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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF AMADOR

HOWARD JARVIS TAXPAYERS ASSN.;) No.
CHARLOTTE ASHER, and LAURA)
BOGGS,)

Petitioners,

v.

AMADOR WATER AGENCY, ITS BOARD)
OF DIRECTORS, and CRIS THOMPSON)
IN HER OFFICIAL CAPACITY AS CLERK)
OF THE BOARD)

Respondents.

EX PARTE PETITION FOR ALTERNATIVE
WRIT OF MANDATE and APPLICATION
FOR CALENDAR PREFERENCE

IMMEDIATE ACTION REQUIRED:
ELECTION-RELATED MATTER ENTITLED
TO CALENDAR PREFERENCE (CCP § 35)
IN ORDER TO COMPLY WITH APRIL 18,
2016 BALLOT PUBLICATION DEADLINE

ELECTION MATTER: PRIORITY REQUESTED

Petitioners hereby apply, ex parte, for: (1) immediate issuance of an Alternative Writ of Mandate directing Respondents to do all acts necessary to place the voters' duly qualified Referendum of Resolution Number 2015-19 on the ballot for the election on June 7, 2016, or appear at a hearing to show cause why the Court should not issue a Peremptory Writ of Mandate ordering them to do so; (2) an expedited briefing schedule for Respondents' Opposition and Petitioners' Reply; and (3) a preferential hearing date for the issuance of a final Peremptory Writ of Mandate.

Petitioners allege as follows:

1. Petitioner Charlotte Asher ("Asher") is a resident, registered voter, and ratepayer within the Amador Water Agency boundaries. She signed the referendum petition.

§ 95-1 *et seq.*). The Agency may sue and be sued. (*Id.*, § 95-3.3.)

5. Respondent Board of Directors ("Board") is the elected governing body of the Agency and is comprised of five directors, each representing one district of the county. Under state law, the Board is responsible for calling the election on a referendum duly qualified by the Agency's voters. (Elec. Code § 9145.)

6. Respondent Cris Thompson in her official capacity is the Clerk of the Board ("Clerk"), and serves as the Agency's elections official. Under state law, the Clerk is responsible for certifying a referendum duly qualified by the Agency's voters. (Elec. Code § 9114.)

JURISDICTION AND VENUE

7. This action seeks the issuance of a writ of mandate pursuant to Code of Civil Procedure section 1085 "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station." The Superior Court has jurisdiction to issue the writ. (*Id.*)

8. Petitioners, as customers and ratepayers of the Agency, and as Amador County registered voters who signed the referendum petition and desire to vote on it, have a beneficial interest in the performance of the duties owed by Respondents. Petitioners have no plain, speedy, and adequate remedy at law. (Code of Civ. Proc. § 1086.)

9. Venue for this action is proper in Amador County as Respondents are all located within Amador County, and the actions and injuries described herein all occurred within Amador County. (Code of Civ. Proc. §§ 393(b) and 394.)

FIRST CAUSE OF ACTION

(Writ of Mandate: Public Officials' Abuse of Discretion)

10. On July 21, 2015, the Agency passed Resolution Number 2015-19, adopting new uniform water rates for single-family customers, temporary water shortage rate surcharges on water usage, metered water rates for flat-rate water customers, and a schedule of annual automatic inflationary rate adjustments. (Request for Judicial Notice ("RJN"), **Exhibit A.**)

1 11. Ratepayers opposed to the new rates circulated a “Referendum Against a Resolution
2 Passed by the Amador Water Agency Board of Directors.” The circulated referendum
3 petition stated: “We hereby request that Resolution Number 2015-19 be reconsidered and
4 repealed by the Board of Directors or that the resolution be submitted to a vote of the
5 People of Amador County at the next regular election.” (RJN, **Exhibit B.**)

6 12. As required by Elections Code section 9147(b), the petition contained the complete
7 text of Resolution No. 2015-19. As further required by case law interpreting section
8 9147(b), the petition also contained two documents incorporated in the Resolution by
9 reference or attachment, the Fiscal Year 2015-2016 Water Rate Update and Water
10 Shortage Financial Strategy Final Report (“Water Rate Update”) and the Amador Water
11 Agency System-Wide Cost of Service and Water Rate Study (“Cost of Service Study”).
12 (RJN, **Exhibit B.**)

13 13. After collecting signatures, Ratepayers on August 19, 2015, presented the
14 referendum petition to the Clerk. The Clerk, in turn, forwarded the petition to the County
15 Registrar of Voters to have the signatures verified and counted.

16 14. The Registrar verified a sufficient number of valid signatures, and returned the
17 petition to the Clerk with her official verification. (RJN, **Exhibit C.**) At that point, the Clerk
18 had a ministerial duty to “certify” the petition to the Board (Elec. Code § 9114), and the
19 Board had a ministerial duty to either repeal the subject Resolution or call an election in
20 order to present it to the voters (Elec. Code § 9145).

21 15. The Clerk, however, refused to certify the referendum petition. She sent a letter to
22 Ratepayers Protection Alliance (RJN, **Exhibit D**) setting forth three reasons for refusing to
23 take action on the petition. The Board ratified the Clerk’s refusal by holding a hearing on
24 the matter on October 8, 2015, at which it too decided to take no action on the petition.
25 (RJN, **Exhibits E & F.**)

26 16. None of the three reasons in the Clerk’s letter provide legal justification for
27 Respondents’ refusal to perform the ministerial duties imposed on them by state law.

28 17. The proponents and voters who signed the petition have asked Respondents to take

1 action on the referendum, yet Respondents continue to ignore their duties and the voters'
2 requests. As this case involves important public interests, namely the People's
3 constitutional right of referendum, right to vote, and right to petition government for redress,
4 unless this Court acts, and with haste, Petitioners will suffer irreparable harm.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Petitioners Howard Jarvis Taxpayers Association, Charlotte
7 Asher, and Laura Boggs pray for relief as follows:

8 1. For the Court to grant this case calendar preference under Code of Civil Procedure
9 section 35 and Elections Code section 13314.

10 2. For the Court to immediately issue an alternative writ of mandate commanding
11 Respondent Cris Thompson, in her official capacity as Clerk of the Board, to certify the
12 referendum as qualified for the ballot, and commanding Respondent Board of Directors to
13 either repeal Resolution No. 2015-19 or pass a resolution calling an election to submit the
14 referended Resolution to the voters at the Primary Election on June 7, 2016, OR, IN THE
15 ALTERNATIVE, to show cause before this Court why they have not done so.

16 3. For the Court to set a show-cause hearing on March _____, 2016, and to order an
17 accelerated briefing schedule requiring Respondents to file and electronically or personally
18 serve their Opposition, if any, by March _____, 2016, and requiring Petitioners to file and
19 electronically or personally serve their Reply, if any, by March _____, 2016.

20 4. For the Court at the hearing to then issue a peremptory writ of mandate commanding
21 Respondent Cris Thompson, in her official capacity as Clerk of the Board, to certify the
22 referendum as qualified for the ballot, and commanding Respondent Board of Directors to
23 either repeal Resolution No. 2015-19 or pass a resolution calling an election to submit the
24 referended Resolution to the voters at the Primary Election on June 7, 2016, or, if the Court
25 finds that the June election date is unavailable, then the first available election date
26 thereafter.

27 5. Making the orders final, and requiring Respondents to file a return to the writ by a
28 specified date demonstrating their compliance.

6. For costs of suit including reasonable attorney fees; and
7. For such other or further relief as the Court deems just and proper.

DATED: March 7, 2016.

Respectfully submitted,

JONATHAN M. COUPAL
TREVOR A. GRIMM
TIMOTHY A. BITTLE
BRITTANY A. SITZER



Brittany A. Sitzer
Counsel for Petitioners

VERIFICATION

I, Brittany A. Sitzer, declare:

I am one of the attorneys of record for the Petitioners in this action. I am authorized to verify this complaint on behalf of Howard Jarvis Taxpayers Association. The other petitioners are absent from the County of Sacramento where I have my office, and I make this verification for that reason as well.

I have read the attached Ex Parte Petition for Writ of Mandate and Application for Calendar Preference. Except as to matters stated on information and belief, the allegations contained therein are true of my own knowledge and, with regard to those matters stated on information and belief, I believe them to be true.

I certify, upon penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this verification was executed on the date shown below in the City of Sacramento, California.

DATED: March 7, 2016.


Brittany A. Sitzer

1. I am over 18 years of age and **not a party to this action**.

2. I served the following **documents** (*specify*):

Ex Parte Petition for Alternative Writ of Mandate and Application for Calendar Preference

(SIGNATURE OF PERSON WHO SERVED THE PAPERS)