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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, NORTH JUSTICE CENTER

RICHARD REDDISH,

Petitioner,

vs.

Case No. 30-2022-01277366

RULING ON PETITION FOR WRIT
OF MANDATE

THERESSA BASS, in her official
capacity as Anaheim City Clerk; BOB
PAGE, in his official capacity as
Orange County Registrar of Voters;
and DOES 1 through 10, inclusive,

Respondents.

Assigned for all purposes to
the Honorable Craig L. Griffin

Department N17

HARI LAL,

Real Party in Interest.

The petition for writ of mandate in the above-captioned matter came on for hearing on September 2, 2022, before the Honorable Craig L. Griffin, Department N17 of the Orange County Superior Court, North Justice Center. The Court, having taken evidence, both oral and written, and considered the arguments of the parties, now rules as follows:

1 **A. The Offices of Anaheim City Council District 6 and Santiago Geological**
2 **Hazard Abatement District (SGHAD) Are Incompatible**

3 Petitioner Richard Reddish seeks a writ of mandate removing the name of Real
4 Party Hari Lal from the ballot for Anaheim City Council, District 6. Petitioner notes
5 that Real Party also filed to run for reelection as a board member of the Santiago
6 Geological Hazard Abatement District (GHAD), and that the two offices are
7 incompatible. Absent intervention by the Court, Real Party will both appear on the
8 ballot for the city council slot, and be appointed by Orange County Board of
9 Supervisors to the GHAD office pursuant to Elections Code section 10515.

10 Government Code section 1099 provides, in relevant part:

11 “(a) A public officer, including, but not limited to, an appointed or
12 elected member of a governmental board, commission, committee, or
13 other body, shall not simultaneously hold two public offices that are
14 incompatible. Offices are incompatible when any of the following
circumstances are present, unless simultaneous holding of the particular
offices is compelled or expressly authorized by law:

15 “(1) Either of the offices may audit, overrule, remove members of,
16 dismiss employees of, or exercise supervisory powers over the other
office or body.

17 “(2) Based on the powers and jurisdiction of the offices, there is a
18 possibility of a significant clash of duties or loyalties between the offices.

19 “(3) Public policy considerations make it improper for one person to hold
both offices.

20 “(b) When two public offices are incompatible, a public officer shall be
21 deemed to have forfeited the first office upon acceding to the second.
22 This provision is enforceable pursuant to Section 803 of the Code of
Civil Procedure.”

23 Petitioner contends that the present situation falls within subsections (a)(2) and (a)(3),
24 based in large part upon an arbitration demand served by GHAD upon the City of
25 Anaheim.

26 Following the 1992 landslide of a bluff in east Anaheim and ensuing lawsuit, a
27 settlement was reached creating GHAD as a special district to take full responsibility
28 to own, operate, and maintain dewatering equipment. Anaheim installed the

1 dewatering equipment and monitoring equipment, and then turned it over to GHAD.
2 Anaheim also provided \$3.5 million to GHAD to finance its operations.

3 On May 7, 2021, GHAD sent an arbitration demand and draft complaint to
4 Anaheim. In the draft complaint, GHAD is seeking declaratory relief that it be
5 relieved from its contractual obligations to continue dewatering operations due to a
6 lack of funding. GHAD alleges that Anaheim is refusing to release GHAD from its
7 obligations, and insists that GHAD continue on with its mission. It is unknown if the
8 dispute between Anaheim and GHAD is still continuing.

9 Real Party does not dispute the two offices he is seeking are incompatible;
10 instead, he asserts the issue is “unclear” and should be determined after the election.

11 The Court finds the two offices to be incompatible. Case law is clear that an
12 actual “clash of duties or loyalties need not actually be realized to render two offices
13 incompatible.” *People ex rel. Lacey v. Robles* (2020) 44 Cal.App.5th 804, 819.

14 In other words, “there need not be a showing that an officeholder’s loyalties actually
15 have been tested—or that it is inevitable they will be tested—for the offices to be
16 incompatible. “ *Ibid.* Here, an actual dispute has arisen between GHAD and
17 Anaheim, with the potential for further disputes down the road.

18
19 **B. The Court Has Jurisdiction to Decide This Matter**

20 Real Party notes that Anaheim is a charter city, whose charter provides that
21 “[t]he City Council shall judge the qualifications of its members” He thus
22 contends that this Court lacks jurisdiction to hear the matter. The Court disagrees.

23 Under Elections Code § 13314, a petition for writ of mandate can be granted for
24 errors, omissions or neglect of duties in violation of the Elections Code, including the
25 placing of a name on the ballot, or printing of a ballot, voter information guide, state
26 voter information guide or other official matter. This is a statutory grant of power for
27 this Court to hear the matter.
28

1 Moreover, local agencies are powerless to grant dispensation where
2 incompatibly exists. On the issue of incompatible offices, “the Legislature intended to
3 occupy the field on a matter of statewide concern and preclude ‘local loopholes.’”
4 *Lacey, supra*, at p. 823. This conclusion was reached in part because an earlier draft of
5 section 1099 contained an exception, “as provided by local ordinance.” On the
6 exception’s removal, the Court of Appeal in *Lacey, supra*, observed:

7 “[T]he Senate Local Government Committee warned that ‘[l]ocal
8 loopholes loom[ed]’ because ‘[a]ny time the Attorney General finds
9 conflicts, local officials could wiggle out of the problem by persuading
10 their colleagues to adopt local ordinances.’ [Citation.] By removing the
11 ‘as provided by local ordinance’ clause, the Legislature eliminated the
12 risk of such loopholes and reserved for itself the sole power to create
13 exceptions to Section 1099.”

14 *Id.* at p. 823. Thus, if elected, Real Party cannot “wiggle out of the problem” by
15 convincing his fellow city council members to find him qualified to serve.

16 **C. Real Party Cannot Withdraw His Candidacy for the SGHAD Board**

17 On August 29, 2022, Real Party sent the Registrar of Voters a letter seeking to
18 withdraw his candidacy for renewed board membership on GHAD. Petitioner
19 contends that Real Party acted too late to withdraw his candidacy. Petitioner is correct.

20 Elections Code section 10510(a) provides, in relevant part: “No candidate shall
21 withdraw his or her declaration of candidacy after 5 p.m. on the 88th day prior to the
22 general district election.” The logic behind such a deadline was explained thus:

23 “The clear intent of the law is to force candidates to consider their
24 qualifications for the ballot seriously and to face election once the
25 qualification process is completed and the 88th day prior to the election
26 has passed. To allow such removal from a ballot encourages undue
27 influence by more powerful candidates, political ‘teams’ who may
28 withdraw in favor of one another, and the deterrence of potential
29 candidates who may consider the race overcrowded or their views
30 represented by potential declared candidates.”

31 *Mann v. Superior Ct.* (1986) 181 Cal.App.3d 372, 375–76.

1 Here, Real Party's attempt to withdraw on August 29 came 17 days too late.
2 Accordingly, the withdrawal attempt was ineffectual.

3 **D. Real Party Cannot Be a Candidate for Both of the Offices He Seeks**

4 As set forth above, Government Code section 1099 provides that "[a] public
5 officer . . . shall not simultaneously hold two public offices that are incompatible."
6 Although the statute prevents one from *holding* two incompatible public offices, it is
7 silent as to whether one can *be a candidate* for two incompatible public offices. The
8 Court is unaware of any statute expressly addressing this issue.

9 But the issue was addressed by Supreme Court in *Keane v. Smith* (1971) 4
10 Cal.3d 932, 940, which determined that a ballot in which a voter had both marked the
11 box for a judicial candidate but also wrote in the same candidate's name as district
12 attorney must be disregarded, as the candidate was constitutionally incapable of being
13 elected to both offices. In support, the court recognized that a candidate is statutorily
14 "required to declare that he will accept nomination, not withdraw, and if nominated,
15 qualify for any office for which he is a candidate." Because a candidate could not file
16 such a declaration for two incompatible offices, the Court declared that "in California
17 one is effectively prohibited from being a candidate for two incompatible offices at the
18 same election." *Id.* at p. 268; *see also* 92 Cal. Op. Att'y Gen. 41 (2009) 2009 WL
19 1913703.
20

21 The reasons for this are sound. In casting their ballots, voters presume that the
22 candidate who receives the most votes will become the officeholder. Voters otherwise
23 inclined to vote for a candidate for a particular office might not do so if they know the
24 candidate considers that office as only a backup to a more desirable one. Accordingly,
25 if a person is a candidate for two incompatible offices the voters will be misled and
26 their power at the ballot box diminished.
27
28

1 The Court holds that Real Party may not run for both the GHAD board and the
2 Anaheim city council. The Court therefore must act under Elections Code § 13314 to
3 prevent this from occurring.

4 **E. The Court Will Issue a Writ of Mandate Removing Real Party**
5 **as a Candidate for the SGHAD Board**

6 Petitioner contends Real Party must be removed from the ballot for the office of
7 Anaheim City Council, District 6, for a number of reasons.

8 First, Petitioner contends that Real Party must be disqualified from running for
9 both offices, citing *Keane, supra*, for the proposition that a person running for
10 incompatible offices loses the right to run for both. But *Keane* never suggested such a
11 thing. *Keane* dealt with a post-election issue regarding the interpretation and validity
12 of ballots already cast for a candidate for two incompatible offices. Here, the matter is
13 being handled pre-election.

14 Indeed, the right to hold a public office is an “implied attribute of citizenship.”
15 *Carter v. Commission on Qualifications of Judicial Appointments* (1939) 14 Cal.2d
16 179, 182. The exercise of the right to hold and seek office should be curtailed only if
17 there is a “plain provision of law,” and ambiguities should be resolved in favor of
18 eligibility to office. *Ibid.* Given this legal backdrop, the Court will exercise its power
19 of writ in accordance with the universal philosophy of horse training: “As gentle as
20 possible, as firm as necessary.” Because the Court can resolve the incompatibility by
21 removing Real Party from candidacy from one only office, there is no principled
22 reason to remove him from both.

24 Petitioner next argues that the Court should apply the common law principle in
25 which a person holding two incompatible offices is deemed to forfeit the earlier held
26 office. Thus, Petitioner argues, Real Party forfeited his filing for Anaheim city council
27 when he filed for the GHAD office.

1 But “[u]nder the doctrine of incompatible offices, the first office does not
2 become vacant at the time of the filing, ‘but upon the actual assumption of the duties of
3 the second office.’” 92 Cal. Op. Att’y Gen. 41 (2009) 2009 WL 1913703. The issue of
4 which of two incompatible offices a person forfeits was addressed in the case of
5 *People ex rel. Bagshaw v. Thompson* (1942) 55 Cal.App.2d 147. In *Bagshaw*, the
6 defendant held the incompatible positions of Director of the Golden Gate Bridge and
7 Highway District (Director) and Supervisor of Marin County (Supervisor). A *quo*
8 *warranto* action was brought to remove the defendant from his position as Director.

9 The Defendant had taken and filed his oath of office as Supervisor on September
10 21, 1938, and filing a required bond on September 24, 1938. On November 14, 1938,
11 the Board of Supervisors of the County of Marin appointed him to the office of
12 Director. On November 24, 1938, he took his oath as Director and assumed the duties
13 of the office the same day. Thereafter, on January 2, 1939, he entered upon his duties
14 as supervisor.

15 The trial court determined that because the defendant became the legal holder of
16 the office of Supervisor on September 24, 1938, his oath of office and assumption of
17 duties as Director on November 24 worked a forfeit of his office of Supervisor. The
18 Court of Appeal reversed, holding that when a person inhabits two incompatible
19 offices, the first held office becomes vacant when he or she “enters upon the duties” of
20 the second. *Id.* at p. 154. Thus, the defendant in that case forfeited his office of
21 Director when he assumed duties as Supervisor on January 2.

22 In the present case, Real Party serves as a director of GHAD, but has not yet
23 been appointed to the new term for which he is a candidate. He also has not yet
24 acceded to the office of Anaheim city council. Accordingly, nothing has been
25 forfeited.
26

27 As noted above, Real Party may not resolve the matter by simply resigning from
28 one candidacy. It thus comes down to the Court to make the decision. Although there

1 is no case law on point controlling this situation, the Court is guided by the principle
2 that “[t]he right to vote is a fundamental right.” *Lion Raisins, Inc. v. Ross* (2022) 64
3 Cal.App.5th 718, 737. Accordingly, the Court must act in a manner which lessens the
4 impact on the voters’ right to select those who will govern them. As counsel during
5 oral argument put it, the decisions which best minimizes the “glitch in the Matrix.”

6 On the one hand, the 305 GHAD residents will not be voting on the two director
7 seats now up. Because only two candidates ran for two seats, the candidates’ names
8 will not appear on the ballot, and the Board of Supervisors will appoint them to a four-
9 year term. The effect of the Court removing Real Party from his candidacy for GHAD
10 director will be that one director will be appointed to only a two-year term. This will
11 no effect on the voter’s rights except that one seat will go to election two years sooner.

12 On the other hand, removing Real Party from the race for Anaheim City
13 Council, District 6, will mean that there will be only one name on the ballot for that
14 office. This will not only affect a far greater number of voters, but—absent a
15 herculean write in candidacy—will deprive the voters of any choice at all. Needless to
16 say, the clear choice is to remove Real Party from being a candidate for the GHAD
17 directorship.

18 Accordingly, the Petition for Writ of Mandate is GRANTED in part, and
19 DENIED in part. Real Party shall be removed from being a candidate for a director of
20 GHAD.
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24 Dated this 2nd day of September 2022


CRAIG E. GRIFFIN
Judge of the Superior Court