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**FILED**  
Clerk of the Superior Court

DEC 20 2019

By: R. Cersosimo, Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

MICHAEL McCONNELL and ISIDRO D. ORTIZ,

Petitioners,

v.

ELIZABETH MALAND, in her official capacity as City Clerk of the City of San Diego, and MICHAEL VU, in his official capacity as the Registrar of Voters of the City of San Diego,

Respondents.

SAN DIEGO CITY COUNCIL and MARA ELLIOTT, the City Attorney of the City of San Diego,

Real Parties in Interest.

Case No. 37-2019-00065808-CU-WM-CTL

**JUDGMENT**

On December 19, 2019, at 1:30 p.m., this case came before this Court a merits hearing on the petition for writ of mandate filed by Plaintiffs/Petitioners Michael McConnell and Isidro D. Ortiz (simultaneously with a merits hearing in the related case). Attorney Margaret Prinzing appeared on behalf of Petitioners Michael McConnell and Isidro D. Ortiz. Attorney Meghan Wharton appeared on behalf of Defendants/Respondents City Clerk Elizabeth Maland and City Attorney Mara Elliott and on behalf of Defendant/Real Party in Interest City Council of the City of San Diego. Attorney

1 Christina Snider appeared on behalf of Defendant/Respondent Registrar of Voters Michael Vu.  
2 Attorney Gary Winuk appeared on behalf of Defendants/Real Parties in Interest Joe Carroll, Jaymie  
3 Bradford, Bob McElroy, Namara Mercer, and Nicholas J. Segura. Attorney Cory J. Briggs appeared  
4 on behalf of Plaintiffs/Petitioners San Diegans for Open Government and Richard Lawrence (in the  
5 related case).

6 Based on the parties' pleadings, briefs, evidence, and based on their legal counsel's oral  
7 arguments at the hearing, **IT IS NOW ORDERED, ADJUDGED, AND DECREED** that relief is  
8 granted in part and denied in part to Plaintiffs/Petitioners Michael McConnell and Isidro D. Ortiz,  
9 and against Defendants/Respondents City Clerk Elizabeth Maland and City Attorney Mara Elliott,  
10 Defendant/Real Party in Interest City Council of the City of San Diego, Defendant/Respondent  
11 Registrar of Voters Michael Vu, and Defendants/Real Parties in Interest Joe Carroll, Jaymie Bradford,  
12 Bob McElroy, Namara Mercer, and Nicholas J. Segura as follows with respect to the ballot measure  
13 that is the subject of San Diego City Council Ordinance no. O-21143:

14 1. The SDOG and McConnell Actions challenge the ballot question and ballot materials for  
15 a citizen's initiative. The citizen's initiative, titled "For a Better San Diego" (Initiative), seeks to  
16 increase the City's transient occupancy tax and dedicate the revenue from the tax increase to three  
17 city priorities: homelessness programs, street repairs and Convention Center expansion and expenses.  
18 [RJN Ex. 1.] In the Actions, SDOG and McConnell challenge the ballot question for the Initiative as  
19 failing to comply with California law and the San Diego Municipal Code (SDMC). Further, the  
20 SDOG Action alleges that the ballot summary and the City Attorney's impartial analysis fail to  
21 comply with the law.

22 It is the role of this Court to "jealously guard the precious initiative power, and to resolve any  
23 reasonable doubts in favor of its exercise." *Legislature v. Eft*, 54 Cal.3d 492, 501 (1991). This Court  
24 must "apply liberal construction to [the initiative power] whenever it is challenged in order that the  
25 right might not be improperly annulled." *Assoc. Home Builders, etc. v. City of Livermore*, 18 Cal.3d  
26 582, 591 (1976). Therefore, in order to prevail in this action, SDOG and McConnell must present  
27 "clear and convincing proof that the material in question is false, misleading, or inconsistent with the  
28 requirements" of the law. See San Diego Municipal Code (SDMC) § 27.0404.

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2 As demonstrated herein, SDOG and McConnell fail to meet this burden with regard to  
3 each defect alleged regarding the ballot question and the ballot materials. First, the City is not  
4 required to comply with the primary statute relied on by SDOG and McConnell because the  
5 statute is not applicable to California charter cities. Second, in each instance, the language used  
6 by the City substantially complies with all legal requirements for the ballot question and ballot  
7 materials. Neither SDOG nor McConnell present clear and convincing proof that the ballot question  
8 and/or the ballot materials are misleading, dishonest, defective, biased, partial,  
9 prejudicial or otherwise in violation of the applicable law.

10 2. Ballot materials “must reasonably inform the voters of the character and purpose of the  
11 proposed measure.” *Yes on 25 etc. v. Superior Ct.*, 189 Cal. App. 4<sup>th</sup> 1445, 1452 (2010). “The  
12 main purpose of these requirements is to avoid misleading the public with inaccurate information.”  
13 *Id.*

14 When the sufficiency of any ballot material is questioned, courts will “independently  
15 examine” whether the material “substantially complies” with the law. *McDonough v. Superior Ct.*,  
16 204 Cal. App. 4<sup>th</sup> 1169, 1174 (2012).

17 3. The Court, in an attempt to make the ballot initiative statement true to “the character and  
18 purpose of the proposed measure”, made nominal changes to the City’s proposed initiative to assist  
19 voters in better understanding the true meaning and intent of the initiative ballot statement.

20 4. The Court rules that the City of San Diego is enjoined from using their proposed existing  
21 ballot statement, and a peremptory writ of mandate shall issue to compel the City Council of the  
22 City of San Diego to modify the ballot measure’s ballot question/label as set forth in Section 3 of  
23 the Ordinance no. O-21143 to conform to the ballot question/label as set forth in Attachment 1 to  
24 this Judgment, and to compel City Clerk Elizabeth Maland and City Attorney Mara Elliott to  
25 transmit to County Registrar of Voters Michael Vu, no later than December 27, 2019, a ballot  
26 question/label, ballot summary, and impartial analysis for the ballot measure in a form that  
27 conforms to this Judgment.

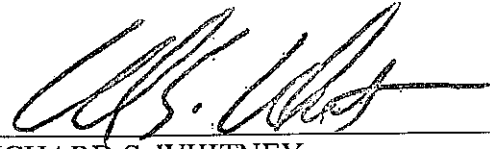
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5. The Court reserves jurisdiction to determine any award of attorney's fees or costs.

IT IS SO ORDERED.

Dated: DEC 20 2019



RICHARD S. WHITNEY  
Judge of the Superior Court

# Attachment 1

<p><b>MEASURE C. INITIATIVE MEASURE – HOTEL VISITOR TAX INCREASE FOR CONVENTION CENTER EXPANSION, HOMELESSNESS PROGRAMS, STREET REPAIRS.</b> Shall the measure be adopted to: increase the City of San Diego’s 10.5% hotel visitor tax to 11.75, 12.75, and 13.75 percentage points, depending on hotel location, through at least 2061, designated to fund convention center expansion, modernization, promotion and operations, homelessness services and programs, and street repairs; and authorize related bonds; with a citizens’ oversight committee and audits by the City Auditor?</p>	<p>YES</p> <hr/> <p>NO</p>	<hr/>
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