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ELECTRONICALLY
FILED
BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF NEVADA
11/18/2022
JASON B. GALKIN, CLERK OF THE COURT
MELISSA MORGAN, DEPUTY

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NEVADA**

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GINA WILL,
Contestant,

vs.

ROB TRIBBLE,
Defendant.

GREGORY DIAZ, in his official capacity as Nevada
County Registrar of Voters; and ROES 1-25,
Real Parties in Interest.

CASE NO: CU-0000159

**MEMORANDUM DECISION
AND ORDER**

**I.
Introduction**

The right to elect our public servants is one of the “most fundamental of our democratic rights.” *Hardeman v. Thomas* (1989) 208 Cal.App.3d 153, 167. At the same time, “[t]here can be no doubt that the state has a strong interest in assuring that a person with aspirations to hold office is qualified to administer the complexities of that office.” *Rawls v.*

1 Zamora (2003) 107 Cal.App.4th 1110, 1117. “And the authority of the state to determine the
2 qualifications of their most important governmental officials is an authority that lies at the
3 heart of representative government.” *Id.*

4 In this case, Contestant Gina Will challenges the qualifications of Defendant Rob
5 Tribble to serve as Nevada County Auditor-Controller (“Auditor-Controller”) under
6 Government Code section 16100(b), following his election to that office during the June 2022
7 Primary Election. The Court conducted a trial on the merits on October 31, 2022, heard
8 argument on November 8, 2022, and took the matter under submission. As explained herein,
9 after careful consideration of the record as a whole, and “mindful of the care required when
10 the judicial branch reviews a case involving the will of the voters,” *Hardeman*, 208
11 Cal.App.3d at 167, the Court finds and concludes that Defendant does not meet the
12 qualifications required by law in Government Code section 26945 to serve as Auditor-
13 Controller. As such, the Court annuls and sets aside the election of Defendant as Auditor-
14 Controller.
15 Controller.

16 17 **II.** 18 **Findings of Fact**

19 **A. The 2022 Primary Election**

20 1. Contestant appeared on the June 7, 2022, Nevada County ballot as a candidate
21 for Auditor-Controller.

22 2. Contestant has served as Assistant Auditor-Controller for 2 years, and served as
23 Finance Director for the Town of Paradise for the preceding 12 years.¹

24
25 _____
26 ¹ The parties agree that Contestant meets the statutory qualifications to run for the office of
27 Auditor-Controller under California Government Code sections 26945 and 26946 and Nevada
28 County Code section A-II 1.9 because she has held a senior fiscal management position with
governmental entities for all of the past five years. While offered as a stipulation of fact, the
Court construes this as the parties’ agreement as to this mixed question of fact and law.

1 3. Defendant appeared on the June 7, 2022, Nevada County ballot as a candidate
2 for Auditor-Controller.

3 4. Contestant and Defendant were the only two candidates for Auditor-Controller
4 on the June 2022 ballot.

5 5. The official canvass of the vote published by the Registrar on or about June 29,
6 2022, states that Contestant garnered 13,969 votes or approximately 45.21 percent of the total
7 votes cast for this office, and Defendant garnered 16,929 votes or approximately 54.79 percent
8 of the total votes cast.
9

10 6. The Board of Supervisors officially certified the results of the election on or
11 about July 12, 2022.

12 7. Because Contestant and Defendant were the only two candidates running for
13 this office, and because Defendant received more than 50 percent of the vote, Defendant
14 will be deemed the winner of this election and will be sworn into the office in January 2023,
15 unless the Court directs otherwise.
16

17 B. Defendant's Background as an Accountant or Auditor

18 8. Defendant is not a licensed public accountant.

19 9. Defendant is not a certified professional internal auditor.

20 10. Defendant has not previously served as a county auditor, chief deputy
21 county auditor, or chief assistant county auditor.

22 C. Defendant's Disclosures Regarding His Professional Experience Over the Last
23 Five Years²

24 11. Defendant's Statements of Economic Interests (Form 700) states he did not
25 hold any jobs between 2019 and March 2022.

26 _____
27 ² Defendant has a substantial educational and professional history that dates back years. That
28 said, in this election contest, only Defendant's professional experience over the last five years
is at issue.

1 12. Defendant's Statements of Economic Interests (Form 700) states that he did
2 not have any sources of income between 2019 and March 2022.

3 13. Defendant's Ballot Designation Worksheet, which Defendant submitted to
4 the County in March 2022, states he is "self [-] employed."

5 14. Defendant listed "Business Accountant/Executive" as his three-word
6 ballot designation.

7 15. Defendant listed his wife as the person who could verify the information on
8 his Ballot Designation Worksheet.

9 16. Defendant's LinkedIn profile does not list any jobs during the last five years.

10 17. Defendant's campaign Facebook page did not list any jobs during the last
11 five years.

12 18. Defendant has a personal website that is almost exclusively about his
13 glass blowing art.

14 19. Other publicly available documents regarding Defendant's professional
15 experience do not list any jobs during the last five years.

16 20. Defendant was asked how he met the qualifications for Auditor-
17 Controller during a League of Women Voters' candidate forum held on or about April 21,
18 2022. He stated, in substance, that he was working on various "black projects" subject to
19 non-disclosure agreements and could not discuss the same.

20 21. Defendant's campaign press coverage did not mention any jobs held by
21 him during the last five years.

22 22. The resume that Defendant distributed during the campaign expressly states
23 under "Recent Work Experience in Last 5 Years" that his "major relationships are with" two
24 companies called "Margin-Finders" and "Rev-Ops," but he actually has not worked with
25 either of these companies in the last five years.

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1 D. Defendant's Post-Election Responses Regarding His Qualifications and this Lawsuit

2 23. On or about June 24, 2022, before the Nevada County certified the results of
3 the election, Contestant's counsel raised the issue of Defendant's qualifications in a letter to the
4 Registrar of Voters, asking the Registrar to confirm whether Defendant met the statutory
5 qualifications for Auditor-Controller before certification. Defendant was copied on this letter
6 but did not respond.

7
8 24. On or about June 29, 2022, Contestant's counsel sent a letter to Defendant
9 asking him to demonstrate that he met the statutory qualifications, but he did not respond.

10 25. On or about July 5, 2022, Contestant filed this election contest.³

11 E. Defendant's Consulting Work In General Over the Last Five Years

12 26. Within the last five years, Defendant has done two consulting projects: one
13 helping an unnamed company find a buyer for its business (hereinafter referred to as "the
14 Company" and "the Company Project"), and another trying to secure licensing agreements for
15 an unnamed patent holder (hereinafter referred to as "the patent holder" and "the Patent
16 Project").⁴

17
18 27. Defendant has not provided the name of the Company or any information about
19 its line of business, or the name of the patent holder or any information about the patent
20 technology, citing non-disclosure agreements.

21 28. Defendant performs consulting work as an independent contractor. He does not
22 do so as part of a firm, a limited liability company or a professional corporation. He does not
23

24
25 ³ Contestant noticed Defendant's deposition for July 18, 2022, to ask him about his job history
26 in advance of the Court hearing scheduled for July 20, 2022. Defendant did not appear for this
27 deposition.

28 ⁴ There was no credible evidence presented that Defendant did any other consulting work
during this period.

1 operate under a business name. He does not have an office or any employees.

2 29. Defendant's weekly work on the consulting projects fluctuated in known
3 duration, with some weeks of no work and most other weeks of some work not reaching 40
4 hours.

5 30. Defendant has listed his employment as "self[-]employed" on his IRS tax
6 returns for the last five years.

7
8 F. Defendant's Consulting Work for the Company Project

9 31. Defendant's work on the Company Project lasted approximately 20
10 months, beginning in February 2018 and ending in October 2019.⁵

11 32. Defendant's work for the Company included reviewing the Company's
12 revenues, expenses, assets and payroll in order to negotiate a fair market price with a potential
13 buyer, preparation of EBITDA (earnings before income, taxes, depreciation, and appreciation)
14 statements and forecasts, preparation of term sheets, and an advisory role in purchase,
15 acquisition and merger.

16 33. Defendant did not manage marketing, accounting, human resources, or any
17 other functions for the Company.

18 34. Defendant did not manage, supervise, recruit, train, review or hire any
19 employees of the Company.

20 35. Defendant was not responsible for monitoring the budget, payroll, recording
21 assets, liabilities, revenues and expenses, internal auditing, or any other fiscal matters for the
22 Company.

23 36. Defendant did not have any title or position with the Company.

24 37. Defendant did not receive a salary from the Company and was not eligible
25 for healthcare or other benefits.

26 38. Defendant's only compensation for his consulting services was a potential
27 commission on the sale price of the Company.

28 ⁵ There was no credible evidence presented that the Company Project lasted for longer than
this timeframe.

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39. Defendant has not yet been paid by the Company for his consulting services.

40. Defendant spent a fair amount of time at the beginning of Company Project reviewing the Company's revenue and expenses, conducting due diligence about the fair market value of the company, and researching the market for potential buyers.

41. Defendant's work on the Company Project became sporadic after the initial work was done, going days or weeks with no work on the project.

G. Defendant's Consulting Work for the Patent Project

42. Defendant's other consulting project within the last five years was helping an unidentified patent holder on two unnamed technologies try to find someone to sell the product under a licensing agreement.

43. Defendant and other individuals have an ownership interest in the patents.

44. The Patent Project does not relate to an established business.

45. The Patent Project has no office and no employees.

46. The Patent Project is not producing or selling a product.

47. The Patent Project has no revenues.

48. Defendant's work on the Patent Project has entailed attempting to identify someone to license the patents.

49. Defendant has worked on the Patent Project for over four years but has only had three to five meetings with potential licensees, with each meeting lasting no more than an hour.

50. Defendant spent some time researching the market for the product and potential licensees when he began working on the Patent Project in late 2018, but since then has not had to devote much time to the Patent Project, sometimes going weeks or longer without doing any work or meeting with any potential licensees.

51. Defendant did not list the company or patent holder on the Statements of Economic Interests (Form 700) which he submitted to the County for the last five years.

1 H. Tasks Not Performed by Defendant In Connection With the Company or Patent
2 Projects

3 52. Defendant did not monitor budgets for the Company Project or Patent
4 Project.

5 53. Defendant did not audit the procurement of payments for goods and
6 services for the Company Project or Patent Project.

7 54. Defendant did not hire, train, review or fire staff for the Company
8 Project or Patent Project.

9 55. Defendant did not perform internal controls and fraud prevention for
10 the Company Project or Patent Project.

11 56. Defendant did not perform accounting operations for the Company
12 Project or Patent Project.

13 57. Defendant did not perform payroll functions for the Company Project
14 or Patent Project.

15 58. Defendant did not perform tax functions, including property, sales and
16 use, and hotel occupancy taxes for the Company Project or Patent Project.

17 59. Defendant did not perform internal auditing for the Company Project
18 or Patent Project.

19 60. Defendant did not perform grant compliance for the Company Project
20 or Patent Project.

21 61. Defendant did not perform financial reporting for the Company
22 Project or Patent Project.

23 I. Responsibilities of the Auditor-Controller

24 62. According to the Executive Committee of the California State Association of
25 County Auditors (“Association”) and its President, Mr. Raigoza: The auditor-controller
26 oversees the management of a county's finances. The office of the auditor-controller operates
27 under the direction of the auditor-controller in five functional areas: accounts payable; general
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accounting and financial reporting; payroll; property tax administration and fiduciary administration; and internal audits.

63. According to the Association, among other things, the auditor-controller performs the following functions and duties: reconciling invoices and claims for payment, including validation of any contractual terms and requirements; generating payments for authorized goods and services of the County and Special Districts; providing training and on-going assistance to all County and Special District staff on accounts payable processes; accounting for all agency assets and liabilities; maintaining the General Ledger accounting structure; controlling the County budget through ensuring expenditures do not exceed the legal level of budget adoption without a properly approved and qualified budget amendment; preparing the annual Countywide Cost Allocation Plan; preparing the Annual Comprehensive Financial Report; preparing the State Financial Transactions Report and Single Audit for Federal expenditures; providing training and on-going assistance to all County and Special District staff on all accounting processes; processing payroll for all County employees including all retiree benefit payrolls; maintaining “position control” to ensure that employees paid are authorized; ensuring pay warrants are in compliance with memorandums of understanding, state and federal laws and regulations; providing training and on-going assistance to all County and Special District staff on time entry and payroll processes; establishing the county property tax rates and calculating the county property tax bills including direct charges, assessments and debt service requirements for locally approved school bonds or other debt, apportioning property tax revenues to the County, Cities/Towns, Schools, and Special Districts throughout the County; conducting audits mandated in various State Code sections, primarily Government Code, including quarterly Treasury Cash audits; reviewing and recommending updates to the government's policies and procedures; and overseeing grant

1 compliance for Federal and State awards.

2 **III.**
3 **Conclusions of Law**

4 A. Standard of Review for an Election Contest

5 “It is a primary principle of law as applied to election contests that it is the duty of the
6 court to validate the election if possible. That is to say, the election must be held valid unless
7 plainly illegal.” *Hardeman*, 208 Cal.App.3d at 166 (citations omitted).

8 “[A] distinction has been developed between mandatory and directory provisions in
9 election laws; a violation of a mandatory provision vitiates the election, whereas a departure
10 from a directory provision does not render the election void if there is a substantial observance
11 of the law and no showing that the result of the election has been changed or the rights of the
12 voters injuriously affected by the deviation.” *Id.*

13
14 “Provisions relating to . . . the qualifications of voters and candidates and other matters
15 of that character are mandatory.” *Daniels v. Tergeson* (1989) 211 Cal.App.3d 1204, 1208. “A
16 violation of a mandatory provision vitiates an election.” *Id.*

17 “The contestant has the burden of proving the defect in the election by clear and
18 convincing evidence.” *Hardeman*, 208 Cal.App.3d at 166 (citations omitted).

19
20 Lastly, “[w]hen a nonpartisan primary election results in the outright election of a
21 candidate because that candidate received a majority of votes, the election is transmuted into a
22 general election, and statutes relating to the contest of a general election are applied.” *Pini v.*
23 *Fenley* (2017) 9 Cal.App.5th 67, 72.

1 B. Government Code Section 26945 Requirements

2 Government Code Title 3, Division 2, Part 3, Chapter 4, Article 4, sets forth the
3 “Qualifications for Office” of the “Auditor”. Government Code section 26945⁶ states, in
4 pertinent part:

5 **Requisites**

6 No person shall hereafter be elected or appointed to the office of county auditor of any
7 county unless the person meets at least one of the following criteria:

8 . . .

9 (b) The person possesses a baccalaureate degree from an accredited university, college,
10 or other four-year institution, with a major in accounting or its equivalent, as described
11 in subdivision (a) of Section 5081.1 of the Business and Professions Code, and has
served within the last five years in a senior fiscal management position in a county,
city, or other public agency, a private firm, or a nonprofit organization, dealing with
similar fiscal responsibilities, for a continuous period of not less than three years.

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15 ⁶Government Code section 26945, in full, states:

16 No person shall hereafter be elected or appointed to the office of county auditor of any
17 county unless the person meets at least one of the following criteria:

18 (a) The person possesses a valid certificate issued by the California Board of
19 Accountancy under Chapter 1 (commencing with Section 5000) of Division 3 of the
Business and Professions Code showing the person to be, and a permit authorizing the
person to practice as, a certified public accountant or as a public accountant.

20 (b) The person possesses a baccalaureate degree from an accredited university, college,
21 or other four-year institution, with a major in accounting or its equivalent, as described
22 in subdivision (a) of Section 5081.1 of the Business and Professions Code, and has
served within the last five years in a senior fiscal management position in a county,
city, or other public agency, a private firm, or a nonprofit organization, dealing with
similar fiscal responsibilities, for a continuous period of not less than three years.

23 (c) The person possesses a certificate issued by the Institute of Internal Auditors
24 showing the person to be a designated professional internal auditor, with a minimum of
16 college semester units, or their equivalent, in accounting, auditing, or finance.

25 (d) The person has served as county auditor, chief deputy county auditor, or chief
assistant county auditor for a continuous period of not less than three years.

26 The parties agree that Defendant does not satisfy the requirements of subsections (a), (c) and
27 (d).

1 Gov. Code § 26945.⁷

2 There is no dispute that Defendant satisfies the “educational requirement” of
3 subsection (b). The parties dispute whether he has satisfied the “experience requirement” in
4 connection with this subsection.

5 Three issues are raised with respect to the experience requirement: (1) has Defendant
6 “served within the last five years in a senior fiscal management position in a county, city, or
7 other public agency, a private firm, or a nonprofit organization,” (2) “dealing with similar
8 fiscal responsibilities,” (3) “for a continuous period of not less than three years.”

10 C. The Experience Requirement

11 1. Statutory Interpretation

12 Our Supreme Court summarized the process of statutory interpretation in *Smith v.*
13 *Superior Court* (2006) 39 Cal.4th 77:

14 In construing a statute, our fundamental task is to ascertain the Legislature's intent to
15 effectuate the purpose of the statute. We begin with the language of the statute, giving
16 the words their usual and ordinary meaning. The language must be construed in the
17 context of the statute as a whole and the overall statutory scheme, and we give
18 significance to every word, phrase, sentence, and part of an act in pursuance of the
19 legislative purpose. In other words, we do not construe statutes in isolation, but rather
20 read every statute with reference to the entire scheme of law of which it is part so that
21 the whole may be harmonized and retain effectiveness. If the statutory terms are
22 ambiguous, we may examine extrinsic sources, including the ostensible objects to be
23 achieved and the legislative history. In such circumstances, we choose the
24 construction that comports most closely with the Legislature's apparent intent,
25 endeavoring to promote rather than defeat the statute's general purpose, and avoiding a
26 construction that would lead to absurd consequences.

27 *Id.* at 83 (quotations and citations omitted).

28 ⁷ Nevada County has explicitly adopted these qualification standards for its Auditor-
Controller. *See* Nevada County Code section A-II 1.9; *see also* Gov. Code § 26946.

1 2. Service in a Position for a Minimum of Three Years

2 As a starting point, the experience requirement has a minimum time threshold. A
3 candidate for auditor-controller must serve in the defined position “for a continuous period of
4 not less than three years.” Gov. Code § 26945(b). This is consequential. Defendant's work
5 on the Company Project lasted approximately 20 months, beginning in February 2018 and
6 ending in October 2019. By contrast, Defendant has worked on the Patent Project for over
7 four years commencing in Fall 2018.
8

9 That being the case, Defendant’s experience in connection with the Company Project
10 fails to satisfy the thee-year minimum experience requirement of Section 26945(b), and the
11 Court need not address whether it satisfies any of the other requirements of the law. The
12 Court finds it “prudent to follow a ‘cardinal principle of judicial restraint—if it is not
13 necessary to decide more, it is necessary not to decide more.’ ” *People v. Contreras* (2018) 4
14 Cal.5th 349, 381. The Court, thus, will turn to other components of the Section 26945(b)
15 experience requirement and their application to the Patent Project.
16

17 3. Service in a Senior Fiscal Management Position

18 The parties offer different interpretations for the meaning of the phrase “served in a
19 senior fiscal management position in a county, city, or other public agency, a private firm, or a
20 nonprofit organization.” The parties agree that the phrase "senior fiscal management position"
21 is not defined in Section 26945(b).⁸
22

23 According to Contestant, the “plain and common sense meaning” of this phrase is:

24 a high-ranking person who has been hired to be part of an organization on an on-going
25 basis to manage and direct the financial matters of the enterprise and who supervises
26 subordinate positions, and who in such position performs duties which are similar to
the duties performed by a county auditor.

27 ⁸ The parties suggested that this was a stipulation of fact. The Court construes this an
28 agreement regarding the statute at issue and the parties’ understanding of law related thereto.

1 9/30/22 Contestant Brief 12:11-14.⁹

2 Defendant does not attempt to define all aspects of the disputed phrase per se. He
3 argues:

4 Mr. Tribble worked on three projects wherein he fulfilled the requirements of having a
5 “senior fiscal management position.” This work was performed by Mr. Tribble as a
6 self-employed consultant . . . [and] required Mr. Tribble to ‘manage’ the process of
7 accomplishing the goals set forth in these consulting agreements. One project involved
8 the sale of a business. The second project involved managing the sale or licensing of
two sets of intellectual property assets.

9 10/14/22 Defendant Brief 3:25-4:2.

10 The Court need not decide which party’s interpretation, if any, is correct. “[T]rue
11 adherence to judicial restraint and economy counsels against an unnecessary detour into an
12 analysis of . . . statutory meaning.” *People v. Mosley* (2015) 60 Cal.4th 1044, 1054, n. 7.¹⁰
13 Here, the Court assumes, *arguendo*, that Defendant “served in a senior fiscal management
14 position in a private firm,” and, instead, turns to the narrow and dispositive issue of whether
15 Defendant served in a position “dealing with similar fiscal responsibilities.”

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21 _____
22 ⁹ The California State Association of County Auditors and its President, Mr. Raigoza, offered
23 an opinion regarding the meaning of “senior fiscal management position.” *See, e.g.*, Exs. 16,
24 23. Placer County Auditor-Controller Sisk offered a similar opinion. *See, e.g.*, Exs. 21, 22.
25 The Court did not consider these opinions in connection with this decision. *See Issakhani v.*
26 *Shadow Glen Homeowners Assn., Inc.* (2021) 63 Cal.App.5th 917, 934(“the meaning and
purpose of a legislative enactment is a question of law for the court; an expert's opinion on
such matters is an inadmissible legal conclusion.”); *Amaral v. Cintas Corp. No. 2*
(2008) 163 Cal.App.4th 1157, 1179 (“Opinion evidence about the meaning of a statute,
whether from a lay person or a purported expert, has long been held inadmissible.”)

27 ¹⁰ Potentially complex interpretive issues are raised by the parties including proper
28 construction of terms such as “management” and “private firm.” Resolution of these issues
can be saved for another day when their resolution is required.

1 4. Service in a Position Dealing With Similar Fiscal Responsibilities

2 a. Interpretation of the Similar Fiscal Responsibilities Requirement

3 The Court must interpret the phrase “dealing with similar fiscal responsibilities.”

4 Here, both parties agree that the phrase means a position dealing with similar fiscal
5 responsibilities *as the county auditor*. The Court concurs.

6 Two interpretive principles are critical: “First, statutory language is to be understood
7 in context, with the whole of a statute considered when attempting to construe each part.”
8 *Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1087. “Second, the Legislature does not
9 engage in idle acts, and no part of its enactments should be rendered surplusage if a
10 construction is available that avoids doing so.” *Id.*

12 Government Code Title 3, Division 2, Part 3, Chapter 4, Article 4, is entitled
13 “Qualifications for Office” of the “Auditor.” The “Requisites” for the same are specifically
14 delineated in Section 26945. An individual to be elected or appointed pursuant to Section
15 26945(b) must have “serv[ed] . . . in a senior fiscal management position in a county, city, or
16 other public agency, a private firm, or a nonprofit organization, *dealing with similar fiscal*
17 *responsibilities . . .*” Gov. Code § 26945(b) (italics supplied). As such, in the context of the
18 statute as a whole, “dealing with *similar* fiscal responsibilities” plainly and clearly means
19 responsibilities similar to the responsibilities of the county auditor. Such an interpretation also
20 assures that independent significance is given to the “similar fiscal responsibilities”
21 requirement separate and apart from the “senior fiscal management position” requirement.
22

24 Having concluded, based on the plain meaning of its language, that the phrase “dealing
25 with similar fiscal responsibilities” means responsibilities similar to the responsibilities of the
26 county auditor, it is not necessary to consider the statute's legislative history. That said, the
27 Court’s review of that limited legislative history reveals that it is consistent with the Court’s
28

1 conclusion. The Legislature enacted Section 26945(b) as part of SB 210 in 1997. *See*
2 Stats.1997, c. 381 (S.B.210), § 1. The identifiable legislative history behind Section 26945(b)
3 confirms that the intent of the law was to ensure that county auditor’s offices are staffed by
4 highly educated, professional and experienced auditors, with recent and high-level experience,
5 given the important and complicated financial responsibilities of county auditors. The Senate

6 Bill analysis notes:

7
8 This bill requires three continuous years of *recent* public or private *senior* level work
9 *experience* in addition to possessing a B.A. in auditing, accounting, or finance.
10 *Recognizing the important and complicated financial role county auditors serve, the*
sponsors feel that this bill ensures that the office of county auditor is occupied by a
well-educated and experienced, professional auditor.

11 California Bill Analysis, S.B. 210 Sen., 7/03/1997 (italics added); California Bill Analysis,
12 S.B. 210 Sen., 4/08/1997 (same); *see also* California Bill Analysis, S.B. 210 Sen., 3/05/1997
13 (same in substance); California Bill Analysis, S.B. 210 Assem., 6/18/1997 (“[SB 210] allows
14 counties to ... require that the person also have served not less than three continuous years,
15 within the last five years, in a senior fiscal management position handling fiscal responsibility
16 in a county, city, or other public or private agency.”)¹¹

18
19 ¹¹ The Court also judicially notices the Enrolled Bill Report for SB 210 from the Governor’s
20 Office of Planning and Research and finds that it is instructive regarding the legislative intent
of SB 210. The report indicates:

21 This bill [SB 210] would require that in addition to the degree, a person must
22 also have three years of senior-level experience within the last five years in accounting
or a related field.

23 Staff with the sponsor stated that this provision [subsection (b)] ensures that
24 persons competently educated in the field of accountancy will also have the hands-on
25 practical experience for the position of county auditor. Senior level experience in
accountancy or a related field would guarantee more prudent fiscal management
practices in the counties.

26 . . .

27 The underlying purpose of this bill is to ensure the prudent management of
28 public funds that have been entrusted to local governments. This bill will ensure that
auditors are competent, qualified, and trained to handle public funds.

1 To determine the relevant responsibilities for the auditor-controller, the Court turns to
2 the Government Code itself. “The provisions of the Government Code prescribing the duties
3 of an elected auditor are set forth between sections 26900 and 26945[.1].” *People v. Hale*
4 (1965) 232 Cal.App.2d 112, 123. “Sections 26880 to 26886 of the Government Code deal
5 with the office of controller which it is said ‘shall be held ex officio by the county auditor.’ ”

6 *Id.*

7 Pursuant to the Government Code, a county auditor or auditor-controller¹² serves as the
8 chief accounting officer and auditor for the county, and has wide-ranging financial oversight
9 responsibilities in connection with all county offices and departments, as well as districts
10 whose funds are kept in the county treasury. Those statutory responsibilities include the
11 following:
12

- 13 • “The county auditor, or in counties that have the office of controller, the auditor-controller
14 shall be the *chief accounting officer of the county*. Upon order of the board of supervisors,
15 the auditor or auditor-controller shall prescribe, and shall *exercise a general supervision,*
16 *including the ability to review departmental and countywide internal controls, over the*
17 *accounting forms and the method of keeping the accounts of all offices, departments and*
18 *institutions under the control of the board of supervisors and of all districts whose funds*
19 *are kept in the county treasury.” Gov. Code § 26881 (italics added).*

20 _____
21 *Id.* at 3, 5.

22 Like the legislative history noted above, the enrolled bill report is consistent with the Court’s
23 conclusion that the phrase “dealing with similar fiscal responsibilities” means responsibilities
24 similar to the responsibilities of the county auditor. *See Elsner v. Uveges* (2004) 34 Cal.4th
25 915, 934 (courts have “routinely found enrolled bill reports, prepared by a responsible agency
26 contemporaneous with passage and before signing, instructive on matters of legislative
27 intent.”); *but see Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005)
28 133 Cal.App.4th 26, 40 (recognizing *Elsner* as controlling authority, but questioning whether
enrolled bill reports after the passage of legislation could properly reflect the intent of the
Legislature).

¹²“The board of supervisors may create the office of controller. The office of county controller
shall be held ex officio by the county auditor.” Gov. Code § 26880.

- 1 • “In addition to the accounts required by law the auditor-controller shall, upon order of the
2 board of supervisors, *maintain such accounts and statistics and prepare such reports*
3 therefrom as the board may deem necessary for its information and use in the management
4 and control of the operations of the county and of those districts whose funds are kept in
5 the county treasury.” Gov. Code § 26882 (italics added).
- 6 • The board of supervisors “shall have the power to require that the county auditor-controller
7 shall *audit the accounts and records* of any department, office, board or institution under
8 its control and of any district whose funds are kept in the county treasury.” Gov. Code §
9 26883 (italics added).
- 10 • “The auditor shall *examine and settle the accounts of any persons indebted to the county* or
11 holding money payable into the county treasury, and shall certify the amount to the
12 treasurer.” Gov. Code § 26900 (italics added).
- 13 • “The auditor shall *keep accounts current with the treasurer*, and when any person deposits
14 with the auditor any receipt given by the treasurer for any money paid into the treasury, the
15 auditor shall file the receipt and charge the treasurer with the amount.” Gov. Code §
16 26904 (italics added).
- 17 • “Not later than the *last day of each month*, the auditor shall *reconcile the cash and*
18 *investment accounts as stated on the auditor's books with the cash and investment*
19 *accounts as stated on the treasurer's books* as of the close of business of the preceding
20 month to determine that the amounts in those accounts as stated on the books of the
21 treasurer are in agreement with the amounts in those accounts as stated on the books of the
22 auditor.” Gov. Code § 26905 (italics added).
- 23 • “The county auditor shall either make or contract with a certified public accountant or
24 public accountant to make an *annual audit of the accounts and records of every special*
25 *district* within the county for which an audit by a certified public accountant or public
26 accountant is not otherwise provided. In each case, the minimum requirements of the
27 audit shall be prescribed by the Controller and shall conform to generally accepted
28 auditing standards.” Gov. Code § 26909(a)(1) (italics added).
- “The auditor may at any reasonable time and *place examine the books and records of any*
special purpose assessing or taxing district located wholly in the county.” Gov. Code §
26910 (italics added).
- The auditor shall *determine and allocate ad valorem property tax revenues* among local
government entities. See Gov. Code §§ 26912-26914.
- “At least once in each quarter, the county auditor shall perform, or cause to be performed,
a review of the treasurer's statement of assets in the county treasury. . . . The auditor's
review shall be accomplished in accordance with the appropriate professional standards, as
determined by the county auditor.” Gov. Code § 26920(a) (italics added).

- 1 • “The auditor shall, at least *annually*, perform or cause to be performed *an audit of the*
2 *assets in the county treasury and express an opinion whether the treasurer's statement of*
3 *assets is presented fairly and in accordance with generally accepted accounting*
4 *principles. The audit report shall be addressed to the board of supervisors.” Gov. Code §*
5 *26920(b) (italics added).*¹³

5 _____
6 ¹³ Other duties set forth in the Government Code include the following:

- 6
- 7 • “The county auditor may require any person or officer indebted to the county or
8 holding money payable into the county treasury to make an oath as to the total amount
9 of money payable by him to the county or into the county treasury, and on what
10 account.” Gov. Code § 26901.
 - 11 • The auditor shall file notices of money paid by the state in his office and shall notify
12 the treasurer of their receipt. Gov. Code § 26903.
 - 13 • “Any money other than taxes erroneously paid into the county treasury may be
14 returned to the person paying it in upon a warrant drawn by the auditor on the order of
15 the board of supervisors based upon such voucher as shows proper evidence of the
16 facts.” Gov. Code § 26906.
 - 17 • “The county auditor, with the approval of the board of supervisors, may impound the
18 disputed revenues of any tax upon secured or unsecured property, levied and collected
19 by the county for the county or any revenue district, whenever, pursuant to Chapter 5
20 (commencing with Section 5096), Part 9, Division 1 of the Revenue and Taxation
21 Code, a claim or action is filed for the return of the revenues, or the auditor reasonably
22 anticipates that the tax may be refunded in whole or in part. The county auditor shall
23 continue to impound such revenues until the final disposition of the claim or action, or
24 a refund of the tax is no longer anticipated. If, under the final disposition, it is
25 determined that such taxes were properly levied against such property, the auditor shall
26 release the revenues to the county or revenue district.” Gov. Code § 26906.1.
 - 27 • The auditor may, under specific conditions, destroy: “certain warrants and registers,”
28 Gov. Code § 26907, “certain cancelled bonds or coupons,” Gov. Code § 26907.1,
“copies of certain deposit permits or receipts,” Gov. Code § 26907.2, and tax rolls.
Gov. Code § 26908.
 - “Whenever a special district has elected to have its assessments collected by the county
on the property tax roll, the district shall transmit to the county auditor, no later than
August 10 of each year, a statement of the rates fixed for assessments.” Gov. Code §
26911.

26 In addition to state statutory law, the Nevada County Code also delineates numerous duties
27 and responsibilities of the auditor-controller in this county. *See, e.g.,* Nevada County Code
28 § A-II 39.10 (payment of general assistance); § A-II 43.1 (payment of payroll).

1 b. Whether Defendant Satisfies the Similar Fiscal Responsibilities
2 Requirement

3 The Court must now determine whether Defendant served in a position dealing with
4 similar fiscal responsibilities to a county auditor while working on the Patent Project.

5 Defendant and some other individuals have an ownership interest in the patents. The
6 Patent Project does not relate to an established business. The Patent Project is not producing
7 or selling a product and has no revenues.

8 Defendant's consulting role was to help someone who holds patents on two unnamed
9 technologies try to find someone to sell the product under a licensing agreement, that is,
10 Defendant attempted to identify licensees to license the patents.

11 Defendant has worked on the Patent Project for over four years but has only had three
12 to five meetings with potential licensees, with each meeting lasting no more than an hour.
13 Defendant spent some time researching the market for the product and potential licensees
14 when he began working on the Patent Project in late 2018, but since then has not had to devote
15 much time to this Patent Project, sometimes going weeks or longer without doing any work or
16 meeting with any potential licensees.
17

18 Moreover, with respect to the Patent Project, Defendant *did not*:

- 19
- 20 • monitor budgets;
 - 21 • audit the procurement of payments for goods and services;
 - 22 • perform internal controls and fraud prevention;
 - 23 • perform accounting operations;
 - 24 • perform payroll functions;
 - 25 • perform tax functions, including property, sales and use, and hotel occupancy taxes;
 - 26 • perform internal auditing; and
 - 27 • perform financial reporting.

28 It is clear from a review of the above that the patent consulting role performed by
Defendant is *not* a position dealing with “similar fiscal responsibilities” to that of a county
auditor as defined by the Government Code. By statute, the auditor-controller serves as the

1 county's chief accounting officer and auditor responsible for oversight of all county offices
2 and of districts whose funds are kept in the county treasury. The auditor-controller, among
3 other things, must: supervise all accounting forms and the keeping of accounts by all county
4 departments and districts; maintain accounts and reports for use in the management of all
5 county operations; audit the accounts of all county departments and districts; examine and
6 settle the accounts of those indebted to the county; keep accounts current with the treasurer
7 and reconcile cash and investment accounts between the treasurer and auditor; ensure annual
8 audits of special districts; examine the books of special assessing or taxing districts;
9 determine and allocate property tax revenues among local government entities; and perform a
10 quarterly review and annual audit of the treasurer's assets. Defendant, at most, has
11 intermittently worked as a solo consultant for the last four years attempting to identify
12 someone to license two patents. Defendant's consulting job plainly did not involve similar
13 fiscal responsibilities to the statutory responsibilities of a county auditor-controller, either
14 qualitatively or quantitatively.¹⁴
15
16
17

18 ¹⁴ Both Messrs. Raigoza and Sisk rendered opinions as to whether Defendant met the
19 qualifications of Government Code section 26945 to serve as auditor-controller. The Court
20 declines to consider those opinions. *See, e.g., Nevarrez v. San Marino Skilled Nursing &*
21 *Wellness Centre, LLC* (2013) 221 Cal.App.4th 102, 122 (“an expert may not testify about
22 issues of law or draw legal conclusions”); *Summers v. A.L. Gilbert Co.* (1999) 69 Cal.App.4th
23 1155, 1178 (“There are limits to expert testimony, not the least of which is the prohibition
against admission of an expert's opinion on a question of law.”); *Ferreira v. Workmen's Comp.*
Appeals Bd. (1974) 38 Cal.App.3d 120, 126 (“The manner in which the law should apply to
particular facts is a legal question and is not subject to expert opinion.”).

24 Moreover, Messrs. Raigoza and Sisk offered written and oral evidence regarding the
25 responsibilities of auditors-controllers. This information was helpful background information
26 that permitted the Court to understand the contemporary day-to-day responsibilities for
27 auditors-controllers. Ultimately, however, the Court did not consider this information in
28 making a determination as to whether Defendant's consulting work constituted a position
dealing with “similar fiscal responsibilities” to that of a county auditor-controller. The Court
made its determination based on a comparison of the statutory responsibilities for a county
auditor-controller and the nature of Defendant's work during the relevant period.

1 Defendant's arguments to the contrary lack merit. In his brief, Defendant does not
2 address the question of whether his consulting work had similar fiscal responsibilities as a
3 county auditor. He argued, referencing Defendant's work at Integral Systems and Rand
4 Corporation, that "Mr. Tribble has vast experience as a business executive doing all of the
5 various tasks . . . required to properly accomplish the job of Auditor[-]Controller." 10/14/22
6 Defendant Brief 5:4-7. This argument fails, as Defendant conceded, because none of the
7 work with these entities was done during the last five years as required by law. *Id.* at 5:8-9.

8
9 During argument, the Court asked defense counsel directly to address the question of
10 whether Defendant's consulting work had similar fiscal responsibilities as a county auditor.

11 Defendant, though counsel, responded:

12 Mr. Tribble's work experience over three out of the last five years did deal with
13 financial issues similar to what an auditor-controller would experience. It involved
14 budgeting, it involved accounting for revenues, it involved accounting for expenses, it
15 involved determining valuations, and those are all things that occur in the auditor-
16 controller's office. And it involved auditing the amounts that were presented in the
17 valuation of the business that Rob Tribble helped to bring to the finish line, so to
18 speak, to get sold. And so a lot of those functions overlap with the functions that would
19 take place in the auditor-controller's office.

20 11/8/22 Reporter's Transcript ("RT") at 29.

21 The Court is not persuaded. First, the Court found, based on the stipulation of the
22 parties and the record as a whole that: Defendant did not monitor budgets for, did not perform
23 accounting operations for, and did not perform internal auditing for either the Company
24 Project or Patent Project. Defendant's current arguments to the contrary are unsupported by
25 the credible record.

26 Second, the testimony offered by Defendant during the October 31, 2022 hearing
27 makes it clear that he did not engage in any detailed budget monitoring or accounting in
28 connection with these projects. When questioned by Contestant's counsel about the very
stipulations Defendant had entered through his counsel, Defendant insisted that he *did* monitor

1 budgets and perform accounting operations for both the Company and Patent Projects.

2 10/31/22 RT at 90-93. During examination by his counsel, Defendant then clarified, “Well, in
3 the case of [Companies] Y and Z [with respect to the Patent Project], since I was the guy that
4 wrote the checks, I guess I was watching myself.” *Id.* at 96. Defendant then affirmed that he
5 had prepared “a budget” and that he had monitored “that” budget. *Id.*

6 Third, while Defendant reportedly did make value determinations in connection with
7 the Company Project, *see, e.g.*, Finding of Fact 32, 9/12/22 Deposition of Defendant at 35, 42-
8 45, his twenty months of work in connection with the Company Project is legally insufficient
9 to satisfy the three-year experience requirement of the statute as explained previously.

10
11 5. Summation

12 Contestant has demonstrated, by clear and convincing evidence, that Defendant does
13 not meet the qualifications required under Government Code section 26945(b). Specifically,
14 Contestant has demonstrated that Defendant did not serve in a position “*dealing with similar*
15 *fiscal responsibilities*” to that of a county auditor for *a continuous period of three years*
16 within the last five years. Defendant has not satisfied the statutory experience requirement.
17 As such, Defendant is not qualified for election as the Auditor-Controller under Government
18 Code section 26945(b).¹⁵

19
20
21
22 ¹⁵ Contestant, citing *DeMiglio v. Mashore* (1992) 4 Cal.App.4th 1260, 1268–1269, argues that
23 she bears the initial burden to prove that Defendant was not qualified to serve as Auditor-
24 Controller and that, thereafter, Defendant bears the burden to prove that he was. The Court is
25 not wholly persuaded that burden shifting applies in the context of this case. For purposes of
26 the decision made herein, the Court has assigned the burden of proof to Contestant at all times,
27 and finds that the burden of proof was satisfied by Contestant. In the alternative, were the
28 Court to adopt the approach recommended by Contestant, the Court finds that Contestant met
her burden of proof regarding Defendant’s lack of qualification to serve as Auditor-Controller
and that Contestant did not meet his burden of proof regarding qualification to serve.

1 D. The Appropriate Remedy

2 Pursuant to Election Code section 16603, the Court must pronounce judgment “either
3 confirming or annulling and setting aside the election.” The Court has determined that
4 Defendant is not qualified for election to the Auditor-Controller office. As such, the Court
5 annuls and sets aside that election.

6 The Court declines Contestant’s request that the Court declare Contestant to be the
7 winner of the election. “[A]n unsuccessful candidate at an election cannot be held to have
8 been elected when the successful candidate is found to be ineligible.” *Doran v.*
9 *Biscailuz* (1954) 128 Cal.App.2d 55, 61. “A contest of [a primary] election, like a successful
10 contest of a general election, results in a vacancy in the office.” *Id.*

12 Our high court has explained:

13 An election is the deliberate choice of a majority or plurality of the electoral body. This
14 is evidenced by the votes of the electors. But if a majority of those voting, by mistake
15 of law or fact, happen to cast their votes upon an ineligible candidate, it by no means
16 follows that the next to him on the poll should receive the office. If this be so, a
17 candidate might be elected who received only a small portion of the votes, and who
18 never could have been elected at all but for this mistake. The votes are not less legal
19 votes because given to a person in whose behalf they cannot be counted; and the
20 person who is the next to him on the list of candidates does not receive a plurality of
21 votes because his competitor was ineligible. The votes cast for the latter, it is true,
22 cannot be counted for him; but that is no reason why they should, in effect, be counted
23 for the former, who, possibly, could never have received them. It is fairer, more just,
24 and more consistent with the theory of our institutions, to hold the votes so cast as
25 merely ineffectual for the purpose of an election, than to give them the effect of
26 disappointing the popular will, and electing to office a [person] whose pretensions the
27 people had designed to reject.

23 *Crawford v. Dunbar* (1877) 52 Cal. 36, 41, quoting *Saunders v. Haynes* (1859) 13 Cal. 145,
24 153–154; see *Bradley v. Perrodin* (2003) 106 Cal.App.4th 1153, 1170 (“Although we agree
25 [defendant’s] election was properly annulled, we disagree that judgment was properly entered
26 for [contestant], who was judicially declared elected despite her failure to win the highest
27 number of legal votes in the . . . election.”); 28 *Cal. Jur. 3d Elections, sec. 319* (“[W]here the
28

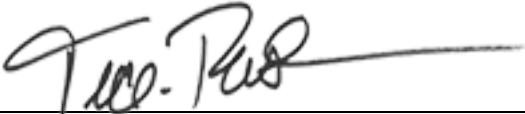
1 court annuls the defendant's election . . . because the defendant is ineligible to hold office, the
2 office is vacant and the court is not authorized to declare anyone else elected.”)

3
4 **IV.
Disposition**

5 “Courts are reluctant to defeat the fair expression of popular will in elections and will
6 not do so unless required by the plain mandate of the law.” *Simpson v. City of Los Angeles*
7 (1953) 40 Cal.2d 271, 277. Here, the plain mandate of Government Code section 26945(b)
8 compels the conclusion that Defendant is ineligible to hold the office of Auditor-Controller.
9 Accordingly, the court annuls and sets aside the election of Defendant as Auditor-Controller.
10 See Gov. Code § 16603. The Court hereby notifies the Nevada County Board of Supervisors,
11 via County Counsel, that the election of Defendant as Auditor-Controller has been annulled
12 and set aside. See Gov. Code § 1771(a); see also Elec. Code § 16702 (“Whenever an election
13 is annulled or set aside by the judgment of the superior court, and no appeal has been taken
14 within 10 days thereafter, the commission, if any has issued, is void and the office vacant.”).
15

16 SO ORDERED.
17

18
19
20 DATED: 10/17/2017

21 
22 _____
23 S. ROBERT TICE-RASKIN
24 Presiding Judge of the Superior Court
25
26
27
28

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF NEVADA**

201 Church Street Nevada City, CA 95959 Phone: (530) 362-4309	ELECTRONICALLY FILED BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF NEVADA 11/18/2022 JASON B. GALKIN, CLERK OF THE COURT MELISSA MORGAN, DEPUTY
Will, Gina vs. Tribble, Rob	
Proof of Service	Case Number: CU0000159

I am a clerk of Superior Court of California, County of Nevada. I am a citizen of the United States. I am over the age of 18 years and not a party to the action above.

On November 18, 2022, I served **Memorandum Decision and Order** on the interested parties in said action, by electronic service to the addresses indicated below:

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Date: November 18, 2022

Melissa Morgan,
Deputy Clerk