

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
NORTH JUSTICE CENTER**

**MINUTE ORDER**

DATE: 03/29/2022

TIME: 05:00:00 PM

DEPT: N17

JUDICIAL OFFICER PRESIDING: Craig Griffin

CLERK: Lenora Silva

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2022-01250784-CU-WM-CJC** CASE INIT.DATE: 03/18/2022

CASE TITLE: **Unger vs. Bob Page**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Writ of Mandate

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EVENT ID/DOCUMENT ID: 73729031

**EVENT TYPE:** Chambers Work - Submitted Matter

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**APPEARANCES**

There are no appearances by any party.

***The Court, having taken the above-entitled matter under submission on 3/28/22 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:***

Petitioner Ivana Unger challenges the candidate statement of Real Party in interest Vicente Sarmiento on the ground that it violates Cal. Elec. Code § 13307 by including the candidate's political party affiliation. Specifically, Petitioner challenges the portion of Real Party's ballot statement which reads: "Please join the Democratic Party of Orange County . . . in supporting Mayor Sarmiento's campaign . . .," requesting a writ of mandate commanding Bob Page, in his official capacity of the Orange County Registrar of Voters, to strike from the statement the phrase "the Democratic Party of Orange County."

Real Party opposes the writ petition on two grounds. First, that the writ petition was not properly verified, and second, that the challenged ballot statement does not violate § 13307. The Court rejects both grounds and grants the writ petition.

**Verification of the Petition for Writ of Mandate**

Real Party contends the writ petition here is defective because it was verified by an attorney and not the Petitioner herself. Code of Civil Procedure section 446 authorizes attorney verification "where the parties are absent from the county where counsel has his office," and permits attorney verification on information and belief.

The verification of a writ petition in the context of an election challenge was addressed in the case of *League of Women Voters v. Eu* (1992) 7 Cal.App.4th 649. There, the Real Party demurred to the writ petition on the grounds that the attorney verification was defective. The verification stated:

"I declare the facts alleged [in the petition] are true to my own personal knowledge, except as to matters stated as to information and belief, and as to those matters, I believe them to be true. I further declare that Petitioners are absent from the county in which I have my office."

*Id.* at p. 656. The Court of Appeal deemed the foregoing sufficient for the purpose of raising the election challenge, observing:

"The object of a verification is to assure good faith in the averments or statements of a party. [Citations.] Where, as here, there is no allegation of counsel's bad faith, a claim of inadequate verification is without merit.

*Ibid.* The Court of Appeal went on to determine that the verified petition was sufficient to demonstrate standing. Here, as in *League of Women Voters*, there is no allegation of bad faith on the part of the attorney verifying the writ petition; nothing in § 446 requires an attorney to provide further explanation as to why his client's signature could not be obtained. The verification in the present case is qualitatively the same as that at issue in *League of Women Voters*; the present verification reads:

"I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof to be true to my own knowledge, except as to those statements made upon information and belief, and as to them, I believe them to be true. I make this declaration on Petitioner's behalf because my office is absent from the county in which Petition is located."

Indeed, the present verification goes beyond that in *Women Voters*, in that it expressly states that the attorney has read the contents of the writ petition. The Court finds that the verification is sufficient to support the writ petition and demonstrate standing on the part of the petitioner.

Real Party also asserts that a separate declaration from Petitioner is required to meet the standard set in Elections Code § 13313, that she must demonstrate, "upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of" the Elections Code. But § 13313 does not require the clear and convincing evidence to be only that provided by the petitioner; here, Petitioner's attorney provides his own declaration upon personal knowledge supporting the Petition.

### **Elections Code § 13307**

Elections Code § 13307(a)(1) provides:

"Each candidate for nonpartisan elective office in any local agency, including any city, county, city and county, or district, may prepare a candidate's statement on an appropriate form provided by the elections official. . . . The statement *shall not include the party affiliation of the candidate, nor membership or activity in partisan political organizations.*"

Cal. Elec. Code § 13307 (Emphasis added.). Real Party argues that the challenged phrase does not violate § 13307 in that it does not declare that he is a member of, or affiliated with, the Democratic Party. In support, Real Party cites the case of *Zapata v. Davidson* (1972) 24 CalApp.3d 823. But *Zapata* is no longer good law, as it was vacated by the California Supreme Court in *Knoll v. Davidson* (1974) 12 Cal.3d 335, and should not have been cited.

Here, Petitioner contends Real Party is declaring his "party affiliation" in the statement. Election Code § 300.5 provides the following definition:

"'Affiliated with a political party' as used in reference to a voter or to a candidate for a voter-nominated office means the party preference that the voter or candidate has disclosed on his or her affidavit of registration."

Cal. Elec. Code § 300.5 (West).

Petitioner provides evidence demonstrating that Real Party is a registered Democrat; thus, she argues, Real Party is declaring his party affiliation in his ballot statement. True, the challenged phrase does not expressly state Real Party is a registered Democrat. But it is virtually inconceivable that the Democratic Party of Orange County would endorse a Republican, or anyone else who is not a Democrat. Certainly, that is how voters will see it.

The manifest purpose of § 13307 is to keep nonpartisan contests truly nonpartisan. The inclusion of a partisan political party endorsement in a candidate statement is simply an end-run around § 13307, and defeats its purpose.

The issue of whether a partisan political party endorsement violates § 13307 was addressed in the case of *Kunde v. Seiler* (2011) 197 Cal.App.4th 518, in which the plaintiff was challenging a political party's electioneering materials sent out with sample ballots which included endorsements of nonpartisan candidates. The Court observed:

"Kunde cites section 13307, subdivision (a)(1), which states that in the context of an election for a nonpartisan office—such as the local contests described in the proposed insert—the candidate's statement appearing in the sample ballot 'shall not include the party affiliation of the candidate, nor membership or activity in partisan political organizations.' He argues that if section 13305 is interpreted to allow electioneering material, it would effectively vitiate the proscription on a candidate for a nonpartisan office including his or her party affiliation. We disagree. Section 13307, subdivision (a)(1) concerns the content of candidate statements, which is a separate matter from the permissible content of a letter from a political party with whom the recipient is registered. Section 13305 has no bearing on the content of a candidate's statement."

*Id.* at p. 534. What is significant about *Kunde* is that the Court of Appeal did not declare that political party endorsements do not violate § 13307; instead, the court denied relief on the basis that the challenged materials were not a candidate statement. Implicit in the *Kunde* ruling is a recognition that a partisan political party endorsement in a candidate statement would have violated § 13307.

The petitioner for writ of mandate is GRANTED. The phrase "the Democratic Party of Orange County" in Real Party's candidate statement is hereby STRICKEN.

Order signed and filed this date.

Court orders Clerk to give notice.