

"BY FAX"

1 NIELSEN, MERKSAMER, PARRINELLO,
2 MUELLER & NAYLOR, LLP
3 MARGUERITE MARY LEONI, SBN 101696
4 SEAN P. WELCH, SBN 227101
5 2350 KERNER BLVD., SUITE 250
6 SAN RAFAEL, CA 94901
7 TELEPHONE (415) 389-6800
8 FAX (415) 388-6874

9 *Attorneys for Petitioner and Plaintiff*
10 KARIM KANO

FILED ORIGINAL
LOS ANGELES SUPERIOR COURT

AUG 12 2008

JOHN A. CLARKE, CLERK

BY SHAUNYA WESLEY, DEPUTY

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF LOS ANGELES/CENTRAL DIVISION
13 UNLIMITED JURISDICTION

14 KARIM KANO,
15 *Petitioner & Plaintiff,*

16 vs.

17 BYRON POPE, City Clerk for the City of
18 Beverly Hills, DEAN C. LOGAN, Registrar of
19 Voters for the County of Los Angeles, and
20 DOES I to X,

21 *Respondents & Defendants.*

22 LARRY LARSON, STACY MARKS, PETER
23 FALK, NANCY SINATRA SR., JOHN
24 MIRISCH, and DOES XI to XX,

25 *Real Parties in Interest.*

Case No.

BC396173

26 VERIFIED PETITION FOR
27 WRIT OF MANDATE &
28 COMPLAINT FOR
INJUNCTIVE RELIEF

CALENDAR PREFERENCE
REQUIRED BY STATUTE
(ELEC. CODE § 13314(a)(3))

VERIFIED PETITION FOR WRIT OF MANDATE & COMPLAINT FOR INJUNCTIVE RELIEF
Case No.:

COURT REPORTERS & VIDEO

Dep 30 Elizabeth A. Hunter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION

1. This is an action in the public interest pursuant to Elections Code §§ 9295 and 13314 to delete certain false and misleading statements from the rebuttal argument of real parties in interest in connection with a ballot measure to be voted on by the voters of the City of Beverly Hills at a consolidated statewide general election on November 4, 2008.

GENERAL FACTUAL ALLEGATIONS

2. The Beverly Hilton, built in 1954, is in the midst of a revitalization project designed to bring new life to the storied hotel property while at the same time generating much-needed revenue to the City of Beverly Hills. On or about April 29, 2008, after a lengthy public planning process, including multiple public meetings before the Planning Commission and City Council, the Beverly Hills City Council adopted Resolution 08-R-12601 (the "Resolution"). The purpose of the Resolution is to modify the City's land use policies so that the planned Beverly Hilton Hotel revitalization project can be built. The Resolution specifically sets the maximum height of each of the three new buildings to be constructed on the Beverly Hilton project site as follows: (1) Building A Condominiums: 6 to 8 stories; (2) Building B Condominiums: 16-18 stories; and (3) New Waldorf-Astoria Hotel: 2 to 12 stories. The Resolution also sets a maximum height of two stories for reconfigured conference meeting space. True and correct copies of the relevant portions of the Resolution and its Exhibit C (Specific Plan) are attached hereto as Exhibit 1 and incorporated herein by this reference.

3. Dissatisfied with the results of the public process as embodied in the Resolution, a political committee known as Citizens Right to Decide Committee (hereafter "CITIZENS RIGHT TO DECIDE"), and its supporters circulated and submitted to City elections officials a referendum petition to overturn the City Council's approval of the Resolution.

4. The referendum qualified for the ballot, and the City Council has ordered a special municipal election on the Resolution to be consolidated with the statewide general

1 election on November 4, 2008.

2 5. The arguments for and against the Resolution, and the rebuttals to those
3 arguments, have been prepared and submitted to Respondent CITY CLERK. The
4 arguments and rebuttals will be printed in the ballot pamphlet for the November general
5 election by Respondent REGISTRAR, and will be mailed to all the voters of the City of
6 Beverly Hills pursuant to Elections Code §§ 9280-9290. Petitioner is informed and
7 believes, and on that basis alleges, that the date that has been set for the official election
8 materials to be submitted for printing is on or after September 8, 2008.

9 6. The statutorily-required 10-calendar-day public examination period for ballot
10 arguments and commencement of litigation ends on August 14, 2008 at 5:00 p.m. A true
11 and correct copy of the Notice to Voters regarding the pertinent dates for filing and
12 challenging ballot arguments, received from the CITY CLERK, is attached hereto as
13 Exhibit 2, and incorporated herein by this reference. Pursuant to Elec. Code § 9295(b)(1), a
14 petition for a writ of mandate must be filed no later than the end of this review period.

15 7. As detailed below, the Rebuttal to the Argument In Favor of the Resolution
16 contains numerous statements that are false and misleading. The Elections Code provides
17 for any Beverly Hills voter to seek a writ of mandate and/or injunction to prevent those
18 false and misleading statements from being sent to the voters in the official ballot pamphlet.
19 Specifically, Elections Code § 9295 provides in relevant part:

20 The elections official shall make a copy of the material referred to in Sections
21 9223, 9280, 9281, 9282, and 9285 available for public examination in the
22 elections official's office for a period of 10 calendar days immediately
following the filing deadline for submission of those materials....

23 During the 10-calendar-day public examination period provided by this
24 section, any voter of the jurisdiction in which the election is being held, or the
25 county elections official, himself or herself, may seek a writ of mandate or an
injunction requiring any or all of the materials to be amended or deleted. The
26 writ of mandate or injunction request shall be filed no later than the end of
27 the 10-calendar-day public examination period....

COPIES 2008-11-11-0808

1 A peremptory writ of mandate or an injunction shall be issued only upon clear
2 and convincing proof that the material in question is false, misleading, or
3 inconsistent with the requirements of this chapter, and that issuance of the
4 writ or injunction will not substantially interfere with the printing or
distribution of official election materials as provided by law.

5 (Emphasis added.) The "official elections materials" referred to in this Section include
6 ballot arguments and rebuttal arguments. (Elec. Code §§ 9282 & 9285.)

7 8. Likewise, Elections Code § 13314 provides in relevant part:

8 Any elector may seek a writ of mandate alleging that an error or omission has
9 occurred, or is about to occur, in the placing of any name on, or in the
10 printing of, a ballot, sample ballot, voter pamphlet, or other official matter, or
that any neglect of duty has occurred, or is about to occur....

11 A peremptory writ of mandate shall issue only upon proof of both of the
12 following: (A) that the error, omission, or neglect is in violation of this code
13 or the Constitution, and (B) that issuance of the writ will not substantially
14 interfere with the conduct of the election.... The action or appeal shall have
priority over all other civil matters.

15 (Emphasis added.)

16 9. In this case, unless the Court grants a writ of mandate and/or injunction, the
17 voter pamphlets will be printed with false and misleading statements contained in the
18 Rebuttal to the Argument In Favor of the Resolution, in violation of the Elections Code.

19 **PARTIES**

20 10. Petitioner and Plaintiff KARIM KANO is a resident, registered voter, and
21 taxpayer in the City of Beverly Hills.

22 11. Respondent BYRON POPE, CITY CLERK FOR THE CITY OF BEVERLY
23 HILLS is the elections official for the City, and in that official capacity is responsible for
24 the conduct of Beverly Hills elections. Pursuant to Elections Code § 9295(b)(3), Mr. POPE
25 is by necessity named as a Respondent in this action and is sued in his official capacity
only.

26 12. Respondent DEAN C. LOGAN, REGISTRAR OF VOTERS FOR THE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

taxpayer expense and in official election materials.

WHEREFORE, Petitioner prays:

1. For an alternative writ of mandate prohibiting Respondents CITY CLERK and REGISTRAR and their officers, agents, and all persons acting by, through or in concert with Respondents from printing the above-described false and misleading statements in the ballot pamphlet for the November 4, 2008 consolidated general election in the City of Beverly Hills or in the alternative, to show cause why he should not be ordered to do so.

2. For a peremptory writ of mandate prohibiting Respondents CITY CLERK and REGISTRAR and their officers, agents, and all persons acting by, through or in concert with Respondents from printing the above-described false and misleading statements in the ballot pamphlet for the November 4, 2008 consolidated general election in the City of Beverly Hills.

3. In the alternative, for an injunction prohibiting Respondents CITY CLERK and REGISTRAR and their officers, agents, and all persons acting by, through or in concert with Respondents from printing the above-described false and misleading statements in the ballot pamphlet for the November 4, 2008 consolidated general election in the City of Beverly Hills.

4. For costs of this proceeding; and

5. For such other and further equitable relief and other relief as this Court may deem just and proper.

Dated: August 12, 2008

NIELSEN, MERKSAMER, PARRINELLO,
MUELLER & NAYLOR, LLP

By: _____

Sean P. Welch

Attorneys for Petitioner & Plaintiff

KARIM KANO

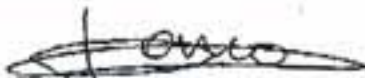
FILED IN 2008 AUG 12 2008

VERIFICATION

1
2 I am a Petitioner and Plaintiff in the above-titled matter. I have read the foregoing
3 VERIFIED PETITION FOR WRIT OF MANDATE & COMPLAINT FOR INJUNCTIVE
4 RELIEF. I know the contents thereof, and the same is true of my own knowledge, except
5 as to matters therein stated on information and belief, and as to those matters, I believe
6 them to be true.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed on August 12, 2008, at Beverly Hills, California.

10 

11 KARIM KANO
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

T M Z

RECEIVED / 8/12/08