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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ORLY TAITZ,

Plaintiff and Appellant,

v.

DAMON DUNN,

Defendant and Respondent.

G045351

(Super. Ct. No. 30-2010-00381664)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Orly Taitz, in pro. per., for Plaintiff and Appellant.

Bell, McAndrews & Hiltachk, Charles H. Bell, Jr., and Brian T. Hildreth for Defendant and Respondent.

The parties in this case were candidates for the Republican nomination for the office of Secretary of State in the June 8, 2010, California statewide primary election. Orly Taitz was defeated by Damon Dunn in the statewide primary election, and Dunn was later defeated by incumbent Debra Bowen at the November 2010 statewide general election. After the election, Taitz filed a lawsuit against Dunn alleging election and voter fraud, as well as common law fraud. In her complaint, Taitz sought a criminal investigation, declaratory relief, damages, and punitive damages due to the alleged fraud. The court granted Dunn's motion for judgment on the pleadings (JOP). On appeal, Taitz asserts she adequately pled an election contest and a cause of action for common law fraud. We disagree and affirm the judgment.

I

On June 17, 2010, Taitz filed her lawsuit in the superior court (limited jurisdiction). She alleged: "Dunn has committed knowingly fraud [*sic*] in registering to vote in California as a Republican, declaring his candidacy and running as a candidate for the position of Secretary of State. Taitz has suffered damages in losing the election to an ineligible candidate and having to spend over \$40,000 running against an ineligible candidate in the primary election. . . . Taitz is seeking [d]eclaratory [r]elief from this honorable court, deeming Dunn [an] ineligible candidate and . . . that votes for Dunn . . . cannot be certified . . . due to fraud." Taitz stated she was seeking reimbursement of \$40,000 plus punitive damages.

One week later, Taitz filed an ex parte application seeking "expedited handling" of her complaint.¹ She also sought a stay of the certification of votes for candidates on the ballot. The court considered the matter on June 24, 2010. After considering argument, it set an order to show cause (OSC) regarding staying certification

¹ Taitz augmented the record to provide us with a copy of her complaint and exhibits to the complaint. On our own motion, we have taken judicial notice of the entire superior court file and we viewed it electronically. (Evid. Code, § 452.)

of election for the Secretary of State and jurisdiction pursuant to Code of Civil Procedure section 86. A few days later, the court determined it did not have jurisdiction to consider the matter and reclassified the matter as a civil unlimited jurisdiction case. A new trial judge was assigned to the case. At the end of June 2010, Dunn filed an answer to the complaint.

On June 30, 2010, Taitz filed an ex parte application for an expedited trial, and requested a stay of the counting and certification of votes for Dunn pending resolution of the issue at trial. The following day, the court considered oral argument and denied the motion.

Several weeks later, on August 20, 2010, Taitz moved to disqualify the trial judge pursuant to Code of Civil Procedure section 170.6. A few days later, the court denied the request as untimely under Code of Civil Procedure section 170.6, subdivision (a)(2).

In early September, Taitz attempted to file a motion to compel discovery, but the motion was rejected by the court clerk due to Taitz's failure to pay the filing fee or properly set the matter for the trial court's law and motion calendar held only on Mondays. On January 10, 2011, the court issued a minute order that scheduled a jury trial for June 6, 2011. It denied Taitz's request for a hearing to be set within 10 to 20 days.

At the end of January 2011, Dunn filed his motion for JOP. He alleged the court lacked jurisdiction to consider the complaint because (1) the action was moot since Dunn was no longer the Republican nominee, and (2) Taitz failed to adhere to the statutory requirements for election contests. In addition, Dunn alleged the election contest failed to state a cause of action because he complied with all his responsibilities to appear on the ballot. The motion was scheduled to be heard on February 28, 2011.

To support the motion for JOP, Dunn requested judicial notice of (1) his declaration of candidacy, (2) a letter authored by the Elections Fraud Investigation Unit

of the Secretary of State in response to a complaint filed by Dunn, (3) pages from the Secretary of State's official statement of the vote for the June 8, 2010, primary election, (4) pages from the Secretary of State's official statement of the vote for the November 2, 2010, general election, and (5) a copy of Dunn's nomination signature verification documentation relative to his candidacy for Secretary of State in 2010 that is maintained by the Orange County Registrar of Voters. He alleged the court could take judicial notice of these documents, which are maintained by public agencies, pursuant to Evidence Code section 452, subdivision (c).

In February 2011, Taitz filed a motion to compel Dunn's deposition, arguing Dunn had failed to attend his deposition scheduled for August 25, 2010. She scheduled the hearing to take place on March 14, 2011.

On February 28, 2011, the court continued the hearing on the motion for JOP to March 14, 2011. On March 1, 2011, Taitz filed an opposition to the JOP. A few days later, Dunn filed an objection to Taitz's opposition. Dunn's counsel filed a declaration stating he agreed to continue the JOP to March 14, which meant Taitz needed to file and serve her opposition on March 1. Taitz failed to comply with the rules regarding proper service of opposition pleadings. The certificate of service failed to include the mandatory provisions that indicated the individual making service was not a party to the action or designate the method of service used. Taitz claimed to have used first class mail, but no service copy was received in the required time period. Finally, the opposition was 21 pages long, violating California Rules of Court, rule 3.1113 mandating no more than 15 pages. Dunn argued there was good cause to strike the opposition brief entirely or in part.

Dunn also filed a reply to Taitz's opposition. Dunn argued the opposition was "fraught with red herrings, inapplicable citations and wandering legal arguments. Her [o]pposition utterly fails to refute [his] statute-based contentions that her [e]lection [c]ontest was untimely filed, is now moot, and improperly requests relief not permitted

under the Elections Code.” In addition, Dunn asserted Taitz failed to allege a cause of action for common law fraud.

On March 11, 2011, Taitz filed a sur-reply to oppose Dunn’s reply. That same day, Dunn filed an opposition to Taitz’s motion to compel. Dunn’s counsel declared he only recently learned about the motion to compel after reviewing the online docket. Dunn argued this was the second motion Taitz filed in violation of the statutory service requirements. He requested \$2,080 in sanctions for time spent opposing the motion.

On March 14, 2011, the court issued a tentative ruling on the motion for JOP and motion to compel. It stated, “The court is inclined to grant [Dunn’s motion for JOP]. First, the complaint fails to state a cause of action because it is not clearly set forth what causes of action [Taitz] intends to plead. The complaint fails to comply with [California Rules of Court, rule,] 2.112, which requires that causes of action be separately numbered and state their nature. In addition, to the extent [Taitz] is seeking to contest the results of the election, the contest is moot by virtue of the fact that the [g]eneral [e]lection has been held. As to [Taitz’s] claims of fraud, there does not appear to be any private right by a losing candidate to sue the winning candidate to recover for monies expended in running for election based on election improprieties, even those characterized as ‘fraud.’ [Dunn’s] [r]equest for [j]udicial [n]otice is granted as to [r]equests [No.] 1 and [Nos.] 3-5. It is denied as to [r]equest [No.] 2. The court, in its discretion, has considered the opposition despite the fact that it exceeds the page limit set forth in [the Rules of Court] and [Dunn’s] claims that it was not received the day after service. However, the court has not considered the sur-reply submitted by [Taitz] on 3-11-11.” As to the motion to compel, the court merely indicated it was “inclined to deny this motion.”

After considering argument and taking the matter under submission, the court issued the following minute order, “The Court, having taken the above-entitled

matter under submission on 3/14/11, now makes the following ruling: The court grants the motion for judgment on the pleading. The facts stated in the complaint are not sufficient to support any causes of action for violation of the Elections Code. Further, the facts do not support the elements of a . . . cause of action to recover the costs of an election campaign under a theory of common law fraud. The court cannot see that any amendments to the complaint will cure the defects, so the motion is granted without leave to amend.” On May 9, 2011, the court ruled the tentative was the final ruling. On May 24, the court entered a final judgment.

II

“The standard of review for a motion for judgment on the pleadings is the same as that for a general demurrer: We treat the pleadings as admitting all of the material facts properly pleaded, but not any contentions, deductions or conclusions of fact or law contained therein. We may also consider matters subject to judicial notice. We review the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any theory. [Citation.]” (*Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281, 1298.)

In this appeal, Taitz alleges she adequately stated a valid claim under Elections Code section 16101 [contest of primary election]² or common law deceit or fraudulent concealment. We will address each claim separately.

A. Requirements for an Election Contest Under Section 16101

“The purpose of an election contest is ‘to ascertain the will of the people at the polls, fairly, honestly and legally expressed.’ [Citations.] ‘Strict rules embodied in the Elections Code govern a court’s review of a properly contested election. “It is a primary principle of law as applied to election contests that it is the duty of the court to validate the election if possible. That is to say, the election must be held valid unless

² All further statutory references are to the Elections Code, unless otherwise indicated.

plainly illegal. [Citations.]” [Citation.]’ [Citation.]” (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 192 (*Friends of Sierra Madre*).

The statutory provisions regarding election contests are gathered in sections 16000 et seq. The beginning general provisions define “contestant” as “any person initiating an election contest” and “[d]efendant” as the “person whose election or nomination is [being] contested.” (§ 16002.) Election contests regarding primary elections are afforded an expedited trial. (§ 16520 [hearing set by presiding judge within 20 days].) The trial court has only two options after hearing the evidence: “After the court has heard the proofs and allegations of the parties, it shall file its findings of fact and conclusions of law and immediately pronounce judgment either confirming the nomination or setting it aside and decreeing contestant nominated.” (§ 16720 [judgment in primary elections not involving a recount].)

Because the goal of an election contest is to protect and preserve “the integrity of the election process” (*Friends of Sierra Madre, supra*, 25 Cal.4th at p. 192), the code delineates specific grounds for an election contest in section 16100.³ Relevant

³ Section 16100 provides in full: “Any elector of a county, city, or of any political subdivision of either may contest any election held therein, for any of the following causes:

“(a) That the precinct board or any member thereof was guilty of malconduct.

“(b) That the person who has been declared elected to an office was not, at the time of the election, eligible to that office.

“(c) That the defendant has given to any elector or member of a precinct board any bribe or reward, or has offered any bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise defined in Division 18 (commencing with [s]ection 18000).

“(d) That illegal votes were cast.

“(e) That eligible voters who attempted to vote in accordance with the laws of the state were denied their right to vote.

“(f) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election as to any person who has been declared elected.

to this case, that section permits “[a]ny elector” to “contest any election” on the grounds the defendant “committed any other offense against the elective franchise defined in Division 18 (commencing with [s]ection 18000).” Division 18 lists the many penal provisions for criminal wrongdoing during elections, and covers misconduct relating to voter registration, candidate nomination, campaigns, ballots, and the voting process. Taitz’s complaint alleged Dunn violated two of these provisions.

It is important to recognize the well-settled authority holding a trial court’s authority to invalidate an election is *limited* to those grounds enumerated in section 16100 regarding post-election contests. As the our Supreme Court noted in *Friends of Sierra Madre, supra*, 25 Cal.4th at page 192, these grounds are exclusive: “That the court’s authority to invalidate an election is limited to the bases for contest specified in . . . section 16100 and that section is exclusive is strongly suggested by the nature of the grounds for contest therein enumerated.” (See also *Bradley v. Perrodin* (2003) 106 Cal.App.4th 1153, 1173 [“Election results may only be challenged on one of the grounds specified in section 16100”]; *People ex rel. Kerr v. County of Orange* (2003) 106 Cal.App.4th 914, 932-933 [rejecting arguments that attack on impartial analysis in ballot could be brought postelection because it was not framed as an election contest]; *Alden v. Superior Court* (1963) 212 Cal.App.2d 764, 768 [“A proceeding to contest an election may be brought only when and as authorized by statute”].)⁴

“(g) That there was an error in the vote-counting programs or summation of ballot counts.” The court’s authority to invalidate an election is limited to the above exclusive list of grounds for election contest. (*Friends of Sierra Madre, supra*, 25 Cal.4th at pp. 192-193.)

⁴ The limited exception to this rule does not apply in this case. “The power of the court to invalidate a ballot measure on constitutional grounds is an exception to this limitation on election contest proceedings. [Citation.] Assertedly invalid statutes or ordinances may be challenged on constitutional grounds in an election contest, which leads to an order setting aside the result of the election, or on constitutional or other grounds by actions for declaratory relief or, where authorized, by a petition for writ of

To initiate an election contest on any of the enumerated grounds, section 16101, subdivision (b), delineates the specific procedures the contestant must follow: “Any candidate at a primary election may contest the right of another candidate to nomination to the same office by *filing an affidavit* alleging” the defendant “has committed any offense against the elective franchise defined in Division 18 (commencing with [s]ection 18000).” (Italics added.) Generally defined, an affidavit is a written declaration under oath, taken before a notary or other officer authorized to administer oaths. (Code Civ. Proc., §§ 2003, 2012.)

Taitz asserts her complaint properly contained allegations to support an election contest under section 16101. Taitz maintains she asserted facts showing violations of Division 18, specifically section 18500 [fraud in connection with any vote cast or to be cast is guilty of a felony] and section 18502 [interference with officers holding an election or voters is illegal]. While these are certainly grounds for an election contest, we agree with the trial court’s legal conclusion that Taitz failed to comply with the mandatory requirements outlined in the statutory scheme for bringing a timely election contest. In short, she did not state a valid claim under section 16101.

To begin with, Taitz’s complaint failed to comply with most basic rules regarding the format of contest statements. As mentioned above, section 16101 provides an election contest must be initiated by the contestant filing an affidavit. Taitz’s complaint was neither verified nor appears to be a declaration under oath. She did not file anything resembling an affidavit.

mandamus, each of which results in a judicial determination that the measure is invalid. (*Friends of Sierra Madre, supra*, 25 Cal.4th at p. 192, fn. 17.) Here, Taitz’s challenges related to the validity of a candidate’s nomination and the integrity of the election process. Because her claim did not implicate the constitution or a ballot measure, her remedy was to bring a postelection election contest under section 16100 et seq.

In addition, Taitz did not allege facts that must be included in a section 16101 affidavit. Section 16400 describes the required contents of a contest statement in any election.⁵ In sum, the contestant must include in his or her written statement filed with the court clerk (1) the date the election results were declared and (2) “the particular grounds of contest and *the section of this code* under which the statement is filed.” (§ 16400, subds. (d) & (e), italics added.) Setting forth these facts clearly is essential for an election contest because different rules and timelines apply depending on when and how the votes were tallied, as well as whether the challenge relates to a general election, a primary election, or a contest involving a recount.

Taitz failed to allege “the section of this code under which the statement is filed.” (§ 16400, subd. (d).) She concedes the only applicable section of the code applying to the nature of her challenge was section 16101 [contest of primary election not involving a recount]. However, nowhere in the complaint did Taitz assert her complaint was intended to be an affidavit filed under section 16101. Instead, Taitz referred to several criminal penalty statutes addressing election violations (the section 18000 series). Contrary to her contention on appeal, the citation to criminal violations were inadequate to alert the court she was filing an election contest as a private individual under section 16101.

We also reject Taitz’s argument that simply discussing section 16101 during the hearing on the motion for JOP was sufficient to raise the claim. She cites to no authority, and we found none, to support this contention. Taitz’s statements during

⁵ Section 16400 provides, “When an elector contests any election he or she shall file with the clerk of the superior court having jurisdiction a written statement setting forth specifically: [¶] (a) The name of the contestant and that he or she is an elector of the district or county, as the case may be, in which the contested election was held. [¶] (b) The name of the defendant. [¶] (c) The office. [¶] (d) The particular grounds of contest and the section of this code under which the statement is filed. [¶] (e) The date of declaration of the result of the election by the body canvassing the returns thereof.”

oral argument did nothing to satisfy the pleading requirements specified in section 16400, subdivision (d). It was her obligation to properly and timely notify the court of her intention to treat the complaint as “an affidavit” under section 16101 to trigger the other Election Code provisions mandating a speedy resolution of the election contest.

Another defect with Taitz’s alleged election contest claim was she failed to specify the date the election results were declared (§ 16400, subd. (e)). And related to this omission, Taitz’s purported election contest was untimely filed. Section 16421, applying to *primary elections*, requires the contestant’s “affidavit . . . be filed in the office of the clerk of the superior court having jurisdiction *within five days* after either the completion of the official canvass or the completion of any postcanvass risk-limiting audit conducted pursuant to [s]ection 15560 by the county last making the declaration. . . .”⁶ (Italics added.) Thus, Taitz was required to declare in her affidavit the date the election results were completed and file the affidavit five days thereafter. The superior court clerk would then be required to “present all the affidavits to the presiding judge of the superior court. The presiding judge shall forthwith designate the time and place of hearing, which shall be not less than 10 nor more than 20 days from the date of the order.” (§ 16520.)

In this case, Taitz filed the election contest in the form of a complaint on June 17, 2010. The results were not certified by the Secretary of State until July 18, 2010. Thus, Taitz filed her purported election contest prematurely, approximately one month before completion of the primary election. Consequently, the superior court clerk did not recognize it was an election contest that needed to be immediately forwarded to

⁶ For the sake of comparison, section 16401, applying to *general elections*, provides that contestants must verify the statement of contest and file it within 30 days after the declaration of the result of the election.

the presiding judge to be set for a hearing. And as mentioned earlier in the opinion, Taitz's failure to follow the statutory requirement to include an affidavit or indicate she was proceeding under section 16101 also affected the court clerk's ability to recognize the complaint as an election contest.

In addition to the above defects, we also note Taitz's failure to seek the only relief offered under section 16101. In the complaint, she did not ask the court to set aside the nomination (§ 16720 [court's judgment limited to confirming the primary election nomination or setting it aside].) Taitz's complaint sought only declaratory relief and personal damages. This is yet another reason to hold the complaint did not state an election contest.

Finally, there was other evidence supporting the conclusion Taitz never intended to file an election contest claim under section 16101. Taitz filed two ex parte applications in June 2010, seeking expedited handling of her complaint and to stop the Secretary of State from certifying the votes. This action only further supports the conclusion she did not intend her complaint to be an election contest under section 16101. As noted above, the affidavit for a contest relating to a primary election must be filed *after* the votes have been certified (and thereafter the election contest hearing will be expedited to be timely resolved before the general election). By filing her complaint *before* the primary election was over, Taitz failed to allege an "election contest" as defined by section 16101. For all the reasons stated above, we conclude Taitz failed to state a claim under section 16101.⁷

⁷ In light of our ruling Taitz failed to state a claim under section 16101, we need not address the alternative argument, discussed at length by both parties, regarding whether the claim was rendered moot by the statewide general election.

B. The Fraud Claim

“The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. ([Civ. Code] 1709; [citations].)” (5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 772 p. 1121.)

The caption of Taitz’s complaint indicated the lawsuit was about election fraud and voter fraud based on Dunn’s actions occurring before the primary election and were the basis for her election contest. Nowhere in the complaint did Taitz assert common law fraud. As noted by the trial court, Taitz failed to comply with the basic pleading rules requiring each cause of action be separately numbered and to state their nature.

Not until Taitz filed her opposition to the motion for JOP did she assert that in addition to claims under the Elections Code, she was also alleging damages caused by common law fraud. At the hearing, Taitz clarified Dunn committed fraud by failing to indicate he voted as a Democrat in Florida and “[i]t was foreseeable that somebody else will be running for the same position and spending a lot of money on the campaign running against someone who [was] committing fraud.” Taitz conceded she knew about the purported fraud approximately two months before the election, but claimed that when she announced her candidacy she had already started spending money. When the court questioned why Taitz did not bring her claim sooner or whether she would have needed to spend the \$40,000 on her campaign regardless of having a running mate. Taitz responded she was not “exactly” asserting she would not have spent the \$40,000 if she had known about the fraud earlier. Taitz explained the basis of her claim was that she did not know of the fraud and “what is more important, that Republicans who were voting did not know those facts and, if they had known those facts, that they would not have voted for . . . Dunn and at [*sic*] which case I would have won the election.”

The court noted if Taitz spent the \$40,000 and won the election she would not have filed a common law fraud action. The court determined Taitz spent the money to get herself elected in the primary and later decided Dunn was not an eligible candidate. It concluded the cause of action failed because, at best, the poorly drafted complaint alleged (1) Dunn “defrauded somebody else . . . [b]ut you’re not entitled to sue for that” and (2) even assuming everything in the complaint can be proved, there is no authority giving Taitz the right to recover monetary damages or any of the other relief requested, i.e., being declared the winner of the primary.

We have carefully reviewed Taitz’s complaint and the record. Her fraud claim is based on the assumption Dunn knew he was ineligible to run as a Republican candidate and therefore misrepresented his eligibility status by declaring his candidacy. The alleged misrepresentations are all premised on Dunn’s alleged intentional failure to disclose some information on his California voter registration card. Specifically, Taitz asserts Dunn failed to disclose prior *expired* voter registrations in Texas and Florida.

However, Taitz provided no authority to support the premise of her argument. She failed to cite any legal authority holding Dunn’s failure to disclose past registrations on his California voter registration card rendered him ineligible to run as Republican candidate. Indeed, she provided no legal basis to explain why Dunn’s voter registration card had any relevancy to his eligibility as a candidate. As such, there is no reason to assume Dunn knew he was allegedly ineligible to run as a Republican candidate, i.e., he made no misrepresentation.

The burden of demonstrating error rests squarely on the appellant. (See *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631-632.) Argument unsupported by any legal analysis or citation to legal authorities is waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [appellate court not required to consider points not

supported by citation to authorities or record].) Taitz may not simply make the assertion the omission rendered Dunn ineligible and leave it to the appellate court to figure out why. Even when our standard of review is de novo, the scope of review is limited to issues that have been adequately raised and are supported by analysis.

Moreover, the trial court correctly concluded there is no legal authority giving Taitz the right to recover monetary damages to address election fraud. Dunn aptly cites to several cases holding loss of an election is not compensable. (See, e.g., *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 635-636 [no right of a losing candidate to seek monetary damages against winning candidate under tort theory (defamation)]; *Southwestern Publishing Co. v. Horsey* (9th Cir. 1956) 230 F.2d 319, 322-323 (*Southwestern Publishing*) [loss of an election is not compensable in damages in libel action]; *Hutchinson v. Miller* (4th Cir. 1986) 797 F.2d 1279, 1287 (*Hutchinson*) [“courts do not sit to award post-election damages to defeated candidates”]; *McIntyre v. Fallahay* (7th Cir. 1985) 766 F.2d 1078, 1087 [awarding monetary damages to defeated candidate was improper because such an award does not provide a correction of electoral ills but rather a windfall to political plaintiffs]; *Chrysler Corp. v. Todorovich* (Wyo. 1978) 580 P.2d 1123, 1134 [monetary damages sought under tort theories (negligence) not permitted for loss of an election or loss of salary in public office]; *Otero v. Ewing* (La. 1926) 162 La. 453, 456 [defeated candidate for nomination for judgeship cannot recover monetary damages against opponent].) We note Taitz failed to cite any legal authority to support her contention monetary damages can be awarded in election disputes.

Southwestern Publishing Co., is instructive. In that case, the “[trial] court correctly instructed the jury that the loss of an election is not compensable in damages in a libel action, being too uncertain and too speculative.” (*Southwestern Publishing Co.*, *supra*, 230 F.2d. at p. 322.) It reasoned, a “thousand factors” might influence an election

including the extent of newspaper coverage, political leanings of people moving into and out of an area, political party support, group endorsements, volunteer workers' efforts, personal campaigning by the candidates, events in which the candidates participated that might affect their popularity, political trends, and issues debated. (*Id.* at pp. 322-323.) This was true in the case before us. Taitz conceded during the hearing she would have spent money to run in the election regardless of whether Dunn was her opponent.

In the *Hutchinson* case, the court held three unsuccessful candidates for public office could not recover for their claim it was a fundamentally unfair election. (*Hutchinson, supra*, 797 F.2d at pp. 1279-1280.) The court ruled, "Our constitution does not contemplate that the federal judiciary routinely will pass judgment on particular elections for federal, state, or local office. The conduct of elections is instead a matter committed primarily to the control of states, and legislative bodies are traditionally the final judges of their own membership. The legitimacy of democratic politics would be compromised if the results of elections were regularly to be rehashed in federal court. Federal courts, of course, have actively guarded the electoral process from class-based discrimination and restrictive state election laws. This suit, however, asks us to consider the award of damages for election irregularities that neither disenfranchised a class of voters nor impugned state and federal procedures for the proper conduct of elections. In this essentially factual dispute, we defer to those primarily responsible for elections and we refuse to authorize yet another avenue for those disgruntled with the political process to keep the contest alive in the courtroom." (*Hutchinson, supra*, 797 F.2d at p. 1280.)

Similarly, Taitz's common law fraud action does not address any issue that disenfranchised a class of voters or cast doubt on the procedures already in place for elections. As discussed in the first section of this opinion, the state authorities can enforce criminal penalties to address election fraud. In addition, there are specific

provisions available for a private individual to bring an election contest to seek equitable relief for fraudulent activity. Taitz's lawsuit essentially seeks to bypass these controls and have a trial court or jury review the outcome of an election and award her damages incurred by losing the race.

We conclude monetary damages for the issues raised by Taitz in this case would be fundamentally inappropriate. As aptly stated by the *Hutchinson* court, “[P]laintiffs’ suit for damages strikes us as an inapt means of overseeing the political process. It would provide not so much a correction of electoral ills as a potential windfall to plaintiffs and political advantage through publicity. [Citation.] Those who enter the political fray know the potential risks of their enterprise. If they are defeated by trickery or fraud, they can and should expect the established mechanisms of review—both civil and criminal—to address their grievances, and to take action to insure legitimate electoral results. In this way, they advance the fundamental goal of the electoral process—to determine the will of the people—while also protecting their own interest in the electoral result. A suit for damages, by contrast, may result principally in financial gain for the candidate. We can imagine no scenario in which this gain is the appropriate result of the decision to pursue elected office, and we can find no other case in which a defeated candidate has won such compensation. Nor do we believe, in light of the multitude of alternative remedies, that such a remedy is necessary either to deter misconduct or to provide incentives for enforcement of election laws. (*Hutchinson, supra*, 797 F.2d at p. 1287.)

Taitz entered the political fray aware of the potential financial risks and we have no doubt that many factors influenced her campaign. There is simply no policy advanced by permitting her to reimburse her campaign coffers from her opponent.

III

The judgment is affirmed. Respondent's request we take judicial notice of various election documents is denied as the documents were not necessary for resolution of the appeal. Respondent shall recover his costs on appeal.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

MOORE, J.