

FILED

MAR 28 2017

Clerk of the Court
Superior Court of California
County of Calaveras
By [Signature] Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF CALAVERAS

CALAVERAS NATURALS, INC., a California corporation; JEREMY CARLSON, an individual,)

Case No. 17CV42233

Petitioners,)

**RULING ON VERIFIED FIRST
AMENDED PETITION FOR WRIT
OF MANDATE TO
DELETE MEASURE B
FROM THE MAY 2, 2017
SPECIAL ELECTION BALLOT**

vs.)

REBECCA TURNER, in her official capacity as Calaveras County Clerk Recorder and Registrar of Voters,)

Respondent.)

WILLIAM McMANUS, an individual; and DAVID TUNNO, an individual,)

Real Party in Interest.)

Measure B is one of four measures presently on a vote by mail ballot scheduled for a special election on May 2, 2017. Petitioners seek a writ of mandate to delete Measure B for its failure to comply with language mandated by Elections Code Section 9124.

Elections Code § 9124 provides, in full:

The enacting clause of an ordinance submitted to the voters of a county shall be substantially in the following form:

“The people of the County of _____ ordain as follows:”

The language of Measure B states “AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF CALAVERAS ...”.

The language of Measure B fails to substantially comply with the mandated language of Elections Code § 9124 for an ordinance submitted to the voters of the county. Moreover, the Court finds this is more than a technical semantic shortcoming as the actual language of Measure B is misleading as it infers the measure is seeking voter approval of an action of the Board of Supervisors contrary to the actual context of Measure B which seeks to have the voters direct the Board to take an action. In making its ruling herein, the Court is mindful of the long established judicial principle that it is usually more appropriate to review challenges to ballot propositions or initiative measures after an election rather than disrupt the electoral process by preventing the exercise of the people's franchise. This Court's preference would be to adhere to this principle. However, the Court finds that the nature and extent of Measure B's misleading references and non-compliance with Elections Code section 9124, with the resulting imprimatur of legislative authority, undermines the integrity of the initiative process. The Court notes that Measure C also on the May 2, 2017, special election ballot properly uses the Elections Code § 9124 language that "The voters of the Copperopolis Fire Protection District, County of Calaveras, State of California, hereby ordain as follows ...".

The Court finds that Petitioner Calaveras Naturals, Inc. lacks standing to petition for a writ of mandate as this business entity does not meet the definition of an "elector" pursuant to Elections Code § 13314(a) but finds Petitioner Jeremy Carlson meets the statutory definition and has standing to bring the present Petition. Finally, the Court finds that granting the Petition would not affect the three other measures on the 5/2/17 special election ballot so granting the petition would not substantially interfere with the conduct of the 5/2/17 special election.

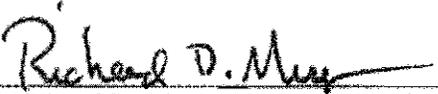
The Verified Answer of real parties in interest fails to address the problems with the language of Measure B. There is no dispute as to the number of signatures that were collected to place Measure B on the ballot but the fact all of those signatures were in support of a ballot measure whose language was contrary to the requirements of the law does not correct the impropriety of using referendum language for a measure that even real parties in interest concede is a citizen initiative. Additionally, the Court finds no merit in the argument that granting the petition and removing Measure B would substantially interfere with the election; while such an outcome would inherently have a substantial effect on Measure B itself, the election will proceed concerning Measures A, C, and D.

Based on the foregoing, the Petition For Writ Of Mandate of Calaveras Naturals, Inc. is DENIED due to the corporation's lack of standing. The Petition For Writ Of Mandate of Jeremy Carlson is GRANTED. Respondent Rebecca Turner, in her official capacity as Calaveras County Clerk recorder and Registrar of Voters is ordered to the extent possible to delete Measure B from the voter ballot and where that is not practical to take no further action (including counting of any votes) relative to the proposed initiative designated Measure B with regard to the 5/2/17 Calaveras County special election.

The clerk shall provide notice of this ruling to the parties forthwith. Petitioner Jeremy Carlson to prepare a formal order in compliance with Rule of Court 3.1312 in conformance with this ruling.

It is so Ordered,

March 28, 2017


Richard D. Meyer, Assigned Judge