

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 8 2019

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SAN BERNARDINO**

19 MICHAEL GOMEZ DALY and INLAND
20 EMPIRE UNITED,
21
22 Petitioners,

CASE NO. CIVDS1833846

Hon. Janet M. Frangie
Dept. S29

23 v.

~~PROPOSED~~ JUDGMENT

19 BOARD OF SUPERVISORS OF SAN
20 BERNARDINO COUNTY; ROBERT A.
21 LOVINGOOD, as First District Supervisor and
22 Chair of the Board of Supervisors; JANICE
23 RUTHERFORD, as Second District Supervisor
24 and Vice Chair of the Board; CURT
25 HAGMAN, as Fourth District Supervisor of
26 the Board; and JOSIE GONZALES, as Fifth
27 District Supervisor of the Board,

Action Filed: December 31, 2018

28 Respondents.

DAWN ROWE,

Real Party in Interest.

BY FAX

~~PROPOSED~~ JUDGMENT

REGISTRATION
SEP 27 2019
SUPERIOR COURT
SAN BERNARDINO COUNTY

1 This matter came before this court on June 28, 2019, for hearing in Department S29, the
2 Honorable Janet M. Frangie presiding. Megan Wachspress, Glenn Rothner, and Juhyung Harold
3 Lee appeared on behalf of petitioners Michael Gomez Daly and Inland Empire United
4 ("Petitioners"). Deborah J. Fox and T. Steven Burke, Jr. appeared on behalf of respondents San
5 Bernardino County Board of Supervisors et al. ("Respondents") and Real Party in Interest Dawn
6 Rowe ("Rowe"). Memoranda of points and authorities in support of and in opposition to the
7 petition for writ of mandate and declarations and documentary evidence in support of such points
8 and authorities having been received into evidence and examined by the court, arguments having
9 been presented and the Court having ruled on the submitted matter, the Court finds as follows:

10 1. The process by which Dawn Rowe was selected to the San Bernardino County
11 Board of Supervisors violated the Ralph M. Brown Act, ("Brown Act"), Cal. Gov't Code §54950
12 *et seq.*

13 2. Respondents violated the Brown Act by conducting an off-the-record seriatim
14 meeting and vote on December 10, 2018 to select the 13 candidates who were then interviewed
15 on December 11, 2018. Each Board Member deliberated on the applications for the Third
16 District Supervisor position and then submitted his or her list of 10 names selected from the field
17 of 48 applicants through a series of individual communications, which were then collected and
18 tallied by the Clerk for the purpose of obtaining a collective agreement by Respondents
19 regarding which candidates in the 48-person applicant pool would be interviewed. This series of
20 events constituted a "meeting" by Respondents where they took "action," *see* Gov. Code
21 §54952.2, and did not fall within any of the statutory exceptions to the open meeting
22 requirements of the Brown Act.

23 3. The selection of these 13 candidates was made by secret ballot, in violation of the
24 Brown Act.

25 4. Respondents failed to cure or correct this violation through their actions at the
26 December 18, 2018 meeting. Respondents did not engage in any deliberation after they
27 purportedly "rescinded" their December 10, 2018 and December 11, 2018 actions, but simply
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1 endorsed the improper vote by truncating their selections to three candidates each, selecting the
2 same five “finalists” that had been chosen on December 11, 2018, continuing the interviews of
3 that date, and then ratifying their original selection of Rowe.

4 5. Because Respondents did not cure or correct their violations of the Brown Act at
5 the December 18, 2018 meeting, Petitioners’ December 18, 2018 letter remained sufficient to
6 allege Brown Act violations, and Petitioners fulfilled the notice-to-cure requirement. Petitioners
7 were not required to submit a second notice to cure following the December 18, 2018 meeting.

8 6. Petitioners were not required to show that they were prejudiced by Respondents’
9 Brown Act violations. Even if such a showing were required, Petitioners have shown prejudice
10 in that the public — including Petitioners — was deprived of their right to monitor and provide
11 input on Respondents’ collective acquisition and exchange of facts, of information shared behind
12 closed doors by members of the Board of Supervisors, and of the opportunity to hear from all
13 candidates and to lobby for their preferred candidate before the Board of Supervisors.

14 7. The appointment of Dawn Rowe as Third District Supervisor is null and void.

15 For the reasons set forth here and in the Statement of Decision, IT IS HEREBY

16 ORDERED THAT:

- 17 1. A peremptory writ of mandate shall issue from the Court:
- 18 a. commanding Respondents immediately to rescind the appointment of Rowe as
19 Third District Supervisor;
- 20 b. prohibiting Respondents from allowing Rowe to participate in an official
21 capacity in any meetings or Board actions, and from registering or otherwise
22 giving effect to any further votes cast by Rowe;
- 23 c. prohibiting Respondents from making any appointment to the position of
24 Third District Supervisor of the San Bernardino Board of Supervisors; and
- 25 d. commanding Respondents to immediately seat any person duly appointed to
26 the position of Third District Supervisor by the Governor.
- 27
28

1 2. Petitioners are the prevailing party and shall recover fees and costs in the
2 proceeding.

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4 DATED: NOV - 8 2019

Janet M Frangie

HON. JANET M. FRANGIE
San Bernardino Superior Court

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