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6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SAN DIEGO**

9 THERESA McKENNA,

10 Petitioner,

11 v.

12 COUNTY OF SAN DIEGO;
MICHAEL VU, in his official capacity
13 as Registrar of Voters for the County of
San Diego,

14 Respondent

15
16 WILLIAM A. KIEL,

17 Real Party in Interest

) Case No. 37-2018-00041199-CU-WE-C.L.

) ROA No. _____

) WILLIAM A. KIEL'S OPPOSITION TO
) PETITIONER'S REQUEST FOR WRIT OF
) MANDATE

) Hearing Date: August 31, 2018

) Time: 1:30 p.m.

) Judge: Eddie C. Sturgeon

) Dept: C-67

19 Respondent WILLIAM A. KIEL (hereinafter, "KIEL") opposes Petitioner THERESA
20 McKenna's ("Petitioner") August 17, 2018, Petition for Writ of Mandate to Delete or Amend False
21 and Misleading Candidate Ballot Statement based on the following:

22 **CANDIDATE'S NAME IS, IN FACT, WILLIAM A. KIEL AND SHOULD BE**

23 **PERMITTED TO USE HIS OWN NAME WITHOUT QUALIFICATION**

- 24 1. KIEL's legal name is "William A. Kiel."
25 2. On or about August 10, 2018, KIEL submitted his Declaration of Candidacy, and
26 other necessary documents, to the San Diego County Registrar of Voters
27 ("Registrar") as a candidate for election to the governing board of the San Miguel
28 Consolidated Fire Protection District "(Fire Board").

- 1 2. KIEL has appropriately identified himself on those documents as "William A. Kiel."
- 2 3. Petitioner alleges that the KIEL's use of his own name is "false and misleading"
- 3 because KIEL's father, also, William A. Kiel, has the same name and serves on the
- 4 Fire Board to which KIEL is seeking election. Petitioner has requested that this court
- 5 impose a name descriptor on KIEL in order to differentiate KIEL from his father.
- 6 Namely, Petitioner has requested that this Court require KIEL to add, "Jr." to his
- 7 name. However, Petitioner does not provide any legal basis for such a an order.
- 8 Petitioner has further requested that this Court require KIEL add a "clarifying
- 9 sentence" to, presumably, his Candidate Statement of Qualification, that would
- 10 identify KIEL as the son of the current Fire Board member. Again, Petitioner
- 11 provides no legal precedence for such a qualifier.
- 12 4. KIEL submits that the use of his own name is neither "false" nor is it "misleading."
- 13 KIEL is using the name he has used his entire life in the community in which he is
- 14 now seeking election. Moreover, in the vacuum of legal precedence, KIEL relies on
- 15 the Registrar's own Candidate Filing Guide wherein he is advised at page 34 that he
- 16 may use his "first, middle and last names." KIEL has so complied. There is no basis
- 17 for requiring KIEL to add a descriptor to his legal name.
- 18 5. KIEL further submits that he is unaware of any legal precedence permitting a
- 19 clarifying statement the likes of which Petitioner has requested. Practically, however,
- 20 KIEL (and his counsel) are unaware of any such clarifying statements on any ballot
- 21 in any local or national election over the past 20 years. Furthermore, additional
- 22 language to the Candidate Statement would likely push KIEL beyond the word count
- 23 limitation imposed thereon.

24 **KIEL'S AGE DISCLOSURE IS OPTIONAL**

- 25 6. Petitioner has requested that this Court require KIEL disclose his age on his
- 26 Candidate Statement. Again, Petitioner has failed to provide any legal precedence
- 27 for such a requirement.

28 ////

- 1 7. KIEL has elected not to disclose his age on his candidacy paperwork. Specifically,
2 KIEL left blank the "optional" age field on his Candidate Statement of Qualifications.
3 Petitioner has no right to force him to disclose his age regardless of how she couches
4 the request-as a discriminatory tactic or a differentiation from current FIRE BOARD
5 members.

6 **KIEL HAS NOT DISPARAGED ANY INDIVIDUAL CANDIDATE RATHER HE**
7 **OPINES ON THE ACTIONS OF THE FIRE BOARD COLLECTIVELY**

- 8 8. Petitioner has alleged that certain statements abridge her right to avoid
9 disparagement of her person. Specifically, Petitioner takes offense to KIEL's various
10 statements wherein he opines that the previous FIRE BOARD: 1) permits
11 "automatic" tax increases; 2) commits "reckless and wasteful spending"; 3) has the
12 District on unsound financial footing; 4) abandoned a certain project; and, 5) wasted
13 money in a "reckless manner."
- 14 9. As justification for the allegations and subsequent request for edit or outright deletion
15 of the offending language, Petitioner cites Election Code § 13308 wherein "a
16 candidate's statement... shall not in any way make reference to other candidates for
17 that office or to another candidate's qualifications, character or activities."
- 18 10. KIEL is acutely aware of the E.C. § 13308 prohibition and crafted the language on
19 his Candidate Statement so as to avoid personal attacks. His opinion "attacks" no one
20 personally and only the FIRE BOARD generally as an entity. There is no prohibition
21 against make such statements against an entity.
- 22 11. Furthermore, KIEL's statements are his own opinion. Petitioner clearly disagrees
23 with KIEL's perception of the FIRE BOARD actions. She is entitled to her view as
24 is KIEL. Petitioner's concern that KIEL's opinion will cause concern amongst voters
25 is exactly the reason KIEL entered the race. It is his intent to share his opinion with
26 the voting public during the campaign process. Whether or not they agree is up to the
27 public not an incumbent dictating what information and/or opinions are released and
28 subject to public scrutiny.

1 **KIEL IS A BUSINESSMAN AND ENTITLED TO USE BUSINESSMAN AS A**
2 **DELEGATION**

- 3 12. Petitioner alleges that KIEL is not a "Businessman" yet, again, offers no
4 substantiation to that claim other than he also works as a Sales Associate at Smart &
5 Final. KIEL asserts that he is a "businessman" within the meaning of E.C. §
6 13107(a)(3) and 2 CCR § 20714 and, as such, is entitled to use the delegation.
- 7 13. E.C. § 13107(a)(3) permits the use of a designation that describes a candidate's
8 vocation. 2 CCR § 20714 clarifies that a "vocation" is "a trade...or the work upon
9 which a person, in most but not all cases, relies for his or her livelihood and spends
10 a major portion of his...time."
- 11 14. For nearly the past 2 years KIEL has been an active buyer and seller of trading cards
12 over the internet. He pursues this entrepreneurial endeavor for pecuniary and intends
13 to continue to grow his business. KIEL does acknowledge that he does not rely on the
14 business for his livelihood but supplements those monies he does earn with a part-
15 time position at Smart & Final. That said, KIEL does spend a "major" part of his time
16 scouring the internet for trading card deals and completing deals all across the United
17 States. Based thereon, KIEL asserts that he is qualified to use the Businessman
18 designation.

19 **WHEREAS**, Respondent prays that this Court:

- 20 1. Deny, in its entirety, Petitioner THERESA McKENNA's Petition for Writ of
21 Mandate to Delete or Amend False and Misleading Candidate Ballot Statement;
22 2. Award attorney fees to Respondent WILLIAM A. KIEL; and
23 3. Provide for any such other relief as this Court may deem appropriate

24
25 Dated: 4/30/18

HASKETT & ASSOCIATES
a Professional Corporation

26
27 By: 
28 J.B. HASKETT, Attorneys for
 WILLIAM A. KIEL