

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal  
Fourth Appellate District

**FILED ELECTRONICALLY**

**08/06/2018**

Kevin J. Lane, Clerk  
By: J. Yost

CITY OF SAN DIEGO, et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

ELIZABETH MALAND, in her capacity  
as Clerk of the City of San Diego, et al.,

Real Parties in Interest.

D074379

(San Diego County  
Super. Ct. No. 37-2018-00023290-CU-  
WM-CTL)

THE COURT:

The emergency petition for writ of mandate and/or other appropriate relief has been read and considered by Justices Benke, Huffman, and Irion.

This petition seeks to remove from the ballot at the November 6, 2018 election the SDSU West Campus Research Center, Stadium and River Park Initiative (SDSU West Initiative), which is one of two competing initiatives concerning the proposed development of the former Qualcomm Stadium and adjacent land in Mission Valley (Site) owned by the City of San Diego (City). The competing initiative is the San Diego River Park and Soccer City Initiative. Each initiative proposes separate terms and conditions for conveyance of the Site to different entities.

The SDSU West Initiative proposes to amend the City's Municipal Code to add provisions directing the City to sell the Site to San Diego State University (SDSU) or its affiliate for development of approximately 132 acres with a joint use stadium for college

football and professional soccer, a river park and other outdoor recreational facilities, educational and research facilities, faculty and student housing facilities, and complementary retail and other facilities. This Initiative directs the City to sell the Site to SDSU or its affiliate on terms and conditions providing for the development in accordance with SDSU's Campus Master Plan and other City requirements regarding development impact fees, parkland dedication, housing impact fees, affordable housing, and greenhouse gas emission reduction.

We decline to rule on the issues raised here before there is certainty as to whether either initiative will pass. We are cognizant that a thorough examination of the merits of the initiatives would require we carry our examination past the deadline for printing the ballot and would effectively remove the SDSU West Initiative from the November ballot. Under these circumstances, and given the substantial public interest involved, we decline to eliminate the right of the public to express its views on the competing initiatives. There is an important public interest "in protecting the fundamental right of the people to propose statutory or constitutional changes through the initiative process." (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1007.) As our Supreme Court has directed, "a court [must] exercise considerable caution before intervening to remove or withhold the measure from an imminent election. Only when a court is confident that the challenge is meritorious and justifies withholding the measure from the ballot, should a court take the dramatic step of ordering the removal of a measure that ostensibly has obtained a sufficient number of qualified signatures." (*Id.* at pp. 1007-1008.) The City's assertion that it will have to spend taxpayer money to place the SDSU West Initiative on the ballot is not substantial enough to prevent the Initiative from going before the electorate.

The petition is DENIED.

IRION, Acting P.J.

Copies to: All Parties