither confusing nor misleading, and must be in full and complete compliance with Elections Code § 13107 and the regulations in this Chapter.

. . . .

Under 2 CCR 20716 [Unacceptable Ballot Designations]:

(a) The Secretary of State shall reject as unacceptable any proposed ballot designation which fails to comply with Elections Code § 13107, subdivision (a); is prohibited pursuant to Elections Code § 13107, subdivision (b); is misleading; or is otherwise improper pursuant to the regulations set forth in this Chapter.

. . . .

(c) Pursuant to Elections Code § 13107, subdivision (b)(1), the Secretary of State shall reject as unacceptable any proposed ballot designation which would mislead voters. In making this determination, the Secretary of State shall determine whether there is a substantial likelihood that a reasonably prudent voter would be misled as to the candidate's principal profession, vocation or occupation by the candidate's proposed ballot designation. The determination shall take into account the plain meaning of the words constituting the proposed ballot designation and the factual accuracy of the proposed ballot designation based upon supporting documents or other evidence submitted by the candidate in support of the proposed ballot designation, pursuant to §§ 20711 and 20717 of this Chapter.

Also, under 2 CCR § 20717(c) [Requests for Supporting Documentation]:

The candidate shall have the burden of establishing that the proposed ballot designation that he or she has submitted is accurate and complies with all provisions of Elections Code § 13107 and this Chapter.

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Even if Petitioner establishes that his proposed ballot designation of "Assessor Taxpayer Advocate" accurately designates Petitioner's "principal professions, vocations or occupations," applying the standards of 2 CCR § 20716(c), the court finds Petitioner fails to meet his burden of establishing that this proposed ballot designation complies with all other provisions of Elections Code § 13107, and in particular subdivision (e)(1) which requires that a designation "would not mislead the voter."

The court begins with the term "Assessor" as used in the proposed designation of "Assessor Taxpayer Advocate." The court finds, in the circumstances presented on this writ, where Petitioner is running for the office of "Assessor/Recorder/County Clerk" and based on the plain meaning of the word "Assessor" as used in the designation "Assessor Taxpayer Advocate" that Respondent's evidence establishes a substantial likelihood that a reasonably prudent voter would be misled by Petitioner's proposed designation of "Assessor Taxpayer Advocate" as to Petitioner's profession/vocation/occupation. In particular Respondent establishes a substantial likelihood that a reasonably prudent voter would be confused and therefore misled into believing that Petitioner is the incumbent Assessor/Recorder/County Clerk. The court also considers the evidence presented as to the term "Taxpayer Advocate." The court finds Respondent establishes a substantial likelihood that a reasonably prudent voter would be confused by the term "Taxpayer Advocate" because the term does not identify the taxpayers for whom Petitioner is an advocate. Petitioner's declaration states that he is "the taxpayer advocate for the Assessor." However, such role is not conveyed by the term "Taxpayer Advocate." As such, there is a substantial probability that use of such term would confuse voters as to Petitioner's profession/vocation/occupation. The court is not persuaded by the arguments Petitioner raises. Petitioner argues that Respondent is substituting her judgment for that of the reasonably prudent voter. However, 2 CCR § 20716(c) requires that the Secretary of State/Registrar "determine whether there is a substantial likelihood that a reasonably prudent voter would be misled." Nor is the court persuaded by Petitioner's reliance on *Andrews v. Valdez* (1995) 40 Cal.App.4th 492. Unlike the administrative law judge designation at issue in *Andrews*, a designation that was "[a] professional title authorized by statute" [*Andrews*, 40 Cal.App.4th 495], and was also the only profession/vocation/occupation held by the candidate, there is no evidence that the designation "Assessor Tax Advocate" is authorized by statute and there is evidence that Petitioner's job has multiple designations including "Chief Deputy Assessor/Recorder/County Clerk."

Based on the foregoing, the court finds Petitioner fails to meet his burden of establishing that his proposed ballot designation of "Assessor Taxpayer Advocate" complies with all provisions of Elections Code § 13107. Accordingly, Petitioner's petition for a writ of mandate commanding Respondent to accept the ballot designation "Assessor Taxpayer Advocate" [Prayer 1] is DENIED. Petitioner also seeks alternate relief requesting that "the Court issue such writ as appropriate to best reflect such designation the court deems as best reflects Petitioner's appropriate designation in compliance with the requirements of Election Code § 13107" [Prayer 2]. Petitioner fails to provide any argument or authority allowing another designation to be made by this court. Therefore, Petitioner's petition for such relief is DENIED. The other orders Petitioner seeks [Prayer 3, 4, 5, 6] are also DENIED.

If this tentative ruling is confirmed the Minute Order will be the final order of the court and the parties shall not submit any further order on this matter.