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7 Attorney for Petitioner DENISE ERKENEFF

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ORANGE**

10 DENISE ERKENEFF) CASE NO.:
11)
12) ***ELECTION MATTER PRIORITY***
13) **(Election Code § 13314(a)(3))**
14)
15) **VERIFIED PETITION FOR**
16) **ALTERNATIVE AND PEREMPTORY**
17) **WRIT OF MANDATE**
18) (CCP Sections 1084-1088.5
19) Elections Code Sections
20) 13103, 13104, 13307, 13313,
21) 13314)
22) **Petition Filed: August 14, 2008**
23)
24)
25)
26)
27)
28)
DENISE ERKENEFF)
Petitioner,)
v.)
NEAL KELLEY, in his official)
capacity as Registrar of)
Voters of the County of)
Orange;)
KATHY WARD, in her official)
capacity as City Clerk of)
the City of Dana Point;)
and DOES 1 through 5)
inclusive.)
Respondents.)
_____)
LUIGI ROSSETTI, JR.,)
A/K/A)
"LOU PENROSE," and DOES 1)
through 5, inclusive,)
Real Party in)
Interest.)
_____)

1 Petitioner alleges as follows:

2 1. This lawsuit is brought in the public interest to
3 enforce and ensure an important right, namely, an accurate
4 election ballot in the upcoming Dana Point municipal election.

5 2. Petitioner is a registered voter in the City of Dana
6 Point and therefore is an "elector" consistent with California
7 Elections Code Section 13314(a)(1) and is entitled to bring
8 this action. Petitioner has no pecuniary interest in this
9 litigation. Petitioner brings this private action under
10 Section 13314(a)(1) because there is no other remedy available
11 to compel Respondents to correct the error on the ballot that
12 is the subject of this Petition.

13 3. Respondent Orange County Registrar of Voters Neal
14 Kelley is the elections official responsible for printing
15 ballots and election materials, for the ballot in the Dana
16 Point municipal election scheduled for November 4, 2008,
17 pursuant to the California Elections Code.

18 4. Respondent Kathy Ward is the City Clerk of the City
19 of Dana Point and is responsible for administering elections in
20 the City of Dana Point and accepting documents and certifying
21 candidates for the ballot.

22 5. Real Party in Interest Luigi Rossetti, Jr.,
23 ("Rossetti") is an employee of the United States Government and
24 District Director for United States Congressman John Campbell.
25 He is a registered voter in the City of Dana Point in the name
26 of "Lou P. Rossetti," and owns real property with his wife in
27 the City of Dana Point as either "Lou" or "Luigi" Rossetti.

28 6. On or about July 25, 2008, through August 5, Rossetti
signed and submitted to Respondents a Declaration of Candidacy

1 for city council wherein he stated his name as "Lou Penrose" to
2 qualify "Lou Penrose" for the ballot in the Dana Point
3 municipal election scheduled for November 4, 2008.

4 7. On or about August 5, 2008, Rossetti signed and
5 submitted to Respondents a Candidate Statement of
6 Qualifications, wherein he stated his name as "Lou Penrose,"
7 for inclusion by Respondents in the voter pamphlet to be
8 printed and mailed to all voters prior to the election.

9 8. "Lou Penrose" is a fictitious name assumed by
10 Rossetti for politics.

11 9. "Lou Penrose" is not a registered voter in Dana
12 Point.

13 10. On or about August 13, 2008, Respondents certified
14 "Lou Penrose" as a candidate in the upcoming Dana Point City
15 Council election.

16 11. Respondents clearly erred in certifying "Lou Penrose"
17 for the ballot. Respondents including Respondent Kelley have
18 an obligation to place accurate names of candidates on the
19 ballot under the California Elections Code. "Lou Penrose" is
20 not an accurate name for any candidate in the upcoming Dana
21 Point City Council election.

22 12. Under California Elections Code Section 13314(a)(1),
23 Respondents, including Respondent Kelley, may be compelled to
24 correct an error or omission on the ballot and election
25 materials by removing an erroneous name from the ballot by writ
26 of mandate.

27 13. Elections Code Section 13307(a)(1) requires that a
28 Candidate Statement of Qualifications contain only a statement
of that candidate's education and qualifications and may
include that candidate's "name."

1 14. The Candidate Statement of Qualifications submitted
2 by Rossetti violates Elections Code Section 13307(a)(1) because
3 "Lou Penrose" is not Rossetti's name.

4 15. The acts complained of which are the subject of this
5 Petition occurred in the County of Orange, State of California,
6 therefore, venue is properly in this court in the County of
7 Orange.

8 16. Pursuant to Elections Code Section 13314(a)(3), this
9 Petition "shall have priority over all other civil matters."

10 17. The true names, identities and capacities of
11 Respondent and Real Party DOES 1 to 5, inclusive, are unknown
12 to Petitioner who therefore brings this Petition against DOES 1
13 to 5, inclusive, by such fictitious names, and will seek leave
14 of this Petition to show the true names, identities and
15 capacities when they have been determined. Petitioner is
16 informed and believes and on that basis alleges that each DOE
17 respondent is responsible in some manner for the events and
18 happenings set forth in this Petition and proximately caused
19 the damage complained of to Petitioner as alleged in this
20 Petition.

21 18. In accordance with Elections Code section 13314, a
22 writ should issue because the errors, omissions, or neglect set
23 forth in this Petition is in violation of California codes or
24 the Constitution, and that issuance of the writ will not
25 substantially interfere with the conduct of the election since
26 the Respondents currently have ample time to correct and print
27 the ballots and ballot pamphlets.
28

FIRST CAUSE OF ACTION

(Petition for Writ of Mandate - Violation of Election Code

1 10511, 13103, 13104)

2 19. Petitioner re-alleges and incorporates by reference
3 the allegations of paragraphs 1 through 18.

4
5 20. On or about July 25, 2008, through August 5,
6 Rossetti signed and submitted to Respondents a Declaration of
7 Candidacy wherein he stated his name as "Lou Penrose" to
8 qualify "Lou Penrose" for the ballot in the Dana Point
9 municipal election scheduled for November 4, 2008.

10
11 21. Rossetti is registered to vote in Dana Point as "Lou P
12 Rossetti."

13 22. There is no person in Dana Point registered to vote as
14 "Lou Penrose."

15 23. Petitioner is informed and believes that Rossetti is
16 employed by his employer, the United States Government by his
17 name "Luigi Rossetti, Jr."

18
19 24. Petitioner is informed and believes that Rossetti is
20 known to the Superior Court of Orange County as "Luigi Rossetti,
21 Jr.", whose traffic school Rossetti has attended.

22
23 25. Petitioner is informed and believes that Rossetti is
24 known to the Fullerton Police Department as Luigi Rossetti, Jr.

25 26. Petitioner is informed and believes that Rossetti is
26 known to Susan W. Manron, notary public, as Luigi Rossetti, Jr.

27
28 27. Petitioner is informed and believes that Rossetti is
known to Kerry E. Fennell, notary public as Luigi Rossetti, Jr.

1 28. Petitioner is informed and believes that Rossetti is
2 known to Brenda Selz Burnett, notary public, as Luigi Rossetti,
3 Jr.

4
5 29. Petitioner is informed and believes that Rossetti is
6 known to Angela LaLima, notary public, as Luigi Rossetti, Jr.

7 30. Petitioner is informed and believes that Rossetti is
8 known to Ana Lucia Lovecky, notary public, as Luigi Rossetti,
9 Jr.

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11 31. Petitioner is informed and believes that Rossetti is
12 known to Cassandra M. Nishti, notary public, as Luigi Rossetti,
13 Jr.

14 32. Petitioner is informed and believes that Rossetti is
15 known to Barbara A. Torres, notary public, as Luigi Rossetti,
16 Jr.

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18 33. Petitioner is informed and believes that Rossetti is
19 known to his college alumni office as Luigi Rossetti, Jr.

20 34. Petitioner is informed and believes that Respondents
21 intend to erroneously and wrongfully allow Rossetti to appear on
22 the ballot as "Lou Penrose" in direct contradiction to his duly
23 registered name unless this court orders them to do otherwise.

24
25 35. Pursuant to Elections Code §§ 10511, 13103 and 13104,
26 Rossetti's name must appear on the ballot, not a fictitious name
27 that will mislead voters.

28 36. Pursuant to Elections Code section 13314 Petitioner is
entitled to a peremptory writ of mandate ordering Respondents to

1 change the name of "Lou Penrose" to Rossetti's registered name
2 of "Lou P. Rossetti" before the ballots are printed and
3 distributed.
4

5 37. Petitioner does not have a plain, speedy or adequate
6 remedy, in the ordinary course of law because the voter pamphlet
7 is to be printed in the next several days.

8 38. Petitioner is entitled to judicial review, and this
9 procedure for a writ of mandate is the appropriate procedure for
10 obtaining judicial review.
11

12 SECOND CAUSE OF ACTION

13 (Petition for Writ of Mandate - Violation of Election Code
14 13307)

15 39. Petitioner re-alleges and incorporates by reference
16 the allegations of paragraphs 1 through 38.
17

18 40. Rossetti submitted the Candidate Statement of
19 Qualifications that is the subject of this petition.

20 41. Petitioner is informed and believes that Respondents
21 intend to include Rossetti's Candidate Statement of
22 Qualifications in the voter pamphlet as submitted by Rossetti to
23 include the fictitious name "Lou Penrose" instead of his
24 registered name of "Lou P. Rossetti," unless this court orders
25 them to do otherwise.
26

27 42. Pursuant to Elections Code § 13307, Rossetti's
28 Candidate Statement of Qualifications may include his name and
cannot mislead voters.

1 43. Pursuant to Elections Code section 13313 Petitioner is
2 entitled to a peremptory writ of mandate ordering Respondent to
3 strike the misleading name of "Lou Penrose" from the Candidate
4 Statement of Qualifications before the voter pamphlet is printed
5 and distributed.
6

7 44. Petitioner does not have a plain, speedy or adequate
8 remedy, in the ordinary course of law because the voter pamphlet
9 is to be printed in the next several days.
10

11 45. Petitioner is entitled to judicial review, and this
12 procedure for a writ of mandate is the appropriate procedure for
13 obtaining judicial review.
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16
17 WHEREFORE, Petitioner prays that his court:

- 18 1. Issue an alternative writ of mandate directing
19 Respondents to remove "Lou Penrose" as a candidate for
20 the position of Dana Point City Council in the
21 elections scheduled for November 4, 2008, or to show
22 cause before this court at a time and place specified
23 by this court why they have not done so and why a
24 peremptory writ should not issue;
- 25 2. Issue an alternative writ of mandate directing
26 Respondents to change Rossetti's name to appear on the
27 ballot to Lou P. or Luigi Rossetti, Jr., or to show
28 cause before this court at a time and place specified
 by this court why they have not done so and why a
 peremptory writ should not issue;

- 1 3. Issue an alternative writ of mandate directing
2 Respondents to change Rossetti's name on the ballot and
3 in Rossetti's Candidate Statement of Qualifications to
4 Lou P. or Luigi Rossetti, Jr, or to show cause before
5 this court at a time and place specified by this court
6 why they have not done so and why a peremptory writ
7 should not issue;
- 8 4. After hearing on this Petition, issue a peremptory writ
9 commanding Respondents to remove the name "Lou Penrose"
10 from Rossetti's Candidate Statement of Qualifications
11 that violates Elections Code section 13307;
- 12 5. After hearing on this Petition, issue a peremptory writ
13 commanding Respondents to remove the name "Lou Penrose"
14 from the ballot that violates Elections Code section
15 13314;
- 16 6. Require a return to this Petition, and set this matter
17 for a hearing at the earliest available dates, so that
18 the issuance of the writ will not substantially interfere
19 in the printing and distribution of the ballot and voter
20 pamphlet;
- 21 7. Award Petitioner her attorneys' fees and costs reasonably
22 incurred in this action under Code of Civil Procedure
23 section 1021.5 and other applicable code sections; and
- 24 8. Grant Petitioner other and further relief as may be just
25 and proper.
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Dated: August 14, 2008

WEWER & LACY, LLP

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James V. Lacy,
Attorney for Petitioner

VERIFICATION

I, Denise Erkeneff, am the Petitioner in the above referenced matter. I hereby certify that I have read the foregoing Verified Petition for Alternate and Peremptory Writ of Mandate and the contents thereof are true and accurate to the best of my knowledge and belief, except as to matters which are herein stated on my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed in Dana Point, California on August 14, 2008.

Denise Erkeneff