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11 COREY SMITH

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14 (UNLIMITED JURISDICTION)

15 COREY SMITH, an individual,

16 Petitioner,

17 vs.

18 JOHN ARNTZ, in his official capacity as the
19 Director of the Department of Elections for the
20 City and County of San Francisco,

21 Respondent,

22 DEAN PRESTON, an individual,

23 Real Party in Interest.

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

06/24/2024
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

No.:

Action Filed:

CPF-24-518603

**VERIFIED PETITION FOR WRIT OF
MANDATE**

**ELECTION MATTER – PRIORITY OVER
ALL CIVIL MATTERS [Elec. Code
§ 13314(a)(3)]**

Hearing:

Date:

Time:

Dept.:

Judge:

Petitioner Corey Smith seeks a writ of mandate to prevent a false and/or misleading statement in the Candidate Statement of Qualifications of Dean Preston, a candidate for District 5 Supervisor, from being printed in the Voter Information Pamphlet for the November 5, 2024 Statewide General Election. Petitioner alleges as follows:

INTRODUCTION

1. This action is filed by Petitioner Corey Smith, an elector and a registered voter in the State of California and a resident of the Fifth Supervisorial District in San Francisco. This action challenges a statement included in the Candidate Statement of Qualifications of Dean Preston, a candidate for District 5 Supervisor.

2. The San Francisco Municipal Elections Code permits candidates for office to place a Candidate Statement of Qualifications describing their education and qualifications for elected office in the Voter Information Pamphlet, but it does not permit the Statement to contain assertions that are false or misleading. Preston’s Candidate Statement of Qualifications claims that as a member of the San Francisco Board of Supervisors, he approved “30,000 new homes, 86% affordable[.]” This claim is objectively false and misleading because San Francisco has approved less than half that many homes during Preston’s tenure. Petitioner brings this action to delete this untrue statement.

STATUTORY DEADLINES

3. Section 590(a) of the San Francisco Municipal Elections Code provides for a 10-day period in which voters are entitled to review the ballot materials and file any legal challenges. With respect to the November 5, 2024 Statewide General Election, the period for filing actions such as this runs from noon on June 12, 2024 to noon on June 24, 2024.

4. Petitioner has no other adequate remedy at law and will suffer immediate and irreparable injury unless this Court issues a writ of mandate deleting the false and/or misleading statement as described below.

5. Petitioner is informed and believes, and on that basis alleges, that issuance of a writ requiring the deletion set forth below will not interfere with the printing and distribution of the Voter Information Pamphlet.

1 **PARTIES**

2 6. Petitioner Corey Smith (“Petitioner”) is a registered voter in the State of
3 California and is a resident of the 5th Supervisorial District in the City and County of San Francisco.

4 7. Respondent John Arntz (“Respondent”) is the Director of the San Francisco
5 Department of Elections and is being sued in his official capacity. As the Director of Elections,
6 Respondent is required to administer San Francisco’s municipal elections, including accepting and
7 compiling the Candidate Statement of Qualifications into the Voter Information Pamphlet. It is the
8 duty of Respondent to determine whether a candidate’s Statement of Qualifications complies with the
9 legal requirements set forth in the San Francisco Municipal Elections Code and California Elections
10 Code and to publish the ballot and supporting materials used by voters to cast their ballots in the
11 November 5, 2024 Statewide General Election. He is named as Respondent in his official capacity
12 only.

13 8. Real Party in Interest Dean Preston (“Preston”) is a candidate for San Francisco
14 Board of Supervisors, District 5 at the November 5, 2024, Statewide General Election.

15 **JURISDICTION AND VENUE**

16 9. This Court has jurisdiction over this action under Elections Code sections
17 13313(b)(1) and 13314. Section 13313(b)(1) allows any voter of the jurisdiction in which the election
18 is being held to seek a writ of mandate requiring any or all of the material in the candidate’s statement
19 be amended or deleted. Under Section 13314(a)(1), “[a]ny elector may seek a writ of mandate alleging
20 that an error or omission has occurred, or is about to occur, in the placing of any name on, or in the
21 printing of, a ballot, sample ballot, voter pamphlet, or other official matter ...” An “elector” means
22 any person who is a “United States citizen 18 years of age or older and a resident of an election
23 precinct at least 15 days prior to an election.” Elec. Code § 321. Petitioner is an “elector” in
24 accordance with this statute.

25 10. Petitioner is entitled to a writ of mandate because he is an elector of the City and
26 County of San Francisco, is beneficially interested in the outcome of this matter, and does not have a
27 plain, speedy, and adequate remedy in the ordinary course of law.
28

1 11. Venue is proper under Code of Civil Procedure section 393 because the events
2 and actions giving rise to the claim alleged herein occurred in the City and County of San Francisco.

3 12. Section 13314(a)(3) requires that this action be granted priority over all other
4 civil matters because of the timing of the election. Elec. Code § 13314(a)(3).

5 **FACTUAL ALLEGATIONS**

6 13. San Francisco Municipal Elections Code section 220 permits candidates to
7 submit a statement of their qualifications for publication in the official Voter Information Pamphlet.
8 The Candidate Statement of Qualifications may include the name, age, and occupation of the candidate
9 and a brief description of no more than 200 words of the candidate’s education and qualifications. The
10 Department translates Candidate Statement of Qualifications into Chinese, Spanish, and Filipino for
11 the translated versions of the Voter Information Pamphlet.

12 14. Elections Code section 13313(b)(2) provides that this Court may issue a writ of
13 mandate to require any or all of the material in a Candidate Statement of Qualifications to be amended
14 or deleted that is “false, misleading or inconsistent with the requirements of [Chapter 4 of Division 13
15 of the Elections Code].” Elections Code section 13314 also provides that a voter may seek a writ of
16 mandate alleging that an error is about to occur in the printing of a ballot or voter information guide
17 where it is shown that the alleged error violates state law or the Constitution and the issuance of the
18 writ will not substantially interfere with the conduct of the election.

19 15. On June 10, 2024, Preston submitted his Candidate Statement of Qualifications
20 to the San Francisco Department of Elections.

21 16. On June 12, 2024, Respondent John Arntz, pursuant to San Francisco Municipal
22 Elections Code section 590(a), made the Candidate Statement of Qualifications and other candidate
23 ballot materials for all candidates for local office in San Francisco available for public inspection.

24 17. Petitioner challenges only one claim in Preston’s Candidate Statement of
25 Qualifications in this action. For ease of reference, a copy of that document is attached to this Petition
26 as **Exhibit A** with Petitioner’s proposed deletions.

27 18. Preston’s Candidate Statement of Qualifications contains the following claim:

28 As Supervisor, I have focused on results: ...

1 Voted to approve 30,000 new homes, 86% affordable

2 19. Most notably, the statement in Paragraph 18 is a blatant falsehood, contradicted
3 by the City's own data submitted to the State of California. Each year, San Francisco must submit an
4 Annual Progress Report to the California Department of Housing and Community Development on the
5 status of the City's housing element of its General Plan and progress on its housing element.¹ Among
6 the data reported to the State is the number of housing units approved and disapproved in the prior
7 year. Gov. Code § 65400(a)(2)(E). During Preston's tenure on the Board of Supervisors, San
8 Francisco has approved less than half of what Preston claims – approximately 14,000 housing units.
9 Preston's statement that he "voted to approve 30,000 new homes" is untrue and lacks any factual basis.
10 This false statement cannot be included in his Candidate Statement of Qualifications.

11 20. By falsely touting that he approved 30,000 homes, Preston misleads voters about
12 his record as a member of the Board of Supervisors as he seeks reelection. Upon information and
13 belief, Petitioner understands that Preston's false assertion that he "voted to approve 30,000 new
14 homes" originates from a report published by his supporters.² However, the methodology employed in
15 this report is deeply flawed. The report asserts that Preston voted to approve 10,000 homes authorized
16 to be developed, constructed, or acquired by a 2020 ballot measure, Proposition K. Except Preston did
17 not vote to approve Proposition K, *the voters did*. As a member of the Board of Supervisors, Preston
18 merely voted to place this measure before voters for their approval. Additionally, the report counts
19 8,250 shelter-in-place hotel rooms that Preston voted to temporarily lease during the COVID-19
20 pandemic. These are not "new homes" but hotel rooms temporary used as housing during the COVID-
21 19 pandemic.

22 21. A majority of the "30,000 new homes" Preston claims to have "voted to
23 approved" were not approved by him or not new homes at all. In other words, Preston is misinforming
24

25 _____
26 ¹ Housing Element Annual Progress Report (APR) Data by Jurisdiction and Year, California Open
27 Data, <https://data.ca.gov/dataset/housing-element-annual-progress-report-apr-data-by-jurisdiction-and-year>.

28 ² Dean Preston's Housing Record, <https://www.deanshousingrecord.com/>.

1 voters about his true record in office by falsely stating that he voted to approve 30,000 new homes in
2 San Francisco.

3 22. On June 16, 2024, a registered voter in San Francisco, David Broockman, wrote
4 to the San Francisco Department of Elections to challenge the claim in Preston’s Candidate Statement
5 of Qualifications that he “voted to approve 30,000 new homes.” Attached as **Exhibit B** to this Petition
6 is Dr. Broockman’s email to the Department of Elections.

7 23. Petitioner is informed and believes that the Department of Elections refused to
8 review Preston’s claims in his Candidate Statement of Qualifications for accuracy. The Department of
9 Elections instead responded that it “[did] not have the authority to modify candidate statements unless
10 it includes the party affiliation of the candidate or membership or activity in partisan political
11 organizations.” *Id.*

12 24. Because the foregoing statement in Preston’s Candidate Statement of
13 Qualifications is false and misleading, it must be stricken from the Voter Information Pamphlet and
14 Petitioner is entitled to a writ of mandate directing that this statement be stricken. Only by a court
15 order will Respondent remove this false and misleading statement from Preston’s Candidate
16 Qualifications Statement.

17 **FIRST CAUSE OF ACTION**

18 **(Writ of Mandate – Elections Code §§ 13313(b), 13314)**

19 25. Petitioner incorporates paragraphs 1 through 24 of this Petition.

20 26. The Candidate Statement of Qualifications of Dean Preston contains a false
21 and/or misleading statement that Preston voted to approve 30,000 new homes in San Francisco during
22 his time on the San Francisco Board of Supervisors and should be stricken in accordance with
23 Elections Code sections 13313(b) and 13314. Respondent has a legal duty not to include any false
24 and/or misleading statements in the ballot materials. Petitioner is beneficially interested in a writ of
25 mandate to strike those statements and has no other adequate remedy at law.

26 27. Issuance of the requested writ will not interfere with the conduct of the election. The
27 San Francisco Department of Elections is responsible for the production and distribution of the ballots
28 and ballot materials for the November 5, 2024, General Election. Petitioner is informed and believes

1 and therefore alleges that Respondent will not submit the ballot and ballot materials to the printer until
2 early September 2024. Since the ballot and ballot materials have not yet been printed, no prejudice
3 interference, delay, or additional cost associated with the printing or distribution of election materials
4 will result if the Court orders Respondent to delete the statement from Dean Preston's Candidate
5 Statement of Qualifications as set forth above and, in the attachment, showing strike-throughs in the
6 Candidate Statement of Qualifications.

7 **RELIEF**

8 WHEREFORE, Petitioner prays that this Court:

- 9 1. Issue an alternative writ of mandate compelling Respondent to amend the
10 Candidate Statement of Qualifications of Dean Preston as set forth above and, in the attachment
11 showing strike-throughs, or, in the alternative, to show cause before this Court at a specified time why
12 Respondent has not done so;
- 13 2. Issue a preemptory writ of mandate commanding Respondent to amend the
14 Candidate Statement of Qualifications of Dean Preston as directed by the Court and to conform any
15 translations of these materials to the changes ordered by this Court;
- 16 3. Award Petitioner attorneys' fees and costs incurred in connection with this
17 matter; and
- 18 4. Grant other such and further relief as the Court may deem necessary.

19 Dated: June 24, 2024

Respectfully submitted,

20 OLSON REMCHO, LLP

21 By: 
22 Benjamin Gevercer

23 Attorneys for Petitioner COREY SMITH
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I am the petitioner in this action. I have read the foregoing Petition for Writ of Mandate contents thereof. I certify that the same is true of my own personal knowledge, except as based on information and belief, and as to those matters, I believe them to be true.

24

OREY SMITH

EXHIBIT A



CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF ELECTIONS

John Arntz, Director

Candidate Statement of Qualifications
(CAEC §§ 13307-13308)
November 5, 2024, General Election

Official Filing Form

2024 JUN 10 PM 2: 57

DEPARTMENT OF ELECTIONS

County Elections Official

By: _____

Date Issued: _____

Candidate Name: Dean Preston
Office Sought: District 5 Supervisor

1

Please complete the following sections:

☐ I will NOT file a Candidate Statement of Qualifications

☒ I will file a Candidate Statement of Qualifications

☒ I will send an electronic copy of my statement in Word format to the Department at publications@sfgov.org no later than 5:00 PM on the fifth day after the close of the nomination period.

Signature of Candidate: _____ Date 6/10/24

2

This statement will be reproduced exactly as written. You may not make changes or corrections after the statement has been submitted. Please type or print neatly. If handwritten information or a revision is unclear, Department staff will interpret the provided information to the best of their abilities. This interpretation is final.

3

Name as it will appear with statement: Dean Preston

My occupation is: District 5 Supervisor

My qualifications are: _____

Keep Text Within the Vertical Lines. Word count starts here: _____

I'm a 28-year District 5 resident with two children in San Francisco public schools, former small business owner and tenant attorney.

As Supervisor, I have focused on results:

- Saved over 20,000 renters from eviction
- Provided free attorney for any tenant facing eviction
- Won \$250 million for rent relief and affordable housing
- Brought community ambassadors to every district neighborhood
- ~~Voted to approve 30,000 new homes, 86% affordable~~
- Secured \$10 million for Tenderloin SRO elevator repairs
- Passed vacancy tax to bring 40,000 vacant units back to market
- Helped small businesses victimized by crime
- Brought district \$30 million for street safety, open space and community wellness

I am fighting for:

- Hundreds of District 5 affordable homes at Haight & Stanyan, DMV and Turk St.
- Four Pillars comprehensive approach to reduce overdoses and crime
- Public Bank to fund affordable housing, small businesses, and green infrastructure

Endorsed by: San Francisco Labor Council, California Nurses, United Educators of San Francisco, Harvey Milk LGBTQ Democratic Club, San Francisco Tenants Union, Affordable Housing Alliance, SF Rising, Small Business Forward, Democratic Socialists of America, Teamsters Joint Council 7, Assemblymember Phil Ting, Tom Ammiano, Mark Leno, Art Agnos, Supervisors Chan, Peskin, Ronen & Walton.

Dean Preston

www.dean2024.com

EXHIBIT B

----- Forwarded message -----

From: **SFVote, (REG)** <sfvote@sfgov.org>

Date: Thu, Jun 20, 2024 at 4:35 PM

Subject: RE: Challenge to Dean Preston's Candidate Qualification Statement

To: Services, Campaign (REG) <campaign.services@sfgov.org>

Good Afternoon,

The Department has received the below challenge to the Candidate Statement of Qualifications. A candidate for Board of Supervisors may withdraw, but not change, his or her candidate qualification statement by filing with the Director of Elections a signed and sworn statement of withdrawal no later than 5:00 p.m. of the 126th day prior to the election, July 2. The Department does not have the authority to modify candidate statements unless it includes the party affiliation of the candidate or membership or activity in partisan political organizations.

During the 10-calendar-day public examination period, any voter may seek a writ of mandate or an injunction requiring any or all of the material in the candidates statements to be amended or deleted. The writ of mandate or injunction request shall be filed no later than the end of the 10-calendar-day public examination period.

Best,

Matthew Selby, Campaign Services Manager & Custodian of Records
San Francisco Department of Elections

[1 Dr. Carlton B. Goodlett Place](#)

City Hall, Room 48

San Francisco, CA 94102

(415) 554-4375



Help determine the future of our City, State, and Country! [Register to vote](#) and cast your ballot in the November 5, 2024 election!

From: David Broockman <david.broockman@gmail.com>
Sent: Sunday, June 16, 2024 8:44 PM
To: SFVote, (REG) <sfvote@sfgov.org>
Subject: Challenge to Dean Preston's Candidate Qualification Statement

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear San Francisco Department of Elections:

My name is David Broockman and I am a registered voter in San Francisco. I am writing to challenge the claim in Dean Preston’s candidate qualification statement that he “voted to approve 30,000 new homes.” This statement is blatantly false and will mislead voters. The City should not allow this false and misleading claim to appear on Preston’s candidate statement.

Preston’s claim that he “voted to approve 30,000 new homes” is drawn from a website [his City legislative staff](#) and campaign volunteers coauthored, as detailed in this San Francisco Chronicle article: <https://www.sfchronicle.com/sf/article/dean-preston-housing-record-18554702.php>. As the Chronicle article details, this total is grossly inflated. For example:

-
-
- This total includes 10,000 homes that Preston claims to have “approved”
- by voting to place 2020’s Proposition K on the ballot. However:
-
-

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- a) This Proposition did not “approve” 10,000 homes, these homes
- would require additional City approvals to be built, as detailed in the Chronicle article. Indeed, there are no addresses for where these 10,000 homes would go yet, because the process of approving them has not even
- *begun*
- yet.
-
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- b) The Proposition does not provide any funding for constructing
- these homes.
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- c) Preston simply voted to place this initiative on the ballot,
- his vote did not pass the initiative; the initiative was approved by the City’s voters.
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- The total includes Preston’s vote on legislation that instructed
- the city to temporarily lease 8,250 shelter-in-place hotel rooms during COVID-19. These are not “new homes” that were “approved” in the sense that a reasonable voter would interpret these terms. To emphasize, these were
- *existing*
- hotel rooms which were *temporarily*
- leased for shelter during COVID-19.
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- The total includes a number of votes related to affordable housing
- projects (such as authorizing spending from voter-approved bonds) that do not constitute housing approvals in the normal use of that term. Indeed, under state streamlining law (Gov’t Code 65913.4) most affordable housing projects included in Preston’s total
- do not require Board of Supervisors approval at all. (Ironically, [Preston](#)
- [opposed](#) this state affordable housing streamlining
- law (SB 35).)
-

The City’s own records also contradict Preston’s false claims. In particular, the City regularly reports to the state which housing projects it “approved” and how many new housing units those projects contain. This data can be found on APR Table A at <https://data.ca.gov/dataset/housing-element-annual-progress-report-apr-data-by-jurisdiction-and-year>. Reviewing this data reveals two things:

-
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- First, according to the City, only 14,009 new units have been approved
- in *all*
- of San Francisco since Preston took office. It is a mathematical impossibility that Preston personally approved more than double this number during his time in office.
-
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- Most of the
- [individual](#)
- [projects listed](#) on Preston’s list of projects that

- allegedly add up to the 30,000 total do not appear on the City's official list of "approved" projects submitted to the state (APR Table A linked above). Their absence from the City's own list of "approved" projects are for the reasons listed earlier: because
- Proposition K did not approve any homes, because leasing COVID-19 shelter in place hotel rooms did not approve any new homes, and because Preston's list includes a number of votes that are not project approvals. Preston thus cannot be said to have "approved"
- these projects, and the City itself agrees.
-

In summary, a plain reading of Preston's statement would indicate to reasonable voters that Preston voted for final approval of building over 30,000 new homes. However, as described above, a majority of this total represents voters on other matters that—according to the city's own definition of housing approval—does not constitute approval to build new homes. This makes the statement highly misleading.

More generally, Preston's implication that he supports new housing construction is misleading. As I have detailed at <https://nimby.report/preston>, Preston has voted to block thousands of homes in San Francisco, including homes for 875 people on a former valet parking lot near BART and upzoning to allow homes for another 8,449 people near Market and Van Ness. He has also opposed state affordable housing and fair housing laws such as SB 35 and SB 50.

Polls consistently show that housing is one of the most important issues to San Franciscans and that they want to see their elected officials vote to approve more housing. While Preston is entitled to make his case to voters about why his approach to this issue is superior, it is critical that the Department of Elections does not allow Supervisor Preston to make blatantly false and misleading statements about his actions in the Department's voter information materials which contradict the City's own data.

Sincerely,
David Broockman

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.