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Orange County Grand Jury
700 Civic Center Dr. West
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Tony Rackauckas
Orange County District Attorney
401 Civic Center Drive West
Santa Ana, CA 92701

Re: Residency Fraud in Santa Ana

Dear Members of the Grand Jury and District Attorney Rackauckas:

1. Introduction

I am writing on behalf of Phil Bacerra. Mr. Bacerra is a candidate for the Santa Ana City Council in Ward 4. The election is November 6, 2018. Mr. Bacerra's opponent, Roman Reyna, is in blatant violation of the residency requirements of the Santa Ana City Charter. We ask that you investigate this residency fraud.

Mr. Bacerra at first approached this matter by filing a petition for writ of mandate in the Orange County Superior Court under Elections Code §13314. Rather than defending Reyna's residency, city clerk Maria Huizar and candidate Reyna took the position that the Superior Court did not have jurisdiction over the qualifications of city councilmembers, and that the city did not have to defend the city charter because the courts cannot enforce it. In other words, the city took the position that the city's own charter had no force and effect.

We believe both of these positions were incorrect. A city cannot immunize itself from residency requirements. See Gov't Code § 36812.1. City charter provisions pertaining to elections are enforceable in the courts. *McKinney v. Superior Court* (2004) 124 Cal.App.4th 951, footnote 9. In any event, no statute or charter can immunize a fraudulent residency from criminal prosecution. See *People v. Superior Court (Wright)* (2011) 197 Cal. App. 4th 511, 515–16 (State Senator convicted of false residency and fraud).

Nevertheless, Mr. Bacerra decided not to pursue his challenge in the context of the expedited proceedings required by a challenge under Elections Code §13314, where there is little, if any, opportunity for discovery or elaborate briefing. But the fact remains that Reyna is running for office in violation of the Santa Ana's residency requirement, after he committed

perjury in his voter registration affidavits, Fair Political Practices Act filings, and his statements to the city clerk. This abuse of the law falls within the jurisdiction of the District Attorney and the Grand Jury to investigate.

2. Santa Ana's Residency Requirement

The City of Santa Ana is a charter city in Orange County. Article XII of the city charter, commencing at Section 1200, provides for municipal elections. Section 1201 provides that general municipal elections in Santa Ana shall be held on the first Tuesday after the first Monday in November of each even-numbered year. Section 1203 provides that all elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or hereafter may be amended, for the holding of municipal elections so far as the same are not in conflict with the Charter.

Santa Ana elects its councilmembers by ward. Section 400 of the city charter provides that the city council shall consist of seven members, including a mayor who is elected citywide. Each council office is assigned to each of six wards in the city. Candidates for each office of councilmember shall be nominated from such ward. (The candidates run in their wards, but are voted upon by all of the voters of the city. There is a measure on the November ballot to amend the charter so that candidates are elected only from their wards.)

Santa Ana has a residency rule for candidates. Section 401 of the charter provides that in order to be eligible to be elected to the office of councilmember, "a person must be a qualified voter *and a thirty (30) day resident of the ward from which the candidate is nominated at the time nomination papers are issued as provided for in the Elections Code*".

Elections Code §10227 defines "issued" as the day that the forms required for nomination and election are furnished to the candidate. In other words, the candidate has to have resided in the ward at least 30 days before taking out papers to run.

3. The Evidence of Residency Fraud

Reyna was not new to the ward system. He had previously been elected to the city council in 2012, but as a representative of Ward 5, not Ward 4. After being on the city council for four years representing Ward 5, Reyna ran for reelection in 2016, and was defeated.

Reyna began looking for a ward to run in in 2018. On June 27, 2018, Reyna registered to vote at 2519 W. Harvard, Santa Ana. A copy of the voter registration is attached hereto.

The problem with the Harvard address was that it is in Ward 6, not Ward 4. Reyna was apparently not aware of this when he registered to vote there. Reyna went into the city clerk's

Orange County Grand Jury
Tony Rackauckas
August 29, 2018
Page Three

office on August 2, 2018, to run for city council in Ward 4. He had prepared paperwork for the Harvard address. He was registered at the Harvard address. To be a candidate and raise money he had to fill out an FPPC form 410, and he submitted a form 410, Statement of Information Recipient Committee, that showed his committee address to be the Harvard Street address. A copy is attached. He also had to submit an FPPC form 501, a Candidate Intention Statement. That form also showed his address to be the Harvard Street address. A copy is attached.

Upon being told that the Harvard address was in Ward 6, Reyna obtained a three-line document allegedly from one Melissa Romero that said Reyna was renting a room at an address at 1218 W. Bishop, Santa Ana. A copy of this three-line document is attached hereto. On that basis, Reyna claimed he was living in Ward 4. The city clerk accepted the document at face value. On August 2, 2018, she issued nominating papers to Reyna. This meant Reyna had to be a resident of Ward 4 for 30 days prior to August 2.

With all that, Reyna never did register to vote at the Bishop address. In fact, Reyna did not re-register to vote in Ward 4 at all until July 16, 2018. And then he registered to vote at a different address, 1522 Hemlock Way, Santa Ana. That address is in Ward 4. A copy of the new registration is attached.

The voter registration cards alone would make a compelling case against Reyna. But the evidence goes beyond that. Due to a Public Records Act request, the city clerk, Maria Huizar, provided a string of text messages between herself and Reyna. These text messages clearly show that Reyna registered in Ward 4 solely as a means to qualify to run, and that he backdated the so-called rental agreement or created it after the fact.

Attached hereto is the letter of the city clerk setting forth what she is producing pursuant to the Public Records Act request. Of the documents that were produced, the most telling are 14 pages of text messages between herself and Reyna. They show that Reyna did not live in Ward 4 for 30 days before he was issued his nomination papers. They also show that he backdated the lease that he presented for evidence that he had lived in Ward 4.

The full text messages are attached hereto. I have left the spelling as the words appear in the texts. The significant excerpts are as follows (starting at page 3; key passages are in bold):

Fri, July 6 4:27 p.m.

Huizar: "Would like to clarify that you are registered to vote in Ward 6, correct?"

Reyna: "6, no"

Huizar: "Yes, your address on the application is in Ward 6. I thought you had mentioned you would be moving to Ward 4. Just wanted to make sure you were aware."

Orange County Grand Jury
Tony Rackauckas
August 29, 2018
Page Four

Reyna: "Hello. 2519 W. Harvard 92704

What

Can u send me Ward 4 boundary

Yikes"

Huizar: "I don't have them on PDF. The wardmap is posted on the web though. You can zoom in to see boundaries."

Reyna: "Ok thx"

Huizar: "Boundary map of the city"

Reyna: "Thx

Question. What forms of documents Do you Asfoor as proof of residency at that location? A bill in your name, register to vote at that address,???"

Huizar: "Voter registration, lease, utility bill. . . any would do.

Voter registration for sure needs to be in Ward running."

Reyna: "Ok thx

Will do.

When can ppl pull papers"

Huizar: "Monday, July 16 thru August 10th. Just make sure paperwork in order otherwise I can't issue Nomination Papers."

Reyna: "Ok thx"

July 23 10:03 a.m.

Reyna: "10:30?"

How long will it take?

Can I come in"

Huizar: "Of course. Give me 30-45 minutes.

Orange County Grand Jury
Tony Rackauckas
August 29, 2018
Page Five

Time to review all the forms, if you'd like but if you just to pick up packet that's fine too. Make sure to bring proof of residency.

Residency for 30 days from today, minimum."

Reyna: "The voter reg is not confirmed?"

Huizar: "I don't have date of that., since you changed in the last couple of weeks, I need additional proof of your 30 day residency."

July 23, 4:30 p.m.

Reyna: "Question for u

Does the voter reg tell u what date?

From that address.

Have u seen my new one?

Just asking"

Huizar: "No. System only gives me address and wheter you have active or inactive account. It now shows a Hemlock address.

Reyna: "But no date?"

Huizar: "No date."

Reyna: "Then how do u know how long they have been there?"

Just asking lol"

Huizar: "That is why I need proof of residency. Your planning Commission is dated June 21, but it has a different address. You signed that under penalty of perjury so now I need proof that you are residing elsewhere for at least 30 days. Proof of residency may include copy of lease, utility bill etc that is dated longer than 30 days from time I issue papers."

July 24, 11:21 a.m.

Reyna: "Ok. I aunt will sign our rent agreement..

It's just a few lines.

Orange County Grand Jury
Tony Rackauckas
August 29, 2018
Page Six

Call I pull tomorrow 4:30ish”

Huizar: “Sure. It can be as long or short as you’d like. Just need address, date you started residing there, her signature. Let me know if you have any other questions ;)”

Reyna: “Koo thx”

Huizar: “Anytime. See you later today.”

Reyna: “Tomorrow.

I go to Catalina at the end of the week and I have monthly reports I need to finish. Work is kicking my ass right now.”

Huizar: “Oh that’s right. Yes tomorrow. I kept thinking you were leaving to Catalina today.”

Reyna: “I wish.

Thx”.

The deadline to move into the ward was July 3 (30 days before August 2). The text messages show that as of July 6, Reyna claimed to reside at 2519 W. Harvard, in Ward 6. When told the address was in Ward 6, his response was “Yikes”.

On July 23, Reyna was still looking for an address. In the text messages, Huizar told him the requirement was 30 days. Reyna’s response was “Does the voter reg tell u what date?” In other words, Reyna was questioning whether the official records would detect whether he had lived in the ward for 30 days. In a cynical act of pretending to be innocent, he added “Just asking lol”.

At the end of the July 23, texts, the city clerk said that proof of residency could include a copy of a lease. On July 24, Reyna texted “OK, I aunt will sign our rent agreement”. Notice the future tense: “will sign”. The lease itself is dated June 28. Reyna obviously backdated the lease after the fact, another act of fraud. His aunt allowed him to use the address, but there is no suggestion that he actually lived at the address, or actually paid rent.

To summarize, this evidence shows that Reyna was not residing in Ward 4 30 days before the nomination papers were issued. The documents show this because:

1. Reyna was still registered in Ward 6 as of July 3, 2018. Voter registrations are made under penalty of perjury (Elections Code section 2102(c)).

2. Reyna did not bother to change his registration into Ward 4 until July 16, 2018, and then it was not at the Bishop address. He has never registered at the Bishop address.
3. The three-line document he claims to be a lease most likely was backdated and created in haste . It is not a standard rental agreement that a landlord would usually use. It does not say that he is living there, only that “he is renting a room”. The document was designed to be viewed by other people, because true leases are not addressed “to who it may concern”. Roman Reyna’s name is misspelled, in that the first letter of his first name is not capitalized. That demonstrates extreme haste. The lease says it starts June 28. Most leases start on the first or fifteenth day of the month, not the 28th day of the month.
4. The lease is dated one day after Reyna registered to vote in Ward 6. Logically Reyna would not have registered at an address if he planned to rent in a different location the next day.
5. The other documents that had been pre-prepared for his filing, the Form 410 and the Form 501, both show the Harvard address. Only when the city clerk told him that the Harvard address was in Ward 6 did Reyna try to create a piece of paper to show an address in the ward.
6. The text string shows Reyna lived in Ward 6, and only became aware of the need to create another address when the city clerk told him he was in the wrong ward. The text string shows he backdated the lease. Not once in the texts does he say “I actually live in Ward 4”.

These facts show a consciousness of violating the law and attempting to falsify documents and records to show a false residence in a different ward. Due to the political divisions in the City of Santa Ana, neither the city clerk nor the city attorney can be counted on to take any kind of action. The responsibility falls to the Grand Jury and the District Attorney.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions or request additional information.

Very truly yours,

MARK S. ROSEN