

MEMORANDUM OF LAW

DATE: April 6, 1995

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Whether Reference to Political Parties in Candidate
Statements is Prohibited

You have asked for an opinion on whether San Diego Municipal Code ("SDMC") section 27.2204 governing statements of candidates' qualifications is invalidated by recent court cases, in particular, California Democratic Party v. Lungren, 860 F.Supp. 718 (N.D. Cal. 1994).

QUESTION PRESENTED

Do recent court cases, especially Lungren, invalidate that portion of the City's Election Code that prohibits any mention of a candidate's party affiliation in a candidate's statement of qualifications?

ANSWER

No. Neither the Lungren case nor other recent cases invalidate the City's prohibition against mentioning party affiliation in candidates' statements, which prohibition is embodied in SDMC section 27.2204.

BACKGROUND

The City's Election Code is located in Chapter II, Article 7, of the San Diego Municipal Code. SDMC sections 27.2001- 27.2311. SDMC sections 27.2201 through 27.2207 provide the rules for ballots used in City elections. SDMC section 27.2204 sets forth the rules governing statements of candidate's qualifications that are placed in the ballot pamphlets. Among other things not relevant to the present question, this SDMC section sets forth the permissible contents of candidates' statements. In relevant part SDMC section 27.2204 reads:

Candidates for elective office may prepare a statement of qualifications on a form provided by the Clerk. Such statement may include the name, age, occupation and education of the candidate and a brief description of the candidate's qualifications expressed by the candidate and limited to matter concerning only the candidate without reference to opponents or anyone else by name. Such statement shall not include the party affiliation of the candidate nor membership or activity in partisan political organizations.

....

The Clerk shall reject any statement which contains . . . (2) any mention of party affiliation of the candidate or membership or activity in partisan political organizations

ANALYSIS

We asked Legal Intern Elizabeth Hull to help us answer your question. The results of her research and analysis are attached to this memorandum. She properly concludes that the Lungren case does not invalidate the City's prohibition against mention of party affiliations in candidates' statements of qualification.

As Ms. Hull points out, the Lungren case dealt with a challenge to Article II, Section 6(b), of the California Constitution, which prohibited political parties from endorsing, supporting or opposing a candidate for nonpartisan office. On the grounds that this provision impermissibly infringes on the exercise of political speech in violation of the First Amendment, the court granted an injunction prohibiting the Attorney General from enforcing this provision.

In contrast with Article II, Section 6(b), of the California Constitution, SDMC section 27.2204 does not purport to limit partisan endorsement, support or opposition to candidates for City office. Rather, it merely prohibits the candidates themselves from mentioning their party affiliation in the ballot pamphlet.

Ms. Hull also discusses other recent cases involving restrictions on partisan endorsements in nonpartisan elections. These cases do not treat the issue presented by your question. We conclude that the rulings in these cases also do not invalidate the City's prohibition against mentioning party affiliation in candidates' statements.

For the reasons set forth in Ms. Hull's memorandum, we believe that SDMC section 27.2204 is not invalidated by the Lungren case or by other recent cases.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:(x043.2)

Attachment

ML-95-24