

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court, Department 21

JUDICIAL OFFICER: HONORABLE SHELLEYANNE W.L. CHANG

Courtroom Clerk: M.Garcia

CSR: None

23WM000137

December 28, 2023

4:50 PM

FONG

vs

DR. SHIRLEY N. WEBER, IN HER OFFICIAL CAPACITY

AS THE CALIFORNIA SECRETARY OF STATE, et al.

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Court Order on Election Writ

This matter came on for hearing on December 28, 2023, at 1:30 p.m. The parties appeared and presented oral argument, after which the Court took the matter under submission. The Court now rules on the submitted matter.

Petitioner Vince Fong's ("Fong") Verified Petition for Writ of Mandate ("Petition") is GRANTED as follows.

I. Introduction

Fong petitions the Court for a writ of mandate compelling Respondent California Secretary of State ("Respondent") to include his name on the list of candidates for California's 20th Congressional District in the United States House of Representatives ("CD-20") in the statewide Presidential Primary Election scheduled for March 5, 2024 (the "Primary"). (Pet. 1:19-22, 11:15-19.)

II. Factual Background

Fong is a current member of the California State Assembly (32nd Assembly District) and has submitted candidacy documents to run for both the State Assembly and CD-20 in the Primary. (Pet. 1:26-27; Decl. of Kirsten Larsen ISO Opp'n ("Larsen Decl.") ¶¶ 8, 9.)

A candidate's name cannot appear on the ballot for the Primary unless certain documents are delivered to the appropriate county elections official by no later than 5:00 p.m. on December 8, 2023. This deadline applies to all candidates for the United States House of Representatives and the State Assembly. (Larsen Decl. ¶ 4.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

On December 8, 2023, Respondent received and filed nomination documents for Fong to appear as a candidate for the 32nd Assembly District. No other person filed nomination papers for the 32nd Assembly District. (Larsen Decl. ¶ 8.)

Incumbent Congressman Kevin McCarthy did not file any nomination documents for CD-20. Accordingly, the nomination period for CD-20 was extended by law for five days, until 5:00 p.m. on December 13, 2023. (Larsen Decl. ¶ 7.)

On December 12, 2023, Respondent received nomination documents for Fong to appear as a candidate for CD-20. Seventeen other people submitted nomination papers for CD-20. (Larsen Decl. ¶ 9.)

On December 15, 2023, Respondent announced that she could not file Fong's nomination papers for CD-20 because he had already declared himself a candidate for the State Assembly, and state law prohibits any person from filing nomination papers for more than one office at the same election. (See Larsen Decl. ¶ 11; *id.*, Ex. B.) Respondent's December 15, 2023 Official Statement concerning Fong states:

The California Secretary of State's Office confirmed today that **state law** prohibits Assemblymember Vince Fong (D-Bakersfield) from running as a candidate for the 20th Congressional District of California because he had previously filed paperwork to run for reelection to the California State Assembly.

Under **state law**, a candidate who has filed their declaration of candidacy is not permitted to withdraw as a candidate at that primary election. Mr. Fong filed his completed nomination documents for Assembly District 32 prior to the close of the December 8, 2023 filing deadline. Mr. Fong then submitted completed nomination documents for Congressional District 20 during the 5-day extension period triggered by the incumbent's decision not to seek re-election. State law prohibits any candidate from filing nomination papers for more than one office at the same election.

As such, the Secretary of State's office has determined that Mr. Fong's filed nomination papers for Congressional District 20 were improperly submitted. Mr. Fong will not appear on the list of certified candidates for Congressional District 20 that our office will transmit to county election officials on candidates on December 28.

(Larsen Decl., Ex. B.) On December 22, 2023, Respondent sent Fong a letter concerning her

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

decision not to accept for filing his nomination papers and declaration of candidacy for CD-20. (Larsen Decl. ¶ 11; *id.*, Ex. C.) The December 22, 2023 letter states in pertinent part:

We are writing to inform you that your nomination papers and declaration of candidacy were not accepted for filing for the office of United States Representative in Congress District 20, for the upcoming March 5, 2024, Presidential Primary Election.

Pursuant to Elections Code section 8003, no candidate may file nomination papers for more than one office at the same election. On December 8, 2023, our office received and filed your nomination documents to appear as a candidate for the 32nd Assembly District. Therefore, our office cannot accept for filing subsequent nomination documents for additional offices for the upcoming election.

(Larsen Decl., Ex. C.)

Fong filed the Petition on December 22, 2023.

II. Legal Standard

Elections Code section 13314, subdivision (a) provides, in part:

(a)(1) An elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot, county voter information guide, state voter information guide, or other official matter, or that any neglect of duty has occurred, or is about to occur.

(2) A peremptory writ of mandate shall issue only upon proof of both of the following:

(A) That the error, omission, or neglect is in violation of this code or the Constitution.

(B) That issuance of the writ will not substantially interfere with the conduct of the election.

Code of Civil Procedure section 1085 permits the issuance of a writ of mandate “to

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

compel the performance of an act which the law specially enjoins.” The writ will lie where the petitioner has no plain, speedy and adequate alternative remedy, the respondent has a clear, present and usually ministerial duty to perform, and the petitioner has a clear, present and beneficial right to performance.” (*Sacramento County Alliance of Law Enforcement v. County of Sacramento* (2007) 151 Cal.App.4th 1012, 1020.) “Two basic requirements are essential to the issuance of the writ. (1) A clear, present and usually ministerial duty upon the part of the respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty.” (*Shamsian v. Dept. of Conservation* (2006) 136 Cal.App.4th 621, 640 [citations omitted].)

III. Discussion[1]

Fong petitions for a writ of mandate compelling Respondent to include his name on the list of candidates for CD-20 in the Primary, arguing Respondent has “an unambiguous ministerial duty to include on the certified list of candidates the names of all qualified candidates for each legislative office” (Pet’r Mem. of P.&A. ISO Pet. (“MPA”) 4:22-24), and Fong is a “duly qualified candidate” for such office. (MPA 1:2-4.) Fong asserts:

It is undisputed that Mr. Fong timely filed his candidacy papers and his declaration of candidacy, and submitted the required number of valid nomination signatures to the Registrar of

Voters as required by the Elections Code. . . .

Mr. Fong completed every aspect of the candidate filing process and is now legally qualified to appear on the CD-20 ballot.

However, on Friday December 15, 2023, the California Secretary of State notified Mr. Fong that she will block Mr. Fong’s access to the Congressional ballot. The Secretary of State cited a century-old statute (Elections Code section 8003) that on its

face applies only to “independent candidate nominations,” a process that was long ago abandoned by the state in favor of its current “top two” nomination process. Mr. Fong is not seeking an

“independent nomination” to the House of Representatives (because there is literally no longer a process for that in California). Therefore, section 8003 is wholly inapplicable to him, and the Secretary of State’s attempted creative application of that section (to Mr. Fong’s voter-nominated candidacy) to bar Mr. Fong from the Congressional ballot must be rejected by this Court. . . .

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

(MPA 1:7-23.)

Respondent opposes the petition, rejoining that her decision was mandated by Elections Code section 8003, subdivision (b), which prohibits any candidate from filing nomination papers for more than one office at the same election. (Opp'n 7:2-10, 9:10-11.)

The parties' arguments raise an issue of statutory interpretation, specifically the application of Elections Code section 8003, subdivision (b).

“Statutory interpretation is an issue of law.” (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1183.) The Court’s “overriding purpose in construing . . . any statute[] is ‘to adopt the construction that best gives effect to the Legislature’s intended purpose.’ [Citation.]” (*Ibid.*) “In determining that intended purpose, [the Court] follow[s] ‘[s]ettled principles.’ [Citation.]” (*Id.* at pp. 1183-1184.) The Court “‘first considers the words of a statute, as the most reliable indicator of legislative intent.’ [Citation.]” (*Id.* at p. 1184.) “In so doing, [the Court] give[s] the words ‘their usual and ordinary meaning,’ viewed in the context of the statute as a whole.” (*Ibid.*)

When the language of a statute is ambiguous — that is, when the words of the statute are susceptible to more than one reasonable meaning, given their usual and ordinary meaning and considered in the context of the statute as a whole — we consult other indicia of the Legislature’s intent, including such extrinsic aids as legislative history and public policy. [Citations.] If there is no ambiguity, we presume the Legislature meant what it said and the plain meaning of the statute governs.

(*Ibid.* [internal quotation marks and citation omitted]; accord *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, 718-719.)

Elections Code section 8003 states:

This chapter[2] does not prohibit the independent nomination of candidates under Part 2[3] (commencing with Section 8300), subject to the following limitations:

(a) A candidate whose name has been on the ballot as a candidate of a party at the direct primary and who has been defeated for that party nomination is ineligible for nomination as an independent candidate. He is also ineligible as a candidate named by a party central committee to fill a vacancy on the ballot for a general election.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

(b) No person may file nomination papers for a party nomination and an independent nomination for the same office, or for more than one office at the same election.

(Emphasis added.)

The Court finds that the plain language of the prefatory first paragraph of section 8003 confines its application to the process for the independent nomination of candidates. Those exceptions listed in (a) and (b) do not exist independent of the prefatory paragraph.

Further, this interpretation is supported by the California Supreme Court decision in *Moore v. Panish* (1982) 32 Cal.3d 535 (“*Moore*”). In *Moore*, the petitioner attempted to file nominating papers seeking election to his party’s county central committee and to the board of directors of a nonpartisan municipal water district at the same primary election. The sole issue to be decided in *Moore* was whether a former version of Elections Code section 8003, subdivision (b)[4] prohibited the petitioner from doing so. The California Supreme Court concluded that it did not because, *inter alia*, members of county central committees are not ever elected “subsequent to or in lieu of a primary election,” therefore, the statute “and its subdivisions could not apply to candidates for party county central committees. (*Moore* at pp. 541-542.) The California Supreme Court said, since “section 6402, by its terms, does not apply to the selection of party county central committees[, i]t follows that subdivision (b), which serves only to limit its application, [also] does not apply to such a committee office.” (*Id.* at p. 538.) The holding in *Moore* appears to preclude application of Elections Code section 8003 to the offices that Fong seeks as argued by Respondent.

Although Respondent argues that the Court should read the language of 8003(b) “*or for more than one office at the same election*” as applying to all candidates since it appears in the disjunctive, the Court declines to do so as said interpretation would read that phrase in isolation, in violation of the rules of statutory interpretation, as stated above.

Accordingly, the Court finds that section 8003 is inapplicable to Fong and cannot be used as a reason to preclude him from the Primary ballot for CD-20.

The Court is not persuaded by Respondent’s authorities, which she cites to argue the contrary. The Court notes that the Attorney General opinions relied upon by Respondent pre-date the *Moore* decision. Further, the Northern District of California federal case, *Dewitt v. Ryan* (N.D. Cal. Jan. 12, 2016) 2016 U.S. Dist. LEXIS 4364, is not persuasive as it contains no analysis on the issue.

For the stated reasons, Fong’s Petition is GRANTED. The Court notes that it is concerned about the outcome of this Petition, as it may result in voter confusion and the disenfranchisement of voters if Fong is ultimately elected for both offices but does not retain one. Moreover, it somewhat defies common sense to find the law permits a candidate to run for two offices during the same election. However, as stated above, the Court is compelled to interpret the law as it is written by the Legislature and finds Elections Code section 8003 is

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

inapplicable to Fong’s Petition and that statute is the sole basis for Respondent’s rejection of Fong’s nomination paperwork for CD-20.[5]

A judgment shall be issued in favor of Fong, and against Respondent, and a peremptory writ shall issue commanding Respondent to take action specially enjoined by law in accordance with the Court’s ruling, but nothing in the writ shall limit or control in any way the discretion legally vested in Respondent. Respondent shall make and file a return within 60 days after issuance of the writ, setting forth what has been done to comply therewith.

Petitioner’s counsel is directed to prepare an order granting the Petition, incorporating this ruling as an exhibit to the order, a separate judgment, and a peremptory writ; submit them to counsel for Respondent for approval as to form in accordance with California Rule of Court, rule (“CRC”) 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b).

[1] The parties’ respective requests for judicial notice, including Petitioner’s Supplemental Request for Judicial Notice, are unopposed and granted.

[2] “This chapter,” refers to Chapter 1, “Direct Primary.”

[3] Part 2 is titled “Independent Nominations,” and concerns the nomination process of candidates by means other than or subsequent to a primary election. (See Elec. Code, § 8300.)

[4] Elections Code section 6402, subdivision (b)

[5] Before the hearing on the Petition, the Court raised the issue of whether the State Assembly and CD-20 offices are “incompatible,” such that Fong could not be a candidate in the same election for both. (See Minute Order Dec. 27, 2023.) However, both parties agreed that such a determination required a factual analysis, and the record is devoid of evidence required to undertake such an analysis. Accordingly, the Court declines to render an opinion on this issue.

/s/ M. Garcia

M. Garcia, Deputy Clerk

By:

Minutes of: 12/28/2023

Entered on: 12/28/2023