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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

PHIL BACERRA,

Contestant,

v.

ROMAN REYNA; MARIA HUIZAR, Santa Ana City Clerk,

Defendants.

Case No.: 30-2018-01035769-CU-PT-CJC

CONTESTANT'S TRIAL BRIEF

DATE: February 6, 2019 (trailed from January 23, 2019)
TIME: 9:00 A.M.
PLACE: N-17 (Fullerton Courthouse, 1275 N. Berkeley Avenue, Fullerton, CA)

Contestant Phil Bacerra submits this trial brief:

I.

INTRODUCTION

This is an election contest under Elections Code §16000 et.al. The statement of contest challenges the election of Roman Reyna to the Santa Ana City Council. The grounds for a contest are found in Elections Code §16100. The applicable grounds are:

"(b) That the person who has been declared elected to an office was not, at the time of the election, eligible to that office."

"(c) That the defendant has given to any elector or member of a precinct board any bribe or reward, or has offered any bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise".

These grounds are repeated in §16440.

The basis for the offense against the elective franchise is a violation of Elections Code §18203. That statute provides: "Any person who files or submits for filing a nomination paper or declaration of candidacy knowing that it or any part of it has been made falsely is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years or by both that fine and imprisonment."

Roman Reyna was a candidate for Ward 4 of the Santa Ana city council. He did not live in Ward 4 for thirty days before nomination papers were issued to him, as required by the Santa Ana city charter in Section 401. To avoid this inconvenient requirement, he falsified and backdated a rental agreement at a fake residency. He then signed nomination papers using the fake address.

Election contests are governed by Elections Code §16000 *et.seq.* See in general *Pierce v. Harrold* (1982) 138 Cal.App.3d 415 (upholding residency eligibility challenge to incumbent judge who had won the election and setting forth the burden of proof); *Daniels v. Tergeson* (1989) 211 Cal. App. 3d 1204, 1207 (successful challenge to residency eligibility of winning candidate who only registered in the district for 28 days); *Wall v. Orange County Municipal Court* (1990) 223 Cal. App. 3d 247)(54 day residency requirement upheld for municipal court candidates).

The court previously ruled on the subject of the court's jurisdiction, so this brief will not repeat those points. See Contestant's brief and reply brief on the issue of jurisdiction, and the court's ruling of January 14, 2019.

II.

FACTS

The City of Santa Ana is a charter city in Orange County. Section 400 of the city charter provides that the city council shall consist of seven members, including a mayor who is elected

citywide. Each council office is assigned to each of six wards in the city. Candidates for each office of councilmember shall be nominated from such ward[1].

Section 401 of the charter is the key provision for this case. It provides that in order to be eligible to be elected to the office of councilmember, "a person must be a qualified voter *and a thirty (30) day resident of the ward from which the candidate is nominated at the time nomination papers are issued as provided for in the Elections Code*". Elections Code section 10227 defines "issued" as the day that the forms required for nomination and election are furnished to the candidate.

Roman Reyna had been elected to the city council for a four-year term in 2012 from Ward 5. He lost his bid for reelection in 2016. The seat would not be up again until 2020. If he wanted to run in 2018, he would have to run from a different ward.

Reyna had been registered to vote at 521 S. Townsend since 2003. That address is in Ward 5. He was registered at that address for over 13 years. It served as his registered address for most of his time on the city council. For some reason, on October 24, 2016, two weeks before the 2016 election, Reyna changed his registration to 2205 W. 7th Street.

Reyna actually owned (and still owns) 2205 W. 7th. It had been conveyed to him by a relative in 2011. This address is also in Ward 5.

Reyna lost the 2016 election. To run again in Ward 5, he would have had to wait until 2020. Reyna did not want to wait. Apparently in June of 2018, he decided to run for the city council in Ward 4. He settled on 2519 W. Harvard as the address to run from. To pump up his resume, he applied to be on the city Planning Commission on June 21, and used 2519 W. Harvard as his home address on his application. He prepared a Statement of Organization for a recipient committee (required by the Fair Political Practices Commission to raise money) on June 27, and used the Harvard address as his address. He also prepared another FPPC form, Form 501, for his candidate intention statement, and signed it on June 21, 2018, using the Harvard address. The candidate intention statement is signed under penalty of perjury. These forms were both filed with the city clerk on August 3.

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[1] In November 2018 the voters adopted Measure AA, which amends section 401 so that only the voters in the ward can vote for ward candidates. In this way the voters emphasized the importance to them of candidates having an actual connection to the ward.

Reyna recorded on June 20, 2018, a grant deed where he conveyed the ownership of 2205 W. 7th Street to himself and three other relatives, as tenants in common. This apparently was to show (on paper) that he was severing his ties to Ward 5. However, to save a few dollars by avoiding a transfer tax, he invoked Government Code §27388.1(a)(2), which exempts fees for "a transfer of real property that is a residential dwelling to an owner-occupier". Because Reyna kept an ownership interest, he was declaring that he, along with his relatives, was an "owner-occupier".

Finally, on June 27, 2018, to complete the transition to a new ward, he registered to vote at 2519 W. Harvard. The voter registration statement was also signed under penalty of perjury.

Reyna was all set to run. He had his new address, he had his voter registration for that address, he had his campaign committees set up for that address, and he had declared it to be his home in order to be on the Planning Commission.

There was just one problem. 2519 W. Harvard is in Ward 6, not Ward 4.

The exact moment when Reyna learned of this fact is documented in text messages between himself and the city clerk, Maria Huizar. All of the text messages were produced by the city clerk in response to a Public Records Act request. They are an exhibit in this case. The key excerpts follow.

On July 6, at 4:27 p.m., Reyna and Huizar had this exchange (misspellings are in the original text messages):

"Fri, July 6 4:27 p.m.

Huizar: "Would like to clarify that you are registered to vote in Ward 6, correct?

Reyna: "6, no"

Huizar: "Yes, your address on the application is in Ward 6. I thought you had mentioned you would be moving to Ward 4. Just wanted to make sure you were aware."

Reyna: "Hello. 2519 W. Harvard 92704

What

Can u send me Ward 4 boundary

Yikes"

Huizar: "I don't have them on PDF. The ward map is posted on the web though. You can zoom in to see boundaries."

Reyna: "Ok thx"

[text message shows reference to City council Ward Map,City of Santa Ana santa-ana.org]

Huizar: "Boundary map of the city"

Reyna: "Thx"

This was the moment of truth for Reyna. He was not eligible to run. He faced a choice: he could either acknowledge his ineligibility and wait to run until 2020. Or he could decide to look for a way to evade the legal requirements.

He chose the latter. His question to Huizar was what documents he would need:

Reyna: "Question. What forms of documents Do you Asfoor as proof of residency at that location? A bill in your name, register to vote at that address,???"

Huizar: "Voter registration, lease, utility bill. . . any would do.
Voter registration for sure needs to be in Ward running."

Reyna: "Ok thx Will do.
When can ppl pull papers"

Huizar: "Monday, July 16 thru August 10th. Just make sure paperwork in order otherwise I can't issue Nomination Papers."

Reyna: "Ok thx"

Reyna's next communication was on July 10, at 2:26 p.m. At this point, he mentioned an address that was in Ward 4, 1522 Hemlock Way. But apparently he did not have any proof that he had any connection to that address.

Reyna: "1522 hemlock way 92704..."

Huizar: "Huh? No election."

Reyna: "When do they normally
June?

[rest of text message is about a pending California Votings Right Act lawsuit]

On July 16, Reyna registered to vote at 1522 Hemlock. However, this did not satisfy the 30-day requirement.

On July 23, at 10:03 a.m. Reyna resumed his texting with Huizar, to make an appointment with her:

Reyna: "10:30?

How long will it take?

Can I come in"

Huizar: "Of course. Give me 30-45 minutes.

Time to review all the forms, if you'd like but if you just to pick up packet that's fine too.

Make sure to bring proof of residency.

Residency for 30 days from today, minimum."

Reyna: "The voter reg is not confirmed?

Huizar: "I don't have date of that.., since you changed in the last couple of weeks, I need additional proof of your 30 day residency."

Reyna resumed the text messaging that same day, July 23, at 4:30 p.m. Still looking to evade the legal requirements, his questions were whether anybody could detect the date he registered to vote or lived somewhere:

Reyna: "Question for u

Does the voter reg tell u what date? From that address

Have u seen my new one?

Just asking"

Huizar: "No. System only gives me address and whether you have active or inactive account.

It now shows a Hemlock address.

Reyna: "But no date?"

Huizar: "No date."

Reyna: **"Then how do u know how long they have been there?**

Just asking lol"

["lol" means "laughing out loud". But Huizar wasn't laughing about it:]

Huizar: "That is why I need proof of residency. Your planning Commission is dated June 21,

but it has a different address. You signed that under penalty of perjury so now I need proof that you are residing elsewhere for at least 30 days. Proof of residency may include copy of lease, utility bill etc that is dated longer than 30 days from time I issue papers."

The next day, July 24, at 11:21 a.m., Reyna told Huizar of his plan to use his aunt to make a lease agreement:

Reyna: "Ok. I aunt will sign our rent agreement..
It's just a few lines.
Call I pull tomorrow 4:30ish"

Huizar: "Sure. It can be as long or short as you'd like. Just need address, date you started residing there, her signature. Let me know if you have any other questions ;)"

Reyna: "Koo thx"

Huizar: "Anytime. See you later today."

Reyna: "Tomorrow.

I go to Catalina at the end of the week and I have monthly reports I need to finish. Work is kicking my ass right now."

Huizar: "Oh that's right. Yes tomorrow. I kept thinking you were leaving to Catalina today."

Reyna: "I wish.

Thx".

When Reyna submitted his papers to Huizar on August 2, which triggered the 30-day period back to July 3, he submitted a five-line sheet of paper bearing a date of June 28, 2018. This was the purported lease for 1218 W. Bishop. Thus, although Reyna said in the text message on July 24 that his aunt *will* sign the rental agreement, it was backdated to a time when Reyna was still registered to vote in another ward. In fact, it was dated June 28, *one day after* Reyna registered to vote at 2519 W. Harvard. Reyna presented no other evidence of residency at 1218 W. Bishop – no checks, no receipts, no utility bills, only a backdated piece of paper that is inconsistent with everything else he said or did.

Reyna is caught between a rock and a hard place. Either he did not reside at 1218 W. Bishop 30 days before August 2, and created a fake rental agreement, or he did live there and committed perjury on his 2519 W. Harvard voter registration card and his forms filed with the FPPC and the city clerk on August 2.

To add to the confusion, Reyna actually registered to vote at 1218 Bishop Street on October 22, 2018. If he actually lived at 1218 Bishop on June 28, why would he have not registered to vote there, instead of 1522 Hemlock, on July 16? Did he really move five times (from 7th Street to Harvard to Bishop to Harvard to Hemlock to Bishop) in the span of five months?

III.

REYNA WAS NOT ELIGIBLE BECAUSE OF THE RESIDENCY REQUIREMENT.

In *Daniels v. Tergeson* (1989) 211 Cal. App. 3d 1204, 1206, the contestant challenged the eligibility of a winning candidate for county supervisor under Government Code §25201 because he had not been a registered voter in the district 30 days before the deadline for filing nomination papers. He had registered 28 days before. The court upheld a 30-day registration requirement and declared the candidate to be ineligible. The court found both compelling reasons for the requirement and for the validity of the requirement:

> "States have "compelling" reasons for requiring candidates for public office to establish their residence and eligibility for office within a reasonable and fixed period of time before the election. (*Dunn v. Blumstein* (1972) 405 U.S. 330, 343, 92 S.Ct. 995, 1003, 31 L.Ed.2d 274.)
>
> " 'An orderly system of election laws crystallizes the issues and candidates during a given time-span before the election. During this period the election officials prepare and distribute sample ballots and print official ballots. During this period the candidates address their appeals to the voters. The latter, in turn, weigh the alternatives. They may rationally resolve their choices only by assurance that all the candidates are eligible.' [Citation.]

"Accordingly, it has been suggested that a public entity may constitutionally require a prospective candidate to be a 'resident at the time he files his nominating papers or equivalent declaration of candidacy and for a period of not more than 30 days next preceding such date of filing.' [Citations.]

"Such a 30–day prefiling residence requirement seems reasonably necessary and convenient to accommodate the needs of election officials in their task of timely verification of the candidate's true residence prior to the preparation and distribution of ballots." (*Johnson v. Hamilton, supra,* 15 Cal.3d at p. 472.)

"Analogously, if the state has a compelling reason for requiring a prospective candidate to be a resident 30 days before filing nomination papers, it can also require him to be a registered voter in the district at that time in order to validate he is a bona fide resident."

The court had no sympathy for the disqualified candidate and noted that if there was any fault, it lied with the candidate who failed to meet the basic eligibility requirement. It quoted from *Rosario v. Rockefeller* (1973) 410 U.S. 752, 757-758: "'[Petitioners] could have registered and enrolled in the party of their choice before that date and been eligible to vote in the June 1972 primary.... Hence, if their plight can be characterized as disenfranchisement at all, it was not caused by [the statute], but by their own failure to take timely steps to effect their enrollment.'" (211 Cal.App.3d at 1212).

The court added: "Other means of verifying residency involve constitutional problems greater than the registration requirement. For example, requiring proof of payment of property taxes in the district would exclude renters as candidates. Requiring proof by way of address listed with the Department of Motor Vehicles would exclude unlicensed persons. And simply taking a candidate's word that he is a resident would not adequately serve the compelling governmental interest of preventing election fraud and assuring that only district residents sit on the board of supervisors. Thus, section 25041 promotes the state's interest in regulating the election process to insure only qualified residents for office are put before the electorate. The statute is not unconstitutional."

True residency requires more than a piece of paper or a token address. "[T]he test for determining a person's domicile is physical presence plus an intention to make that place his

permanent home." *Fenton v. Board of Directors of Groveland* (1984) 156 Cal.App.3d 1107, 1116. In *People v. Mayer* (2003) 108 Cal.App.4th 403, a candidate was tried and convicted for using somebody else's residence on his voter registration and candidate statements. The court did not accept his defense that he was mistaken as to the legal standard for candidates. "We are not prepared to accept the proposition that 'residence' has one meaning for elected office holders and candidates for election to public office, but a different and universally recognized meaning for all other persons." *Id* at 414. The court did not permit expert testimony (even from a former lieutenant governor and congressman) about the loose standards for political candidates. See also *People v. Superior Court (Wright)* (2011) 197 Cal. App. 4th 511, 515–16 (state senator convicted of false residency and fraud).

If a candidate uses an address but does not live in the ward, he is ineligible, and his election must be nullified.

IV.

THE FALSE STATEMENTS UNDER PENALTY OF PERJURY ARE AN INDEPENDENT GROUND TO REMOVE REYNA.

There are two grounds for this election contest. One has to do with Reyna's residency, and the other has to do with a violation of the elective franchise.

In *Pierce v. Harrold, supra,* 138 Cal. App. 3d 415, the court disqualified a sitting judge because she had falsely stated her county of residence on her declaration of candidacy. The judge had received 62% of the vote. The basis of the disqualification was the provision making it a crime for a person to file a declaration of candidacy knowing that it had been made falsely. The court set forth the issue: "The record plainly presents one overriding issue, and that is whether defendant has committed an offense against the elective franchise as such offenses are defined in Division 17. If so, because the election here under contest was in legal result a general election, then the court properly proceeded under section 20021, subdivision (c) to nullify defendant's election."

The judge argued that the residency requirement was unconstitutional. The court found that the false declaration of candidacy was still disqualifying, regardless of whether the residency requirement was valid:

"[I]t is obvious to us that the falsity of the declaration was *highly material.* Even accepting that the Legislature may not impose conditions for elective office in excess of any constitutional provisions, it is too plain to require extensive confirmation that the electors in any election, especially a judicial election, are highly interested in knowing the true fact of a candidate's place of residence as such. The voters of the West Orange County Judicial District were entitled to a truthful statement from the defendant on where she actually lived at the time of her declaration of candidacy regardless of whether such residence was a condition for her taking office. They did not receive such a statement, and therein lies the gravamen of defendant's offense against the elective franchise."

Similarly, the voters of Santa Ana were entitled to know Reyna's true residence, regardless of whether it was determinative, and were entitled to an election free from false sworn statements. An offense against the elective franchise disqualifies the respondent even if the violation would not have made a difference in the result.

This point was made in *Bradley v. Perrodin* (2003) 106 Cal. App. 4th 1153.The court said:

"When an otherwise successful candidate such as Irving is subsequently found to have committed an offense or offenses against the elective franchise, her election may be annulled even if the number of unqualified voters she fraudulently registered or the number of votes she unlawfully solicited were too few to have changed the outcome of the election. As the California Supreme Court explained: 'Each ... 'offense against the elective franchise defined in Division 17 [now 18]' of the Elections Code ... can furnish independent statutory grounds for contesting and annulling the election, separate and apart from the effects of any illegal votes actually counted. ([Former] § 20021, subd. (c) [, now § 16100, subd. (c)]; *see Stebbins v. White* (1987) 190 Cal.App.3d 769, 788–791.)" (*Gooch v. Hendrix* (1993) 5 Cal.4th 266, 275, fn. 4.)"

In this case, Reyna committed election fraud in his voter registration and in his statement of intention. Voter registrations are made under penalty of perjury (Elections Code section 2102(c)). This alone would be enough to uphold the contest, regardless of whether he was otherwise qualified to run.

V.

THE BURDEN OF PROOF IS BY A PREPONDERANCE OF THE EVIDENCE.

In election contests, there are cases that suggest the burden of proof is by preponderance of the evidence and other cases that suggest the burden is by clear and convincing evidence. The proper standard is preponderance of the evidence.

The one case that discusses the burden of proof in any detail is *Pierce v. Harrold, supra,* at 427-428. The court said in full on this point:

"Even so, because, in future cases of this kind, the litigants will be vitally concerned with the burden of proof to be met, we shall address the question.

"Starting first with the Evidence Code, we note that section 115 provides, " 'Burden of proof' means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt. [¶] *Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.*" (Emphasis added.) Witkin, after quoting the second paragraph of section 115, observes, "as the above quotation makes clear, unless a greater or lesser burden is imposed by statute or judicial decision, the party with the burden of proof satisfies it by a preponderance of the evidence." (Witkin, Evidence, § 208, p. 189.) Continuing with Witkin, "Even where the theory of the case [as here] involves the accusation of a crime, the burden of proving the crime ... is met by a *preponderance of the evidence,* i.e., the high degree of proof demanded in criminal cases is not required in civil cases even on the *issue of crime* [citations]." (*Id.* at p. 190; original emphasis.)

"In *Liodas v. Sahadi,* 19 Cal.3d 278, the Supreme Court granted a hearing to determine the proper standard of proof of civil fraud. In the course of resolving that issue as requiring proof by only a preponderance of the evidence the Supreme Court observes that "it has long been settled ... in civil cases [that] even a criminal act may be proved by a preponderance of the evidence. (*Estate of Nelson* (1923) 191 Cal. 280, 286–287, 216 ....)" (*Liodas v. Sahadi, supra,* 19 Cal.3d 278, 290, fn. 8.)

1 "Therefore, because section 29303 does not specify any particular standard of proof, the
2 traditional civil standard applies, i.e., proof by a preponderance of the evidence. What that degree of
3 proof amounts to is too well established to require citation of authority or further discourse upon it."

4 Other cases, i.e. *Gooch v. Hendrix* (1993) 5 Cal.4th 266, suggest clear and convincing proof
5 without elaboration. *Gooch*, at page 279, cited *Wilks v. Mouton* (1986) 42 Cal.3d 400, 404, and older
6 cases, without analysis. *Wilks* merely recites: "The contestant has the burden of proving the defect in
7 the election by clear and convincing evidence. (*Smith v. Thomas* (1898) 121 Cal. 533, 536; *Hawkins*
8 *v. Sanguinetti* (1950) 98 Cal.App.2d 278, 283; *Willburn v. Wixson, supra,* 37 Cal.App.3d at p. 737.)"

9 These cases do not stand for the cited proposition, and none of them turned on the distinction
10 between clear and convincing and preponderance of the evidence. In *Willburn v. Wixson* (1974) 37
11 Cal. App. 3d 730, 737, the court said: "Although we are well aware of the substantial evidence rule,
12 we also note that in an election contest the evidence must be 'very clear' (*Smith v. Thomas* (1898),
13 121 Cal. 533, 536), 'clear and convincing' (*Hawkins v. Sanguinetti* (1950), 98 Cal.App.2d 278, 283).
14 Here, as we have stated above, all that the evidence shows is speculation and conjecture where such
15 speculation and conjecture could just as logically lead one way as the other."

16 *Hawkins v. Sanguinetti* (1950) 98 Cal. App. 2d 278, 283, refers to "clear and convincing", but
17 in the context of the *appellate* burden of proof: "Contestant, in support of his contention that the court
18 erred in not deducting Hyde's vote from the contestee's total, refers to Hyde's statement that after
19 requesting assistance from a postman in the adjoining booth, he instructed his assistant to cast a vote
20 for Sanguinetti. Appellant then argues that since no evidence was presented by contestee to rebut
21 such testimony it must be presumed that said assistant carried out Hyde's instructions and cast a vote
22 for Sanguinetti, and therefore not alone should the ballot have been declared illegal but also the trial
23 court should have deducted a vote from the contestee. We are not so convinced of the conclusiveness
24 of such testimony as contestant appears to be. It should be noted that upon direct examination the
25 witness also testified that he had poor vision, that he did not have his glasses at the time and that the
26 light was not too good in the voting booth, while on cross-examination he testified that he neither
27 saw, nor did he know of his own knowledge, where the stamp was placed on the ballot nor did he
28 read any of the names appearing on the ballot. Additionally it should be noted

1 that the person who assisted Hyde was not produced as a witness. Under such circumstances it cannot
2 be said that the evidence was so clear and convincing as to warrant this court in disturbing the
3 conclusion reached by the trial court on such a question of fact."

4 In *Smith v. Thomas* (1898) 121 Cal. 533, 535–36, it is doubtful whether the court intended to
5 set forth a rule of law, on a comment that was dicta. The described testimony was
6 unreliable under any standard. The relevant portions of the opinion say:

7 "One Crabtree, called as a witness, was asked for whom he had voted for supervisor. He
8 declined to answer and was then asked: "Without intimating whether or not you voted, did you have
9 any preference for the office of supervisor of supervisor district No. 3 on or before the third day of
10 November, 1896, and before the day the general election was held in this supervisor district?" An
11 objection having been overruled, he answered: "On election day if I had voted I suppose I would
12 have voted for Mr. Thomas." He was then asked if he had voted at all would he have voted for
13 supervisor. To which he replied: "I don't know but what I would." There was other evidence which
14 tended to show that the witness had voted and that he was not a legal voter.

15 "The court refused to deduct the vote from the tally of defendant, and perhaps in so doing was
16 influenced to some extent by the testimony, improperly admitted, tending to show that the witness
17 had said that he had voted for Smith. There was, however, no testimony as to how he voted except
18 that above set out. I do not think it amounted to evidence. He thought when on the witness stand that
19 he would have voted for Thomas if he had voted, and if he had voted he did not know but he would
20 have voted for supervisor. The witness could not have been convicted of perjury for this testimony if
21 it had been proven that he voted for Smith. He may have forgotten how he did in fact vote. At the
22 general election there were many other offices to be filled. The requirement of secrecy is based upon
23 the idea that voters may find it inconvenient to have it known for whom they voted—may, in fact, be
24 weak enough to desire to create the impression that they voted otherwise than as they did vote. They
25 may not be willing to risk their political standing by openly voting independently. And I think results
26 show that many do vote differently from their professions.

27 "Under such circumstances, I think very clear evidence should be furnished as to how one did
28 vote before his vote can be deducted from the total of any candidate. The secret ballot brings many

inconveniences, and we must take the bitter with the sweet."

This was a statement made to affirm the trial court on what the court described as "I do not think it amounted to evidence".

The only case to analyze the burden of proof in detail, and to discuss the relevant statutes, was *Pierce v. Harrold.* Its holding is relevant today. There is no special statute setting forth the burden of proof in election contest cases. The cited case, *Liodas v. Sahadi*, recognized an overall change in the law to apply the preponderance of the evidence standard in civil cases in the absence of a statute dictating otherwise. Accordingly, the burden of proof in this case should be preponderance of the evidence.

CONCLUSION

The court should determine that Reyna was not eligible to be a candidate or hold office, on two separate grounds, and should annul the certificate of election, set aside the election and declare the office vacant (Elections Code §16603, 16702), bar Reyna from running for the office [2], and award costs (Elections Code §16800), which may include attorneys fees.

DATED: February 6, 2019

MARK S. ROSEN
Attorney for Contestant Phil Bacerra

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[2] If there is a vacancy, Reyna is not eligible for an appointment to fill the vacancy because Section 403 of the city charter requires the appointee have lived in the ward for one year. He also is not eligible to fill out any of the term if he is found to have violated the elective franchise – a determination that should be made even if Reyna resigns prior to the commencement of the trial. See *Bradley v. Perrodin, supra,* 106 Cal.App.4th 1153, 1174-1176 ("Under section 16100, subdivision (c), Irving is disqualified from seeking or filling the council seat she had sought in the 2001 election, for the remainder of that 2001 term."), citing *Pierce v. Harrold, supra,* 138 Cal. App. 3d 415, 434, which held that a disqualified candidate cannot have another chance to run for the same term ("We conclude thusly, for the entire procedure starts with a declaration of candidacy, and the statutory procedure does not contemplate a second declaration of candidacy for the general election for those persons who for any reason are eliminated at the primary."). There are other disabilities if Reyna resigns due to charges of corruption (See Govt.C. §36512(e)(3)). There could also be a lifetime ban (Elections Code §18501).