

STEPHEN THUNBERG
Clerk of the Superior Court

OCT 16 2002

D. Munshower, Deputy
By: R. ADAMS, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO
EAST COUNTY DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,)	Case No.: GIE-012239
)	
ex rel. JOHN B. LINDEN,)	DECISION OF THE COURT UPON THE
)	PLAINTIFF'S MOTION FOR JUDGMENT IN THE
Plaintiff,)	QUO WARRANTO ACTION BEFORE THE
)	COURT.
)	
Vs.)	
)	
JOEL SCALZITTI,)	
)	
Defendant.)	

PREFACE

JOEL SCALZITTI (hereinafter referred to as "SCALZITTI") was elected to a position as a Member of the Board of Directors of the Helix Water District (hereinafter referred to as "DISTRICT"). Upon application, JOHN B. LINDEN (hereinafter referred to as "LINDEN") was granted "Leave To Sue" in an action *In Quo Warranto* by the Attorney General of the State of California in the name of the People of the State of California against SCALZITTI. The purpose of the litigation is to determine whether or not SCALZITTI is entitled to continue to hold and exercise the office of Member of the Board of Directors of

1 the DISTRICT or should be ousted from this office and fined pursuant to Code of Civil Procedure section
2 809.

3 The Complaint, entitled "VERIFIED COMPALINT *IN QUO WARRANTO* FOR OUSTER" was filed
4 pursuant to the Leave to Sue on May 30, 2002.

5
6 PROCEDURAL HISTORY OF THE CASE

7 The Complaint having been filed on May 30, 2002 the Court held an *ex parte* hearing on June 4,
8 2002 was held to establish the procedures to be followed and set hearing dates. The Court set the date
9 of June 24, 2002 for the commencement of the evidentiary hearing in this action. A General Denial
10 proposed by counsel for SCALZITTI was ordered to be filed with the Court on or before June 7, 2002.

11 The evidentiary hearing was commenced on June 24, 2002. Testimony was presented and
12 documentary evidence introduced. As the matter was not able to be completed in a single day as
13 anticipated, the hearing was continued to July 17, 2002 for the presentation of additional evidence. On
14 June 26, 2002 at the request of SCALZITTI the hearing was continued to July 30, 2002. The hearing
15 proceeded on July 30, 2002. Further testimonial and documentary evidence was presented during the
16 course of the hearing. The hearing was not completed on July 30th and was continued to the next day,
17 July 31st for presentation of the final testimonial evidence, additional documentary evidence and the
18 arguments of counsel upon LINDEN's Motion for Judgment, both Plaintiff and Defendant having rested
19 their case.

20 At the conclusion of the oral arguments of counsel and at the request of counsel for SCALZITTI
21 the Court continued the matter to September 6, 2002 in order to allow presentation of additional briefing.
22 SCALZITTI's supplemental briefing was to be filed with the Court on or before August 26th and LINDEN's
23 supplemental and responsive briefing was to be filed on or before September 6th at which point the Court
24 would take the matter under submission for decision. Counsel for SCALZITTI requested additional time
25 within which to file his supplemental briefing. Over the objection of LINDEN's counsel the Court granted
the request for additional time to file the supplemental brief. Defendant was given until September 16,

1 2002 in which to file his supplemental brief. The brief was filed on September 17th. Additional time was
2 also given to LINDEN in which to file his supplemental brief. The brief was received and filed by the
3 Court on September 30th. The Court took the matter under submission for decision on September 30,
4 2002.

5 INTRODUCTION

6
7 President Theodore Roosevelt once said, "It is character that counts in a nation as in a man." He
8 also observed that "A lie is no more to be excused in politics than out of politics." It is unfortunate that this
9 Court must address both the character and the mendacity of SCALZITTI to reach a conclusion in the
10 present matter.

11 It may well be suggested that the present action is without the jurisdiction of the Court as it is a
12 "political question" which the courts have traditionally eschewed. Initially in the decision of the United
13 States Supreme Court in the case of *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137, 2 L.Ed. 60,
14 questions which are by their very nature political are not questions for the court. (*Ibid.*, at page 170).
15 However, it was *Marbury v. Madison*, *supra*, that clearly established that questions of constitutional
16 magnitude and statutory construction are questions justiciable and not simply characterized as political.
17 Here, too, this Court addresses not the electorate's choice of the candidates but rather the qualifications
18 of the individual candidate to fulfill the requirements of office.

19 These matters are not without precedent. In San Diego County there have been previous
20 instances in which current office holders are challenged as to the underlying qualifications for or the right
21 to hold elective office. Two cases involving the Office of District Attorney for the County of San Diego
22 come to mind: *People of the State of California, ex rel. Sweet v. Ward* (1895) 107 Cal. 236 and *People of*
23 *the State of California, ex rel. Webb v. Marsh* (1916) 30 Cal.App. 424.

24 In this action the People of the State of California through LINDEN, as Realtor, seeks the removal
25 of SCALZITTI from his position as an elected member of the Board of Directors of the Hellx Water District
from Division 1. It is alleged by LINDEN that SCALZITTI has failed to qualify for this office upon two

1 separate and exclusive grounds: (1) SCALZITTI was not at all times a resident of the defined area of
 2 Division 1; and/or (2) SCALZITTI was not at all times a landowner within the geographical description of
 3 the Helix Water District.

4 This action proceeds *in quo warranto*. LINDEN has received a right to sue letter from the
 5 Attorney General of the State of California and is acting, therefore, on behalf of and in the name of the
 6 People of the State of California.

7 The Court has bifurcated the issues and allegations set forth above. The Court will first address
 8 the question of SCALZITTI'S continuous residence within Division 1 of the Helix Water District. Should
 9 the Court determine that SCALZITTI is qualified by virtue of continuous residence within Division 1 at all
 10 relevant times the Court will next determine whether or not SCALZITTI has been a landowner within the
 11 Helix Water District at all relevant times. The legal analysis of the question of the Constitutionality of the
 12 Helix Water District's requirement of land ownership is to be addressed at a later date.

13
 14 **AN ACTION IN QUO WARRANTO**

15 An action *in quo warranto* is an appropriate means by which to test the qualifications of an
 16 individual to hold public office. California Code of Civil Procedure section 803 provides for such an
 17 action. Section 803 provides:

18 *An action may be brought by the attorney-general, in the name of the
 19 people of this state, upon his own information, or upon a complaint of a
 20 private party, against any person who usurps, intrudes into, or unlawfully
 21 holds or exercises any public office, civil or military, or any franchise, or
 22 against any corporation, either de jure or de facto, which usurps, intrudes
 23 into, or unlawfully holds or exercises any franchise, within this state. And
 24 the attorney general must bring the action, whenever he has reason to
 25 believe that any such office or franchise has been usurped, intruded into,

1 or unlawfully held or exercised by any person, or when he is directed to
2 do so by the governor."

3 The remedy *in quo warranto* is the appropriate and only procedure by which to
4 determine the right to a public office where a *de facto* officeholder holds the office. See
5 *Klose v. Superior Court (1950) 96 Cal.App.2d 913, 917-918; Ops. Cal. Atty. Gen. Number*
6 *02-306 (May 10, 2002).*

7 Upon application to the Attorney General of the State of California, Leave To Sue
8 was granted to address two questions:

9 1. Is Joel Scalzitti unlawfully holding the office of director of the Helix Water
10 District due to a failure to satisfy the qualification of being a landowner within
11 the district?

12 And,

13 2. Is Joel Scalzitti unlawfully holding the office of director of the Helix Water
14 District due to a failure to satisfy the qualification of being a resident within
15 the division of the district from which he was elected?

16 The Attorney General determined that each of these two questions, based upon preliminary inquiry
17 required judicial resolution. See *Ops. Cal. Atty. Gen., Number 02-306, (May 10, 2002) at pages 1-2.*

18 The genesis of an action *in quo warranto* is in the common law and is now statutorily provided by
19 section 803 of the Code of Civil Procedure, noted above. In its broadest sense it is a formal judicial
20 inquiry into the legitimacy or legality of the claim to an elective officer by the current officeholder. See
21 *American Jurisprudence, Second Edition, "Quo Warranto" by Anne M. Payner, J.D.* It is, therefore, used
22 primarily to question the authority of the claimant asserting a right to public elective office.

23 The Attorney General must conclude that the issuance of Leave to Sue *In Quo Warranto* is
24 required to have a judicial resolution of a substantial question of fact or law and, if so, would the overall
25 public interest be served by allowing the action to proceed. In this case, by granting the Leave to Sue, the

1 Attorney General has determined that these factual and legal questions are not only ripe for
2 determination, but also that the public interest is served by a judicial resolution of the issues.

3 The Opinion of the Attorney General concludes:

4 "In the present circumstances, Linden has submitted a verified
5 statement of facts, supported by declarations signed under penalty of
6 perjury, indicating Scalzitti's residence for purposes of section 21100 to
7 be in Division 2 rather than Division 1 of the District. Scalzitti has not
8 presented a verified statement of facts as to the issue of his residence.
9 Accordingly, we believe substantial issues of fact and law have been
10 presented concerning Scalzitti's residence at the time of his election and
11 during his term of office for purposes of section 21100.

12 "We have generally viewed the existence of a substantial
13 question of fact or law as presenting a sufficient public purpose to
14 warrant the granting of leave to sue in quo warranto. In such cases,
15 leave will be denied only in the presence of other overriding
16 considerations. . . . No such considerations are present here. Rather,
17 both the public and the District have an interest in a judicial resolution of
18 this matter.

19 "Accordingly, the application for leave to sue in quo warranto is
20 GRANTED." (*Ops. Cal. Atty. Gen., Number 02-306, supra at pages 5-6*).

21 In a *quo warranto* proceeding such as is before this Court, SCALZITTI has both the burden of
22 producing evidence and the burden of proof to demonstrate that he lawfully holds his office. (*See People*
23 *ex rel. Stephenson v. Hayden (1935) 9 Cal.App.2d 312*). In fact, the ordinary rules of pleading and proof
24 are reversed from a normal civil proceeding. Here the Realtor (LINDEN) is not required to show or prove
25 anything. Rather it is the responsibility of the defendant (SCALZITTI) to establish his lawful claim to the
office of Director as well as his right to exercise the authority of that office. (*See Smith v. City of San Jose*

1 (1950) 100 Cal.App.2d 57; *People ex rel. Paganini v. Town of Corte Maria* (1950) 97 Cal.App.2d 726.

2 See also, 53 Cal.Jur.3d, *Quo Warranto*, section 3.)

3
4 **MOTION FOR JUDGMENT**

5 At the conclusion of the presentation of testimony and documentary evidence, the Realtor
6 LINDEN moved the Court for Judgment. SCALZITTI has mischaracterized this motion as a Motion for
7 Nonsuit. It is not a Motion for Nonsuit. It is a Motion for Judgment. (See *Code of Civil Procedure* section
8 631.8).

9 Section 631.8 permits either party to an action to move for a judgment at the close of the other's
10 case. Ordinarily it is the defendant who makes this motion at the close of the plaintiff's case. However,
11 since this case *in quo warranto* reverses the procedure and requires the defendant to proceed first, the
12 same principles as would apply, with appropriate adaptations. (*People v. Mobil Oil Corporation* (1983)
13 143 Cal.App.3d 261, 267-268 footnote 6.)

14 Upon the making of a Motion for Judgment the Court is required to weigh and consider all of the
15 evidence. In that process the Court may refuse to believe witnesses and draw conclusions that are at
16 odds with any expert opinions that are offered during the course of the proceedings. And, if supported by
17 substantial evidence, the grant of a Motion for Judgment will not be reversed. (See *Roth v. Parker* (1997)
18 57 Cal.App.4th 542; *Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245).

19 The determination of the Court may act as a final adjudication of the matter if judgment is granted
20 pursuant to the motion. (*Code of Civil Procedure* section 631.8(c)). It is the express purpose of this
21 Motion to dispense with the need for the moving party to produce evidence if the opposing party has failed
22 to meet his burden of producing evidence and burden of proof. (See *Roth v. Parker*, 57 Cal.App.4th,
23 *supra*; *People v. Mobil Oil Corporation*, 143 Cal.App.3d, *supra* at pages 267-272; and, *Heap v. General*
24 *Motors Corporation* (1977) 66 Cal.App.3d 824).

**QUALIFICATIONS REQUIRED FOR THE OFFICE OF DIRECTOR
OF THE HELIX WATER DISTRICT**

As was determined in the Opinion of the Attorney General and now by this Court, the Helix Water District is established as an "Irrigation District" pursuant to California Water Code sections 20500 et seq. (See *Ops. Cal. Atty. Gen. 02-306, supra at page 2*). Subsequent to its formation as an Irrigation District, the California State Legislature in 1972 authorized the District to delete the word "Irrigation" from its appellation and operate under the name "Helix Water District". (*Cal. Water Code, section 20980.6*).

The District is organized in five separate geographic "Divisions". There is an elective position of Director for each of the Divisions. Each Director is required to be both a "landowner" of the District and a "resident" of the Division in which he or she resides. Residency in the geographic division from which one is elected as a Director is required throughout the entirety of the term of office for which the individual was elected. (*See Cal. Water Code section 21100; Ops. Cal. Atty. Gen., supra*). Specifically, *Cal. Water Code section 21100(a)* provides:

"Each [Irrigation district] director . . . shall be a voter and a landowner in the district and a resident of the division that he or she represents at the time of his or her nomination or appointment and through his or her entire term. . . ." [Emphasis is added].

SCALZITTI'S FAILURE TO MEET HIS BURDEN OF PROOF

As a procedural matter, it was and is the responsibility of SCALZITTI to establish the requirements for the Office of Director of the Helix Water District. SCALZITTI argued strenuously to have this Court hold that the Office is that of a Director of a Water District and not that of a Director of an Irrigation District. SCALZITTI has failed not only to meet his burden of producing evidence on this issue but has also failed to meet his burden of proof on this issue. As noted above, the Helix Water District, although operating under the appellation of a Water District is in fact and law an Irrigation District with all the requirements of office holders attendant thereto.

1 1. SCALZITTI HAS FAILED TO MEET HIS BURDEN OF PROOF THAT HE WAS A CONTINUOUS
 2 RESIDENT OF THE DIVISION FROM WHICH HE WAS ELECTED DIRECTOR THROUGHOUT THE
 3 ENTIRETY OF HIS TERM OF OFFICE:

4 It was clearly established through the testimony of SCALZITTI himself that it is his claim that he
 5 maintained, throughout his term of office, his residence at 1063 1/2 Sumner Avenue. The residency
 6 requirement of an office holder is one which extends throughout the entire term of office. If, then, at any
 7 point in time SCALZITTI's residence, during the term of office for which he was elected Director, was
 8 outside of the Division from which he was elected, his office must declared vacant and his position forfeit.
 9 *Cal. Water Code, section 21100.*

10 The credible evidence and reasonable inferences drawn therefrom is irrefutable that SCALZITTI
 11 did not intend nor have physical connection with 1063 1/2 Sumner Avenue as his place of residence
 12 between December 8, 2000 and December, 2001. As such, the irrefutable credible evidence and the
 13 reasonable inferences drawn therefrom is that SCALZITTI did not reside, maintain his residence, within
 14 the Division from which he was elected throughout the entirety of his term of office.

15 In summary, the evidence supporting this conclusion is:

- 16 • Between November 2000 and January 2002 SCALZITTI filled out and signed five separate
 17 documents which, under oath, identified his residence as other than 1063 1/2 Sumner. (See
 18 Exhibits 12 [a voter registration change from "1063" Sumner Avenue to 975 Spinel Street on
 19 April 4, 2001], 43 [Fair Political Practices Commission Form 460 filed on July 31, 2001 identifying
 20 (under penalty of perjury) his address as 975 Spinel Avenue] and 45 [a series of Department of
 21 Motor Vehicles forms, registrations and driver's license applications dated July 9, 2001; July 27,
 22 2001; November 28, 2001; December 31, 2001; April 30, 2002 and July 31, 2002 each of which
 23 indicating his residence address at 10050 Country View Road].
- 24 • Prior to being sworn into office SCALZITTI moved out of the 1063 1/2 Sumner residence and
 25 changed his California Driver's License address to 10050 Country View Road. 10050 Country
 View Road is located within Division 2 and not the Division 1 from which SCALZITTI was

1 elected. The change of address was under penalty of perjury and remained his mailing and
2 residence address for Department of Motor Vehicle purposes at the 10050 Country View Road
3 address until February 2002 shortly after these proceedings were initiated. (See Exhibit 45).

4 • The evidence presented has also demonstrated that SCALZITTI has registered automobiles, a
5 utility trailer, and a boat and trailer at the 10050 Country View Road address. (See Exhibit 45).

6 • SCALZITTI has not paid any of the property taxes on 1063 1/2 Sumner nor was he one of the
7 persons to whom the loan was made to purchase the property. His mother, Judy Matthews
8 testified quite clearly that the loan was made in her name and through a loan broker at
9 Washington Mutual Bank with whom she had had prior dealings.

10 • SCALZITTI has not obtained or claimed any tax benefits from the alleged ownership of 1063 1/2
11 Sumner.

12 • The title to the property at 1063 and 1063 1/2 Sumner was taken in his mother's name alone at
13 the time of the sale and transfer of the ownership of the property. SCALZITTI's name did not
14 appear on the title to the property until the Quit Claim deed from his mother on June 7, 2002.
15 (See Exhibit 8).

16 • SCALZITTI has presented no evidence of a telephone listing for himself at any time between
17 December 2000 and December 2001 at the 1063 1/2 Sumner residence.

18 • SCALZITTI changed his voter registration from 10050 Country View Road to 1063 1/2 Sumner at
19 the same time he submitted his nomination papers to the Registrar of Voters for the office of
20 Director from Division 1 even though he had purportedly been in residence at 1063 1/2 Sumner
21 since May of 2000. (It is also interesting to note that when SCALZITTI reregistered to vote in
22 April 2001 using the 975 Spinel address he listed his prior address as 1063 Sumner and not
23 1063 1/2 Sumner. See Exhibit 12). After the initiation of this action SCALZITTI reregistered to
24 vote using the 1063 1/2 Sumner address. (See Exhibit 13).

25

1 In summary, SCALZITTI did not, through the entirety of his term of elected office of Director from
2 Division 1 of the Helix Water District, maintain residency within that Division. At a very minimum
3 SCALZITTI has failed to sustain his burden of proof on this issue.

4 While the specific issue of being a *landowner* is technically to await another day, the evidence on
5 this issue bears great significance as to the credibility and believability of SCALZITTI. It is certainly a fact
6 that a witness who has failed to be forthright in one material part of his testimony is to be distrusted in
7 others. Simply put, SCALZITTI was not a *landowner* within the District. The artful creation of a "ledger"
8 (See Exhibits 7 and 72) from a calendar of hours worked for his mother (See Exhibits 61, 62, and 63) is
9 but a subterfuge of the worst kind. The documents are all created in the same ink which gives one great
10 pause from the outset.

11 It is also interesting to note that as of August 10th when SCALZITTI filed his nomination papers.
12 he had paid over to his mother \$1,800.00 from the sale of his Chevy truck (although his mother testified
13 that she believed that the amount was \$1,400.00 which she had been holding for him for a couple of
14 months since the sale of the vehicle even though the "ledger" reflects the \$1,800.00 and not the
15 \$1,400.00) and 9 hours of work at \$10.00 per hour. In other words, SCALZITTI had a purported financial
16 investment in real property as of August 10th at most of 8%. Interesting also is the absence of any
17 evidence of any payments by SCALZITTI on the mortgage.

18 However, more persuasive are the facts that he was not on the title to the property until recently and
19 after this action was begun; he never claimed a mortgage deduction; the loan to secure the property was
20 in his mother's name; he never paid any property taxes on the property; the insurance was not in his
21 name; he never reported income from the rents received on the property; and, this alleged "contract" with
22 his mother can only be one which is wholly executory given the testimony of his mother that every
23 indication of ownership was in her while SCALZITTI "worked off" what was to have been his share of the
24 down payment of \$40,000.00.

25 Even though not required of the Court on the Motion for Judgment and the defendant having
presented his evidence regarding ownership through his own testimony and that of his mother, the

1 Court specifically finds that at no time did SCALZITTI own property within the geographical
2 boundaries of the Helix Water District. That is, SCALZITTI did not at all times qualify for office
3 because he was not a landowner within the District.

4
5 **CONCLUSION**

6 President Abraham Lincoln said:

7 "If you once forfeit the confidence of your fellow citizens, you can never
8 regain their respect and esteem. It is true that you may fool all the
9 people some of the time; you can even fool some of the people all of the
10 time; but you can't fool all of the people all of the time."

11 A public office is a public trust and those who assume a public office should do so not for
12 personal advancement or private advantage. Public office is a unique opportunity in a democratic
13 society to serve ones community in the fulfillment of a public trust. This service cannot begin with a
14 deception.

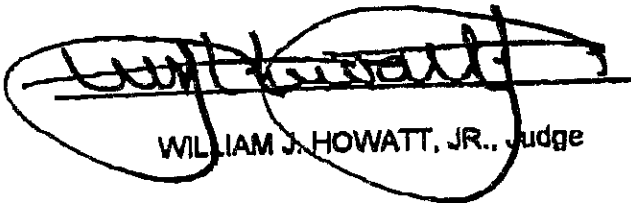
15 While the State and Federal Courts are loathe to embark upon resolution of purely political
16 matters when the very foundation upon which a public office and trust is compromised the courts will
17 move to protect the institutions of democracy.

18 This Court has considered carefully all of the testimonial and documentary evidence presented,
19 and, in particular, the testimony and explanations offered by SCALZITTI regarding his places of residence
20 and his assertion of ownership of land within the geographical construct of the Helix Water District. The
21 Court has reached the following conclusions on the issues presented:

- 22 • SCALZITTI has failed to establish his residency throughout his term of office as being
23 continuously located at 1063 ½ Sumner.
24 • SCALZITTI has failed to establish that he was a landowner within the geographical construct of
25 the Helix Water District throughout his term of office.

1 SCALZITTI has failed to sustain his burden of proof that he is qualified to hold the office of
 2 Director from Division 1 of the Helix Water District throughout the entire term of his office.
 3 THEREFORE, it is the determination of this Court that Judgment must and shall be entered in favor of the
 4 People ex rel. LINDEN; and JOEL SCALZITTI is immediately ousted from the office of Director of the
 5 Helix Water District; and the office of Director of the Helix Water District, Division 1 shall be and is
 6 declared to be vacant; and the People, acting through Realtor John B. LINDEN as a private attorney
 7 general have prevailed and are the prevailing party in this action *in quo warranto*. Counsel for the
 8 prevailing party is directed to prepare and submit an Order and Judgment consistent with the Court's
 9 findings, conclusions and orders set forth above. SCALZITTI shall be assessed reasonable costs
 10 pursuant to a memorandum of costs to be submitted by the People pursuant to Code of Civil Procedure
 11 section 809. The Court determines that a reimbursement of all per diem payments made to SCALZITTI
 12 during the time he unlawfully held office is appropriate and upon an accounting presented by the Helix
 13 Water District an Order of Restitution shall be made. The Court determines that it is not appropriate to
 14 impose a fine pursuant to Code of Civil Procedure section 809 as SCALZITTI shall be responsible for
 15 costs of the action and the per diem reimbursement to the District.

16 DATED: October 16, 2002.

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 18 WILLIAM J. HOWATT, JR., Judge

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