IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; CITY OF HUNTINGTON BEACH et al. Real Parties in Interest.	G065209 (Super. Ct. No. 30-2024-01393606) O R D E R

THE COURT:*

On February 13, 2025, petitioner filed a petition for writ of mandate. The petition challenges the trial court's orders sustaining the demurrer of real parties in interest, declining to enter judgment, and dismissing the action without prejudice.

Respondent court's conclusion that this matter is not ripe for decision is problematic. Elections Code section 10005 states, "A local government shall not enact or enforce any charter provision, ordinance, or regulation requiring a person to present identification for the purpose of

voting or submitting a ballot at any polling place, vote center, or other location where ballots are cast or submitted, unless required by state or federal law. For the purposes of this section, 'local government' means any charter or general law city, charter or general law county, or any city and county." The challenged provision of real party in interest the City of Huntington Beach's (the City) charter states, "The City may verify the eligibility of Electors by voter identification."[1] The statute and the City's charter appear to facially conflict, in that the City's charter purports to grant the City power to do something the state forbids.

This is a ripe, present controversy. The City's own arguments support this view. The City contends Elections Code section 10005 is facially unconstitutional as to charter cities under article XI, section 5 of the California Constitution. "Because a facial challenge to a statute's constitutionality focuses on the statute's text rather than its application in a particular case, 'a facial challenge is generally ripe the moment the challenged [law] is passed.'" (*AIDS Healthcare Foundation v. Bonta* (2024) 101 Cal.App.5th 73, 80.)

The City's arguments to the contrary before the trial court are suspect. The City argued it has not yet established a scheme of ordinances to carry out its voter identification checks, and it is therefore impossible to know now whether the challenged charter provision will ultimately violate Elections Code section 10005, because the City's voter identification checks may not be carried out at all or could be limited to those "required by state or federal law." However, the challenged charter provision specifically grants

[1] "Electors" are defined as United States citizens age 18 or older who are City residents on or before the date of the election.

the City power to go beyond those checks required by state or federal law, and it replaced a pre-existing provision requiring the City's municipal elections to comply with the state's Elections Code. We ordinarily presume the Legislature or other legislative bodies do not engage in idle acts. (*Gonzales v. California Victim Compensation Bd.* (2023) 98 Cal.App.5th 427, 445.)

The City also argued it had a constitutional right to regulate its own municipal elections free from state interference, and therefore petitioner could not allege a cause of action. This argument is also problematic. Municipal elections, including those in the City, are typically held in conjunction with statewide elections, and involve the same ballot, personnel, infrastructure, polling places, and voter registration scheme. This occurs via consolidation of the elections pursuant to Elections Code section 10400 et seq. Consolidation with statewide elections takes the City's municipal elections outside the home rule doctrine, as does use of state personnel, voting infrastructure, funds, polling places, etc.

Additionally, even if the matter is not yet ripe, Code of Civil Procedure "[s]ection 581, subdivision (f)(2) '. . . gives the defendant the right to obtain a court order dismissing the action with prejudice once the court sustains a demurrer with leave to amend and the plaintiff has not amended within the time given.'" (*Cano v. Glover* (2006) 143 Cal.App.4th 326, 330.) Respondent court's decision not to enter judgment violates the law.

Respondent court has the power and jurisdiction to alter its order in this case, either by entering judgment in favor of real parties in interest, or by overruling the demurrer of real parties in interest. (See *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1245-1246 (*Brown*) [discussing procedure for so-called "suggestive" *Palma* notices in lieu of

issuance of a peremptory writ in the first instance].)[2] If respondent court intends to change its order, it should provide notice and an opportunity to be heard to the parties. (*Id.* at 1239.)

This order neither commands nor obligates respondent court to follow any particular course. "Rather, a suggestive *Palma* notice is analogous to a tentative ruling, in that it sets forth the appellate court's preliminary conclusions with respect to the merits of the writ petition—conclusions that, similar to those reflected in a tentative ruling, are not binding upon either the trial court or the appellate court." (*Brown*, *supra*, 47 Cal.4th at p. 1238.)

IT IS ORDERED that respondent court shall notify this court within 10 days of the date of this order whether it intends to modify its orders sustaining the demurrer of real parties in interest and dismissing the action without prejudice. Respondent court shall provide this court with a copy of the judgment or order, if any, that it enters in response to this suggestive *Palma* notice.

The parties are advised that if respondent court does not modify its orders, this court is considering issuing a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.) If respondent court does not modify its orders to overrule the demurrer of real parties in interest, the parties are each invited to file an additional brief with this court within 20 days of the filing of this order, responding to the

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[2] Code of Civil Procedure section 916 does not bar the trial court from modifying its order, as petitioner has not yet perfected its appeal because the challenged orders (an order sustaining a demurrer and an unsigned minute order entering a dismissal without prejudice) are not appealable. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1409, fn. 4 ["A sizable body of precedent holds that an appeal from a *nonappealable order* will not divest the trial court of jurisdiction"].)

tentative analysis contained herein. The parties' briefs should address, at a minimum, the following two questions:

(1) Does the City intend to conduct voter identification checks that extend beyond those "required by state and federal law," as described in Elections Code section 10005?

(2) Assuming the trial court vacates its order dismissing the action without prejudice and enters an appealable judgment pursuant to Code of Civil Procedure section 581, subdivision (f)(2), and this court enters an order granting calendar preference to the appeal therefrom, what harm, if any, does petitioner suffer by proceeding via their appeal instead of this writ petition, given that the challenged city charter language does not apply to any elections before 2026?

If respondent court concludes the matter is ripe and modifies its orders by vacating its dismissal, vacating the order sustaining the demurrer, entering a new order overruling the demurrer of real parties in interest and setting the matter for a prompt hearing,[3] this petition will be dismissed as moot. If respondent court enters judgment in favor of real parties in interest, this court will retain jurisdiction to grant further relief on the writ petition or dismiss it in light of petitioner's appeal from the same order.

O'LEARY, P. J.

* Before O'Leary, P. J., Goethals, J., and Sanchez, J.

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[3] "Cases affecting the right to vote and the method of conducting elections are obviously of great public importance." (*Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, fn. 1.) "Questions involving ballot access . . . go to the heart of our democracy and are of substantial and continuing public interest." (*Weber v. Superior Court* (2024) 101 Cal.App.5th 342, 350.)