

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME JUDGE</b>	<b>August 29, 2018, 1:30, p.m. HON. ALLEN SUMNER</b>	<b>DEPT. NO CLERK</b>	<b>42 M. GARCIA</b>
<b>DEENA PEOPLES, et al.,</b>  <b>Petitioners,</b>  <b>v.</b>  <b>ALEX PADILLA, in his official capacity as Secretary of State,</b>  <b>Respondent,</b>		<b>Case No.: 34-2018-80002959</b>	
<hr/> <b>YOUNG KIM,</b>  <b>Real Party in Interest.</b>			
<b>Nature of Proceedings:</b>		<b>TENTATIVE RULING ON PETITION FOR WRIT OF MANDATE</b>	

Petitioners Deena Peoples and Mario Alfaro seek a writ of mandate directing Secretary of State Alex Padilla to reject the ballot designation “small business owner” submitted by Real Party in Interest Young Kim.

Following is the court’s tentative decision denying the petition for writ of mandate, subject to the arguments and evidence presented at the hearing.

**THE RELEVANT LAW**

Elections Code section 13107 allows a candidate to include on the ballot “no more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents.” (§ 13107, subd. (a)(3).)<sup>1</sup> Each election cycle those three little words generate significant litigation.

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<sup>1</sup> All statutory citations are to the Elections Code.

To include a designation on the ballot, the candidate must file a ballot designation worksheet no later than 88 days prior to the primary election. (§ 13107.3, subd. (b); see also § 8028.) The ballot designation worksheet must contain a “brief statement identifying the factual basis upon which the candidate claims the proposed ballot designation.” (2 Cal. Code Regs 20711, subd. (c)(6).) The Secretary of State may request additional documentation or evidence to support the proposed ballot designation. (2 Cal. Code Regs § 20717.)

Candidates have been known to get “creative” with their ballot designations. (See *Luke v. Superior Court* (1988) 199 Cal.App.3d 1360, 1362.) Too much creativity, however, is not allowed. “In order for a ballot designation . . . to be deemed acceptable to the Secretary of State, it must **accurately** state the candidate’s principal professions, vocations or occupations[.]” (2 Cal. Code Regs § 20714, subd. (c), emphasis added.) And, “Each proposed principal profession, vocation or occupation submitted by the candidate must be **factually accurate** . . .” (*Id.*, emphasis added.)

The Elections Code directs the Secretary of State “**shall not accept** a designation” that would mislead the voters. (§ 13107, subd. (e)(1), emphasis added.) The Secretary of State “**shall reject** as unacceptable any proposed ballot designation” that fails to comply with either the Elections Code or the regulations promulgated thereunder. (2 Cal. Code Regs § 20716, subd. (a).) The Secretary of State thus “shall not accept” and “shall reject” a ballot designation that is not accurate and/or would mislead the voters.<sup>2</sup>

Once a candidate’s ballot designation appears on the primary election ballot, it “shall remain the same for all purposes of both primary and general elections, unless the candidate, at least 98 days before the general election, requests in writing a different designation which the candidate is entitled to use at the time of the request.”<sup>3</sup> (§ 13107, subds. (g), (h).)

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<sup>2</sup> In his opposition to the petition, Secretary of State Padilla asserts he “does not take a position on whether [a candidate’s] chosen designation . . . is factually correct.” (Opp. at 4:15-17.) This position is surprising given both the Elections Code and the Secretary of State’s own regulations require him to reject designations that are not factually accurate.

<sup>3</sup> The court is not persuaded by Kim’s argument an elector cannot challenge a ballot designation appearing on the general election ballot if that designation appeared on the primary ballot. Kim argues a ballot designation shall remain the same for primary and general elections, unless the candidate timely requests a different, and proper, designation. But section 13314 provides an elector may challenge a ballot designation as not complying with the Elections Code. Section 13314 does not specify such a challenge is too late if it is brought after a designation appeared on

“An elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot[.]” (§ 13314, subd. (a).) This allows an elector to seek a writ of mandate directing the Secretary of State to reject a ballot designation that is false, misleading, or otherwise does not comply with the Elections Code. (See *Andal v. Miller* (1994) 28 Cal.App.4<sup>th</sup> 358, 361.)

A writ may issue only upon proof it “will not substantially interfere with the conduct of the election.” (§ 13314, subd. (a)(2)(B).) As relevant here, the Secretary of State must certify and deliver to county elections officials a list of candidates and their ballot designations not less than 68 days before the general election. (§ 8148, subds (a), (c).) The general election is November 6, 2018. The Secretary of State thus must provide this list by August 30, 2018. The Secretary of State asserts county elections officials generally begin the process of printing ballots as soon as they receive this list.

To ensure Petitioner’s challenge does not interfere with conducting the election, the court finds it must be decided by August 30. If for some reason it cannot be decided by that date, the petition must be denied.<sup>4</sup> (See, e.g., *Younger v. Jordan* (1954) 42 Cal.2d 757, 760 [even if otherwise meritorious, election writ must be denied if petition cannot be timely and properly served on real party in interest].)

### FACTUAL BACKGROUND

Real Party in Interest Kim is a Republican candidate for the United States House of Representatives, 39<sup>th</sup> Congressional District. On March 1, 2018, she filed a ballot designation

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the ballot in the primary election. A ballot designation that is false or misleading does not become less so simply because it was previously unchallenged.

The court does not address whether, in appropriate circumstances, laches might bar a general election challenge to a ballot designation that appeared on the primary ballot.

<sup>4</sup> One such reason might be Code of Civil Procedure section 1088, which provides notice of an application for a peremptory writ “must be at least ten days.” Kim filed a petition for writ of prohibition/mandate in the Court of Appeal to stop this court’s decision on Peoples’ petition for writ of mandate. Kim argues hearing in this case was set just six days after she was served with the petition, and just five days after she was served with notice of the hearing. Absent a ruling by the Court of Appeal, this court declines to address that issue.

worksheet proposing “small business owner” as her ballot designation.<sup>5</sup> She justified this designation by stating she owned a general consulting company called Y.K. Connections.

Kim’s ballot designation was approved by the Secretary of State, not challenged and thus appeared on the ballot for the primary election held June 5, 2018. Out of a field of 17 candidates for the 39<sup>th</sup> Congressional District, Kim and Democrat Gil Cisneros were the top two finishers progressing to the November 6, 2018, general election.

Petitioners are two registered voters who live in the 39<sup>th</sup> Congressional District. They claim Kim’s “small business owner” ballot designation is improper and misleading because “she does not appear to have owned or received income from” Y.K. Connections (or any other small business) since 2016. As evidence, Petitioners cite the fact Y.K. Connections is not listed with the Secretary of State as a corporation, a limited liability company or a limited partnership. Petitioners acknowledge Kim filed a fictitious business name statement for Y.K. Connections with the Orange County Clerk on or about December 2, 2013. (Narciso Decl., Exs. F, H.)

Petitioners’ primary evidence is a federal financial disclosure report Kim filed with the Clerk of the United States House of Representatives for the period covering January 1, 2017, to January 31, 2018.<sup>6</sup> This form does not disclose unearned or earned income from Y.K. Connections. It does, however, disclose \$10,800 in earned income from KBS America, and \$4,000 from South Baylo University. (*Id.*, Ex. E.)

Kim’s declaration explains Y.K. Connections is a sole proprietorship that generates approximately \$10,000 per year in income.<sup>7</sup> Y.K. Connections provides general media and public affairs consulting, advising on branding, and helping businesses implement programs to improve their image. Kim reports income from Y.K. Connections on her personal income tax returns. She states KBS America and South Baylo University are clients of Y.K. Consulting who paid her \$14,800 in 2017, which explains their disclosure on her federal financial disclosure

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<sup>5</sup> Her two proposed alternatives were “small businesswoman” and “businesswoman.”

<sup>6</sup> Petitioners provide copies of the Statement of Economic Interests (“Form 700”) Kim filed with the Fair Political Practices Commission for 2014, 2015, and 2016. (Narciso Decl., Exs B, C, D.) All three filings state Kim earned between \$1,001 and \$10,000 from Y.K. Connections in each year.

<sup>7</sup> The fact it is a sole proprietorship would explain why it is not listed on the Secretary of State’s “business search” page.

report. She has copies of the contracts between Y.K. Connections and KBS America and South Baylo University.

Kim states she receives income from three sources: a federal pension, investments, and Y.K. Connections. She acknowledges Y.K. Connections does not take all of her time, but states it is currently her only employment or source of active income, and her only professional, occupational, or vocational endeavor. For the past 18 months, she has divided her time between campaigning and working on Y.K. Connections.

### ANALYSIS

Petitioners bear the burden of demonstrating Kim's ballot designation violates the Elections Code. (§ 13314, subd. (a); *Khan v. Los Angeles City Employees' Retirement System* (2010) 187 Cal.App.4<sup>th</sup> 98, 106.) They fail to meet that burden.

The court is not convinced Petitioners have even made a prima facie showing Kim's "small business owner" ballot designation is either false or misleading. Assuming for argument they did, Kim's declaration sufficiently rebuts any such showing.

As noted above, Kim is allowed to designate either her current principal profession, vocation or occupation, or the principal profession, vocation, or occupation she held during the calendar year immediately preceding her filing of nomination documents. (§ 13107, subd. (a)(3).)

Petitioners do not claim that "small business owner" is not a profession, vocation, or occupation as those terms are defined by the Secretary of State's regulations. According to those regulations, "occupation" means "the employment in which one regularly engages or follows as the means of making a livelihood." (2 Cal. Code Regs § 20714, subd. (a)(3).) Examples of occupations include "retail salesperson" and "computer manufacturing executive." (*Id.*) "Small business owner" would fit within the definition of an occupation; Petitioners do not suggest otherwise. The Court in *Andal v. Miller, supra*, noted the term "businessman" is "routinely accepted as a ballot designation[.]" (*Andal, supra*, 28 Ca. App. 4<sup>th</sup> at 365.)

Instead, Petitioners claim Kim does not "appear" to earn income from owning or operating a small business. Although not dispositive, the Secretary of State's regulations do provide a vocation or occupation is generally a "means of making a livelihood" or something a person "relies on for his or her livelihood." (2 Cal. Code Regs § 20714, subds. (a)(2), (a)(3).)

And case law teaches “[t]he central characteristic of a profession, vocation or occupation . . . is its attribute at a means of livelihood or production of income.” (*Andal v. Miller, supra*, 28 Cal.App.4<sup>th</sup> at 365.) Kim’s declaration establishes she earned over \$14,000 in income from Y.K. Consulting in 2017.

Petitioners also argue it “appears” Y.K. Connections “has been defunct since 2016,” and thus cannot constitute Kim’s current principal occupation or her occupation in 2017. Again, Petitioners fail to persuade. Y.K. Connections is not defunct, and Kim earned over \$14,000 in income from it in 2017.

Petitioners also argue Y.K. Connections is not Kim’s *principal* occupation because it generates less than \$200 in income. Again, Petitioners fail to persuade. In 2017, Y.K. Connections generated over \$14,000 in income. The Secretary of State’s regulations provide:

“Principal” . . . means a substantial involvement of time and effort such that the activity is one of the primary, main or leading professional, vocational or occupational endeavors of the candidate. The term “principal” precludes any activity which does not entail a significant involvement on the part of the candidate. Involvement which is only nominal, pro forma, or titular in character does not meet the requirements of the statute.

(2 CR § 20714, subd. (b).)

Although Kim acknowledges she does not spend all of her time on Y.K. Connections, she states it is still her single greatest occupational endeavor. In the last 18 months, she divided her time between Y.K. Connections and campaigning. Petitioners fail to convince this is insufficient to qualify as a principal occupation.

Having determined Petitioners fail to meet their burden of showing Kim’s ballot designation is false or misleading, the court need not reach Kim’s alternative arguments.

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In the event this tentative ruling becomes the final ruling of the court, counsel for Respondent Alex Padilla is directed to prepare a formal judgment, incorporating this ruling as an exhibit; submit it to all other counsel for approval as to form; and thereafter submit it to the court for signature and entry of judgment in accordance with Rule of Court 3.1312.

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

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**DENA PEOPLES et al.**

**Case Number: 34-2018-80002959**

**vs.**

**ALEX PADILLA**

**CERTIFICATE OF SERVICE  
BY EMAILING**

**YOUNG KIM**

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I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **TENTATIVE RULING ON PETITION FOR WRIT OF MANDATE** by sending true copies thereof, addressed respectively to the persons and email addresses shown below:

Andrew Harris Werbrock  
[aw@rjp.com](mailto:aw@rjp.com)

Alan Anderson Jr.  
[aanderso@sos.ca.gov](mailto:aanderso@sos.ca.gov)

Chad Morgan  
[chad@chadmorgan.com](mailto:chad@chadmorgan.com)

I, the undersigned Deputy Clerk, declare under penalty of perjury that the foregoing is true and correct.

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

Dated: August 29, 2018

By: M. GARCIA,   
Deputy Clerk