

APR 05 2010

Clerk of the Superior Court
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

HON. GEORGE A. MIRAM, JUDGE - DEPARTMENT NO. 28

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MICHAEL NI,)	
)	CASE NO. CIV 492074
)	
vs.)	DECISION AND ORDER RE:
)	
WARREN SLOCUM, in his official capacity as)	<u>Plaintiff's Petition for Writ of</u>
Chief Elections Officer of the COUNTY OF SAN)	<u>Mandate</u>
MATEO; DOES 1-100,)	
)	
Defendant-Respondent.)	
)	
)	

The Petition for Writ of Mandate is DENIED. Before a Court may issue a writ of mandate compelling a specific act, the Court must first conclude that the petitioner has established the two requirements for mandamus: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right in the petitioner to performance of that duty. (Code Civ. Proc. § 1085; *Barnes v. Wong* (1995) 33 Cal.App.4th 390, 394.) Petitioner seeks a writ of mandate compelling the San Mateo County Chief Elections Officer to certify the initiative "petition" purportedly completed by Petitioner. The writ of mandate is denied because Petitioner has failed to establish a clear, present and beneficial right to certification of his "petition."

1 Respondent's Request for Judicial Notice is GRANTED. (*Casella v. SouthWest*
2 *Dealer Services, Inc.* (2007) 157 Cal.App.4th 1127, 1137.) The parties agree and the Court
3 finds that a USB flash drive was presented to the San Mateo County Elections Officer as
4 though the flash drive were the initiative petition. The Court finds that an elections officer
5 was able to view an image from the flash drive. The image on the flash drive was that of an
6 initiative petition for a statewide ballot. The image contained one apparent signature in
7 support of the initiative petition; a corresponding name that appears to be hand printed; a
8 corresponding address (street address redacted) in typeset; a range of dates in which the
9 petition was purportedly completed that appears to be hand printed; a date when the
10 Declaration of Circulator was executed that appears to be hand printed; the city where the
11 Declaration of Circulator was executed in typeset; an apparent signature of the circulator; the
12 name of the circulator that appears to be hand printed; and the address of the circulator in
13 typeset (street address redacted). All of the dates are identical, the printed name of the
14 petitioner and circulator are identical, and the viewable portions of the addresses are identical.

15 The writ of mandate is denied because Petitioner did not substantially comply with the
16 requirements of Elections Code § 100. Although prior cases have analyzed whether a
17 technical defect in an initiative petition supports rejecting such petitions, (see, e.g., *Mapstead*
18 *v. Anchundo* (1998) 63 Cal.App.4th 246), the starting point of every dispute has been the
19 submission of an *actual* petition. The Court concludes that Petitioner's initiative "petition"
20 was a virtual "petition" saved to an electronic memory device. Although Respondent did not
21 contend Petitioner's initiative "petition" was flawed because it was not submitted on paper,
22 the mundane requirement of a one-inch margin found in Election Code § 100 and the
23 additional requirement of a one-inch margin across "the top of each page of every initiative
24 petition" found in Election Code § 9009 support the conclusion that the initiative petition have
25 actual dimensions allowing for these required margins. Therefore, Petitioner did not
26 substantially comply with the requirements of Election Code § 100 because Petitioner simply
27 did not submit an actual initiative petition to the elections officer. Furthermore, the lack of
28 margin shows that the virtual initiative "petition" is not in conformity with Election Code §

1 9009, and, therefore, pursuant to Election Code § 9012, the elections officer may not receive
2 or file it.

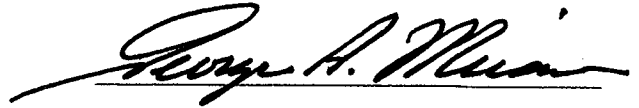
3 In addition, the image of the apparently signed initiative petition does not substantially
4 comply with Election Code § 100. “[S]ubstantial compliance means *actual* compliance in
5 respect to the substance essential to every reasonable objective of the statute.” (*Mapstead v.*
6 *Anchundo* (1998) 63 Cal.App.4th 246, 264 (quoting *Assembly v. Deukmejian* (1982) 30 Cal.3d
7 638, 649 (emphasis in original).) One of the purposes of Election Code § 100 is to allow the
8 elections official to carry out their duty to “ensure that petitions have been signed by those
9 entitled to do so.” Pursuant to Election Code § 9030, which applies to statewide ballot
10 initiatives, “[i]n determining from the records of registration what number of qualified voters
11 have signed the petition, the elections official may use the duplicate file of affidavits of
12 registered voters or the facsimiles of voters’ signatures, provided that the method of preparing
13 and displaying the facsimiles complies with law.” In *Mapstead, supra*, 63 Cal.App.4th at p.
14 267, the court concluded that identical language in Election Code § 9114 corresponding to
15 determinations of county referendum petitions prohibited elections officials from examining
16 any extrinsic evidence. Here, the San Mateo County Elections Officer would likewise be
17 prohibited from examining any extrinsic evidence. However, an elections officer is not
18 required to ignore facts presented by the initiative petition itself. (*Mapstead, supra*, 63
19 Cal.App.4th at p. 260.)

20 The image of the virtual initiative “petition” submitted to the San Mateo County
21 Elections Officer presented the elections officer with the inability to determine if the petition
22 was signed by one entitled to do so. The image itself does not allow an elections official to
23 determine whether the voter personally affixed their signature to the petition. While Petitioner
24 has included assertions of the security of the technology employed to affix signatures to
25 initiative petitions, these purported assurances and explanations would require the elections
26 officer to investigate extrinsic evidence. As explained above, the elections officer is strictly
27 prohibited from employing such a method. Merely viewing the virtual “petition” without an
28 explanation of the technology prevents an election official from determining whether the voter

1 personally affixed their signature to the petition or some other technology was employed
2 whereby a third party affixed the signature. Thus, the image of the virtual initiative "petition"
3 does not substantially comply with Election Code § 100.

4 **IT IS SO ORDERED.**

5 Dated: *April 2, 2010*



JUDGE OF THE SUPERIOR COURT

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