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**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA
SAN JOSE**

	) Case No.: 21-5605
MICHAEL LYNN GABRIEL	) PLAINTIFF'S EMERGENCY
)
Plaintiff,	) MOTION FOR A TEMPORARY
	) RESTRAINING ORDER AND
vs.	) PRELIMINARY INJUNCTION
SHIRLEY N, WEBER,)
Secretary of State)
Defendant.)
))

1. The Plaintiff, pursuant to Section Section 2 of the Voting Rights Act, 52 USC sec 10310 – 10314, and Rule 65 of the Federal Rules of Civil Procedure, moves the Court for entry of a Temporary Restraining Order and Preliminary Injunction enjoining Defendant Shirley N. Weber, California

1 Secretary of State ("California"), and all persons acting on her behalf for the State
2 of California, from

- 3 a. Refusing to accept on the ballot anyone qualifying for as a write in
4 candidate for the California Governor Recall election if they register
5 by August 6, 2021 as a write in candidate; and
6
7 b. Refusing to accept for publication in the Voter's Guide a candidate
8 statement from any write in candidate who registers for the election
9 by August 6, or until Oct 14, 2021 if the election is continued to
10 October 14 and both pays the required fee and submits a candidate
11 statement in conformity with the rules set forth in the Defendant's
12 Candidate Statement Guidelines.
13
14 c. holding the election on September 14, 2021 and instead moving the
15 date of the election back thirty days to Oct 14, 2021,

16
17
18 pending entry by the Court of a final judgment in this action.

19 This motion is based on the following grounds:

20
21 2. On July 2021, the Plaintiff filed CLASS ACTION COMPLAINT
22 FOR INJUNCTIVE AND DECLARATORY RELIEF for violations of the
23 Voting Rights Act

24
25 3. On July 26, 2021, the Plaintiff filed an Amended Complaint and
26 Request For Injunction for the violations of the Voting Rights Act

27
28 **TITLE OF DOCUMENT: EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION CASE NO: 21-5605**

1 4. Unless enjoined by this Court, Defendant will continue to violate
2 the Voting Rights Act by:

3 a. holding an election that was improperly advanced and accelerated
4 so as to create a disparate impact on minority candidates and thereby
5 not giving them sufficient time to properly enter the race as replacement
6 candidates:
7

8 b. holding an election which violated the Voting Rights Act by
9 unconstitutionally requiring all minority candidate to waive their
10 constitutional right of privacy and disclose their tax returns in order to
11 filing as a candidate. Minority candidates unwilling to do so could not
12 file as a replacement candidate:
13

14 c. holding an election where write in candidates who properly
15 registered before August 6 and as extended by any continuance of the
16 election, were denied equal protection in not being able to have their
17 candidate statement published in the Voter Guide even though
18 replacement candidates are able to do so before the Voter's Guide is
19 sent for publication.
20
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22

23 5. Pursuant to Rule 65(a)(1) of the Federal Rules of Civil Procedure,
24 undersigned counsel for the Plaintiff respectfully certifies to the Court that on
25 July 21, 2021, Plaintiff filed a complaint in this matter.
26
27

1 6. Concurrently with this filing, Plaintiff sent for service on the
2 defendant copies of this motion, the proposed TRO, the memorandum in support
3 of this motion, and declarations in support thereof.
4

5 7. There is a substantial likelihood that Plaintiff will establish at trial
6 that the conduct of the Defendant violated the Voting Rights Act and had a
7 disparate impact on minorities
8

9 (a) in their entering the race by advancing the election so as to limit the
10 time needed to prepare for entrance into the race

11 (b) by unconstitutionally requiring minority candidates to submit tax
12 returns as a pre-condition to filing as a candidate. While this
13 requirement was struck down as unconstitutional after the filing
14 period ended, the disparate impact of the act remains. Otherwise
15 interested potential minorities had been coerced not to run because
16 of this unconstitutional requirement. The effect of tax return
17 requirement on this election is analogous to that of a poll tax
18
19
20

21 8. A Temporary Restraining Order is necessary to preserve the status
22 quo, to prevent the irreparable injury to the public that would result from
23 qualified minority candidates not being able to run because they were intimidated
24 and their fundamental right to be a candidate curtailed because they refused to
25 unconstitutionally disclose their tax returns and waive their right of privacy.
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9. A Temporary Restraining Order is necessary to preserve the status quo, to prevent the irreparable injury to the public that would result from qualified minority write in candidates who properly register before the Voter Guide was sent for publication, not being able to have their candidate statements published in the Voters Guide while other candidates could still do so

10. A Temporary Restraining Order is necessary to preserve the status quo, to prevent the irreparable injury to the public and to allow the Court to render effective relief if the Plaintiff prevails at trial. Plaintiff would have no adequate remedy at law, and this Court's ability to fashion effective relief would be significantly impaired, if Defendant was able to proceed with the election in the face the Defendant's Voting Rights Violations.

11. Granting the requested preliminary relief will serve the public interest.

12. This Court has authority under Section 2 of the Voting Rights Act, 52 USC sec 10310 – 10314 to issue the requested preliminary relief.

13. This Emergency Motion is supported by a concurrently filed Memorandum of United States in Support of Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, the proposed Temporary Restraining Order, and supporting declarations.

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**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA
SAN JOSE**

	)	Case No.: 21-5605
MICHAEL LYNN GABRIEL	)	MEMORANDUM IN SUPPORT OF
	)	EMERGENCY MOTION FOR A
Plaintiff,	)	TEMPORARY RESTRAINING ORDER
vs.)	AND PRELIMINARY INJUNCTION
SHIRLEY N, WEBER,)	
Secretary of State)	
Defendant.)	
)	
)	

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1 **I. NATURE OF THE ACTION AND RELIEF SOUGHT**

2
3 1. The human body relies on a beating heart to survive. Voting is “the
4 beating heart of democracy.” *League of Women Voters of Fla., Inc. v. Detzner*, 314
5 F. Supp. 3d 1205, 1215 (N.D. Fla. 2018). The right to vote is a “precious” right,
6 *Harper v. State Bd. of Elections*, 383 U.S. 663, 670 (1966), “of the most
7 fundamental significance under our constitutional structure,” *Burdick v. Takushi*,
8 504 U.S. 428, 433 (1992) (internal quotation marks omitted). California’s
9 recent action attacking the voting rights of its citizens is like a virus attacking the
10 human heart. Without a remedy to undo the effects, our democracy will die.

11
12
13 2. In this Voting Rights Violation Action, the Plaintiff respectfully moves
14 this Court, on an emergency basis, to issue an order so as to preserve the integrity of the
15 election process in Californian and prevent the systemic violations of the Voting Rights Act
16 being perpetuated in the upcoming California Governor Recall Election which has had the
17 both a chilling and disparate impact on minority participation in the election as well as a
18 suppression of of election free speech.

19
20
21 3, The grant of temporary and preliminary injunctive relief is necessary to prevent
22 further harm to the election process and preserve the Court’s ability to order complete and
23 effective relief following a trial on the merits.

24
25 4. This Court has subject matter jurisdiction pursuant to Section 2 of the
26 Voting Rights Act 52 U.S.C. §§ 10310 which, confers jurisdiction on this Court to prevent
27 and restrain violations of the Voting Right Act.

52 U.S. Code § 10310 - Enforcement proceedings

“(b) JURISDICTION OF COURTS FOR DECLARATORY JUDGMENT, RESTRAINING ORDERS, OR TEMPORARY OR PERMANENT INJUNCTION

No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment pursuant to section 10303 or 10304 of this title or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of chapters 103 to 107 of this title or any action of any Federal officer or employee pursuant hereto.

(c) DEFINITIONS

(1) The terms “vote” or “voting” shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this chapter, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.”

6. The voting rights practices which this court has the jurisdiction over is set forth in 52 U.S.C. § 10304

“52 U.S.C. § 10304 - U.S. Code - Unannotated Title 52. Voting and Elections § 10304. Alteration of voting qualifications; procedure and appeal; purpose or effect of diminishing the ability of citizens to elect their preferred candidates

1 **(b)** Any voting qualification or prerequisite to voting, or standard,
2 practice, or procedure with respect to voting that has the purpose of or will
3 have the effect of diminishing the ability of any citizens of the United
4 States on account of race or color, or in contravention of the guarantees set
5 forth in section 10303(f)(2) of this title, to elect their preferred candidates
6 of choice denies or abridges the right to vote within the meaning of
7 subsection (a) of this section.

8 **(c)** The term “purpose” in subsections (a) and (b) of this section
9 shall include any discriminatory purpose.

10 **(d)** The purpose of subsection (b) of this section is to protect the
11 ability of such citizens to elect their preferred candidates of choice.

12 7. Section 10310 empowers this Court to make such temporary
13 restraining order or prohibition as shall be deemed just in the premises to prevent and
14 restrain violations of the Voting Rights Act

15 **II. SUMMARY OF DEFENDANT’S UNLAWFUL CONDUCT**

16 8. The Defendant in handling the upcoming Governor Recall Election has
17 done or is doing three things each of which violates Constitution and Voting Rights
18 Act. Unless enjoined by this Court, Defendant will continue to violate the
19 Voting Rights Act by:
20
21

22 a. holding an election that was improperly advanced and accelerated
23 so as to create a disparate impact on minority candidates and thereby
24 not giving them sufficient time to properly enter the race as replacement
25 candidates. That was evidenced by the fact that 94 persons had announced
26

27 and filed Form 500 Candidate Intention yet only 44 ie 47% were able complete
28

1 the filing as a replacement candidate within the accelerated and narrowed one
2 week period.

3 b. holding an election which violated the Voting Rights Act by
4 unconstitutionally requiring all minority candidate to waive their
5 constitutional right of privacy and disclose their tax returns in order to
6 filing as a candidate. Minority candidates unwilling to do so could not
7 file as a replacement candidate:
8

9
10 c. holding an election where write in candidates who properly registered
11 before August 6 and as extended by any continuance of the election, were
12 denied equal protection in not being able to have their candidate statement
13 published in the Voter Guide even though replacement candidates are able to do
14 so before the Voter's Guide is sent for publication.
15
16

17 **III. ARGUMENT**

18 **A. THE DEFENDANT'S ACTION VIOLATE BOTH THE CONSTITUTION** 19 **AND THE VOTING RIGHTS ACT**

20 **1. ADVANCING THE ELECTION SO AS TO LIMIT THE NUMBER OF** 21 **PEOPLE ABLE TO FILE WITHIN THE SHORT PERIOD OF TIME**

22
23
24 9. Under the Voting Rights Act 52 U.S.C. § 10304, it is illegal for any
25 state to adopt any voting practice or procedure with the effect of in essence
26 rigging an election. The statute prohibits:
27
28

1 “(b) Any voting qualification or prerequisite to voting, or standard, practice,
2 or procedure with respect to voting that has the purpose of or will have the
3 effect of diminishing the ability of any citizens of the United States on account of
4 race or color, or in contravention of the guarantees set forth in section 10303(f)
5 (2)of this title, to elect their preferred candidates of choice denies or abridges the
6 right to vote within the meaning of subsection (a) of this section.

7 10. The Democratically controlled California Legislature passed the law
8 SB 152 which was specifically designed to move up of the election date up a
9 month and thereby only allow prospective candidates a one week period to
10 register to run as a replacement candidate.
11

12 11. The prior law required a thirty day period for to review the estimated
13 costs of the special election before setting the date. Instead, the Democratically
14 controlled California legislature passed a signed by the governor whose recall
15 was to be held waiving that state law and allowing the election date to be set
16 immediately.
17

18 12. The sole purpose of SB152 was specifically to advance the election
19 date and give people especially minorities less time to enter the race
20

21 13. The result of the new law was that candidates only had 7 days
22 from July 9 to July 16 to file a declaration of candidacy and submit a
23 nominating petition of 65 signatures, file a Form 500 Candidate Intention, file
24 their tax returns for the last 5 years, open a campaign bank account and file a
25 Form 700 Statement of Economic Interests to make the ballot as replacement
26
27
28

1 candidates.

2 14. Anyone like the Plaintiff who was unable to do all in the
3 seven day period could not make the ballot as a replacement candidate but
4 could still run as a write in candidate but they would not be their candidate
5 statement included in the Voter Guide even if they were fully registered and
6 approved for the ballot by August 6 for Replacement candidates doing so

7
8
9 15. Plaintiff, an Arab American could not get the 65 signatures by
10 that date so was unable to file as regular candidate. Within just a week period.
11 If the election had been originally set 30 days further back everyone including
12 fellow minorities would have an additional month to collect the signatories and
13 make the printed ballot as a replacement candidate

14
15 16 Moving the election date up by Governor Newsom was specifically
16 and undeniably intended to prevent candidates including minority candidates
17 from entering the race.

18
19 17 There had been 94 persons who had filed From 501 as a candidate
20 for the election as shown on Exhibit 2 to the Amended Complaint but only 44
21 of them were able to get the 65 signatures or otherwise comply within the
22 specific filing week so as to become a replacement candidates. That means that
23 that by moving up the election date up by at least a month 53 % of the people
24 intending to run were unable to do so and complete their election filing within
25 the accelerated time frame of one week.
26
27
28

1 18. The actions of the California Legislature had a disparate impact on
2 the minority community and the election as a whole by limiting access to the
3 voting process to the election process for no other reason than to help and
4 incumbent Governor stave off a recall effort. The actions of the Legislature in
5 passing SB 152 is an example of a classic voting right violation solely designed
6 to rig the election in favor of one candidate.
7

8
9 **2. UNCONSTITUTIONALLY REQUIRING CANDIDATES TO FURNISH**
10 **TAX RETURNS AS A PRE CONDITION TO RUNNING**
11

12 19. 42 U.S.C. § 1983 provides a cause of action, including for declaratory
13 or injunctive relief, against “[e]very person who, under color of any statute,
14 ordinance, regulation, custom, or usage... subjects, or causes to be subjected,
15 any citizen of the United States or other person within the jurisdiction thereof to
16 the deprivation of any rights, privileges, or immunities secured by the
17 Constitution and laws....”
18

19
20 20. Section 1 of the Fifteenth Amendment to the United States
21 Constitution prohibits states from denying or abridging the right of American
22 citizens to vote on account of their race or color.
23

24 21. The arbitrarily created Voter Guide participation limitation violates the
25 Fifteenth Amendment to the United States Constitution because the Defendant
26
27

1 intentionally intends to administer and enforce the Voter Guide participation limitation so
2 as to deny and abridge the right of minority candidates to vote or run for office

3 22. It was the requirement by the Defendant that in order for candidates to be
4 permitted to file to run in the election that they had to disclose and release their tax
5 returns for the previous five years.

6
7 23. That requirement was later ruled unconstitutional when challenged by
8 candidate Larry Elder after he was denied a filing because his tax returns had not been
9 fully redacted as the Defendant wanted. The court found that the candidates did not have
10 to furnish tax returns in order to be a candidate in the election

11
12 24. In acknowledgment of that that ruling, the defendant has removed the
13 requirement for write in candidates to produce their tax returns as a condition for being
14 approved for the election. While the requirement of furnishing tax returns is no longer in
15 effect, the damage that the requirement did while in force is still present.

16
17 25. Many potential candidates, especially those in the minority community were
18 dissuaded and intimidated from running in the election because they were, at that time,
19 being required to waive their constitutional right privacy and release and release their tax
20 returns as a requirement to be on the ballot.

21
22 26. The effect of this unconstitutional requirement was that an unknown number
23 of people refused to run because doing so would have required them to release their tax
24 returns and give up their right of privacy which turned out to be an unconstitutional
25 requirement in order to be able to run.

1 27. One such example of a person who considered running and did not is
2 shown by the declaration of Vignesh Venkat. Mr Venkat considered running but decided
3 not to do because he did not want to give up his right of privacy and disclose his tax
4 returns.

5
6 28. If the election is extended 30 days, Mr, Venkat and other minorities who
7 were prevented by running by the unconstitutional requirement to furnish tax returns
8 would have the opportunity to file again as a replacement candidate. As it is now, the
9 minority candidates who were kept off the ballot by the unconstitutional requirement that
10 they had to first provide their tax returns could run as a write in candidates but as such
11 they would not be able to have their candidate statement published in the Voters Guide.
12

13
14 29. So the unconstitutional requirement that candidates provide their tax
15 returns in order yo be able to run as a replacement candidate has kept an unknown number
16 of minorities from running, This unconstitutional requirement that tax returns be
17 furbished is the type of voting rights violation which the Voting Rights Act sec 2(b) was
18 designed to prevent,
19

20 30. The only way to correct this miscarriage of justice is for the Court to
21 extend the election 30 days, That way that minority candidates who had previously
22 decided not to run because they would have to produce their tax returns now would
23 have the opportunity to stand for election again. However, this time without having a
24 requirement to produce their tax returns,.
25
26
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1 31. It did no good for minorities for the tax return requirement to be
2 removed without also giving them the opportunity to file for the election again.
3 What the Defendant did was wrong. It ended up keeping minorities from running
4 for the election. Now that everyone agrees that the state and Defendant were
5 wrong in what they did in requiring tax returns. As such the only remedy is to
6 restore the status quo and move the election back 30 days where it would have
7 been if the SB 152 had not been passed,. This way those people who had decided
8 not to run because they did not want to to disclose their tax returns can now do so
9 without disclosing their tax returns.
10
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14 **III. THE REFUSAL TO PUBLISH MINORITY CANDIDATE STATEMENTS**
15 **RECEIVED PRIOR TO AUGUST 6 FROM WRITE IN CANDIDATES**
16 **VIOLATES THE VOTING RIGHTS ACT, THE 14 AND 15 AMENDMENTS**
17 **OF THE US CONSTITUTION AS WELL AS THE CALIFORNIA**
18 **CONSTITUTION**
19
20
21

22 32. To be listed in the voter guide the only stated requirements is that
23 the people seeking to run file a declaration of candidacy, the candidate statement
24 and pay the fee of \$6250. Plaintiff did all that and then after accepting the
25 payment the California Secretary of State rewrote the candidate statement rules
26 Exhibit 1 and then reversed itself and refused the accept Plaintiff;s candidate
27
28 **TITLE OF DOCUMENT MEMORANDUM FOR TRO CASE NO: 21-5605**
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1 statement. The defendants stated for the first time that only regular candidates
2 can appear on the printed ballot. Thus under this revision of the rules write in
3 candidates even those who Plaintiff will be approved before the August 6 print
4 deadline date cannot be in the Voters Guide, but the defendant kept the payment
5

6 33. The Defendant's actions has the disparate effect of keeping minority
7 candidates such as the Plaintiff from reaching the voters with their messages.
8 This is a clear violation of the voting rights act
9

10 34. The guidelines required that Plaintiff both file a Form 501 and pay
11 the fee of \$6250 both of which Plaintiff had done. Nothing in the instructions
12 said that the application would be limited to replacement candidates alone.
13

14 35. Furthermore the date for payment of the fee for replacement
15 candidates is August 6 in order so as to make the to Voters Guide
16

17 "If a payment for the candidate statement is not received, or if the
18 payment is made by a check and it does not clear the candidate's
19 banking institution before the end of the state Voter Information Guide
20 public display period (August 6, 2021), the candidate statement will not
21 be printed in the state Voter Information Guide.|"

22
23 36. Write in candidate should have the August 6 date as well to be in
24 the guide as the state has not yet prepared ballot so there is no burden on the state
25 in both adding the names of write in candidates who have qualified for the
26
27
28

1 election as of that time and also putting their candidate statements in the voter
2 guide.

3 37. The California Supreme Court in *Thompson vs Mellon* 9 Cal. 3D
4 97 (1973) restated that the right to run for office is a fundamental right.
5

6 “We concluded in *Zeilenga* that the right to hold office was a fundamental right
7 and that restrictions upon its exercise must, therefore, be strictly scrutinized”
8

9 38. Thus a strict scrutiny test will be applied to any decision on refusal
10 to accept a candidate prior to the August 6 date . There is no reason not to accept
11 Plaintiff’s candidate statement for inclusion into the voting guide as long as
12 Plaintiff make the ballot by August 6. That is the same treatment for replacement
13 candidates who do not pay their fee by then. Use of that date for write candidates
14 to be in the voter guide does not disrupt in the election process
15

16 39. The new limitation of who can be on the Voter Guide is arbitrary, capricious
17 and unreasonable as there is no basis for limiting the Plaintiff’s access to the Voter Guide
18 if he qualifies for the election by August 6 which is the last date for replacement
19 candidates to be in the Voter’s Guide by paying for their candidate statement an act which
20 the Plaintiff has already done
21

22
23 **A. VIOLATION OF VOTING RIGHT SEC 10301**
24

25 40. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a),
26 provides in pertinent part:
27

1 No voting qualification or prerequisite to voting or standard, practice,
2 or procedure shall be imposed or applied by any State or political
3 subdivision in a manner which results in a denial or abridgement of the
4 right of any citizen of the United States to vote on account of race or
color

5 41. The Defendant’s Voter Guide participation limitation to only
6 replacement candidates violates Section 2 of the Voting Rights Act because the
7 effect if these provisions of the denying voters of color full and equal access to
8 the political process.

9
10 42. These provisions would violate Section 2 even in the absence of
11 discriminatory intent, because, by their discriminatory impact, they will
12 “result in a denial or abridgement” of the right of voters of color to vote
13 and to participate equally in the democratic process.

14
15
16 43. This provision violates of the Voting Rights Act because, given the
17 “totality of circumstances,” including the long history of racial discrimination in
18 California, the challenged provisions, individually and cumulatively, will
19 disproportionately deny voters of color, including Black and Latino voters, an
20 equal opportunity to participate in the political process and to elect representatives
21 of their choice
22
23

24
25 **B VIOLATION OF FREE SPEECH**

26 44. Plaintiff and indeed anyone running for Governor in California
27 and wishing got a fair and honest election enjoys rights under the First
28

1 Amendment to the United States Constitution, as applied to the states by
2 the Fourteenth Amendment, to engage in protected speech and expression,
3 including political speech.

4
5 45. State election laws may not place burdens upon the constitutional
6 right to vote unless relevant and legitimate state interests of sufficient weight
7 necessarily justify the magnitude and character of the burdens imposed. *See*
8 *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460
9 U.S. 780, 789 (1983).

10
11 46. Any burden on the constitutional right to vote—even a slight one—
12 “must be justified by relevant and legitimate state interests sufficiently weighty
13 to justify the limitation.” *Crawford v. Marion County Election Bd.*, 553 U.S.
14 181, 191 (2008) (Stevens, J., controlling op.) (internal quotation marks
15 omitted).

16
17
18 47. The more a challenged law burdens the right to vote, the more
19 strictly must it be scrutinized. *See Democratic Exec. Comm. of Fla. v. Lee*, 915
20 F.3d 1312, 1318-19 (11th Cir. 2019).

21
22
23 48. In seeking to have their candidates statements published in the state
24 Voter Guide write in candidates who have properly registered for the election
25 before the publication deadline for the submission of candidate statements are
26 engaged in speech and expression protected by the First Amendment. There is
27

1 no detriment being suffered by the state in accepting for publication candidate
2 statements from legitimate candidates willing to pay for the publication and the
3 submission is made during the time when submissions are being still open for
4 regular replacements candidates.
5

6 . 49. Plaintiff and other write in candidates submitting candidate
7 statements in the course of the election, constitute speech and expressive
8 conduct intended to share Plaintiffs' belief in the importance of participation
9 by all eligible citizens, including marginalized and excluded constituencies, in
10 the democratic process. Advocating for that belief by working to persuade
11 Californians to vote is core political speech and expression. *See Meyer*, 486
12 U.S. at 421-23.
13
14
15

16 50. Restrictions on protected political speech and expression violate the
17 First Amendment when they “significantly inhibit” election-related speech and
18 association and are “not warranted by the state interests ... alleged to justify
19 [the] restrictions.” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182,
20 192 (1999). Laws that burden core political speech are subject to “exacting
21 scrutiny” and will be upheld only if the restrictions are “narrowly tailored to
22 serve an overriding state interest.” *McIntyre v. Ohio Elections Comm’n*, 514
23 U.S. 334, 346-47 (1995).
24
25
26

27 51. The Defendant Shirley N Weber’s limitation of participation in the
28 California Voters; Guide to just the few persons who could register in the
TITLE OF DOCUMENT MEMORANDUM FOR TRO CASE NO: 21-5605
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1 artificially created 7 day period as replacement candidates and not allowing
2 write in candidates any such equal right even when time exists infringes on
3 Plaintiff's and all minority candidates' First Amendment rights. This action
4 chills the protected speech and expression that occurs during voter registration
5 and campaign activities.
6

7 52. The intent and effect of the Voter Guide participation limitation's effect
8 is to diminish and impair Plaintiff's and all persons including minorities
9 wishing to run for governor in their ability to engage in protected political
10 speech and expression. It is intended to suppress the dissemination of their
11 message however unpopular with the Democratic party before the People so
12 they can not make an informed decision as to whom to vote and support.
13
14

15 53. The Voter Guide publication limitation is not warranted by any
16 sufficiently weighty state interest. The State lacks any legitimate interest in
17 sowing doubt and uncertainty among eligible California voters by denying
18 access to the voters guide to qualified write in candidates many of whom may
19 have missed being a replacement candidate like the Plaintiff solely because of
20 the extremely short and artificially created narrow window of registration for
21 the election to wit: 7 days.
22
23
24

25 54. The Voter Guide participation limitation therefore represents an
26 unconstitutional restriction on political speech and expression and should be
27 enjoined.
28

1 55. “Some of [the Supreme] Court’s leading First Amendment precedents
2 have established the principle that freedom of speech prohibits the government
3 from telling people what they must say.” *Rumsfeld v. Forum for Acad. &*
4 *Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006). A law that “compel[s]
5 individuals to speak a particular message” is a content-based regulation of
6 speech and is therefore “presumptively unconstitutional.” *Nat’l Inst. of Family*
7 *& Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371 (2018).

10 56. The Voter Guide candidate participation limitation is not narrowly
11 tailored to serve any compelling or overriding state interest. To the extent the
12 government believes that the Voter Guide limitation is needed, the government
13 must speak for itself. Because the Voter Guide participation limitation denies
14 properly registered write in candidates for which people will be voting at the
15 election to submit a candidate statement simply because they are write in
16 candidates and for no other reason limits their 1st amendment right to speak
17 and thereby affects their fundamental right under California law to be a
18 candidate and run for office. As such the voter guide limitation for properly
19 registered candidates who will be registered while the submission window is
20 open for replacement candidates should have their candidate statements
21 published and the refusal to do so violates the First Amendment and should be
22 enjoined.
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1 57. The same rationale and logic exists for write in candidates having
2 their names included on the printed the ballots if registered before the time
3 that the ballots are printed. If the elections is extended then the ballot printing
4 date will be extended as well. So any addition of write in candidates names on
5 the ballots will not burden the state if said names are submitted prior to the
6 publishing date for the ballots.
7

8
9 **IV. PLAINTIFF SATISFIES THE REQUIREMENTS FOR**
10 **INJUNCTIVE RELIEF**

11 58. Under 28 U.S.C. § 1651, an injunction is appropriate if it is
12 “necessary or appropriate in aid of” the Court’s jurisdiction. *See Turner Broad.*
13 *Sys., Inc.*, 507 U.S. at 1301. This Court has “consistently applied [§ 1651]
14 flexibly and in conformity with” the principle that “a federal court may avail
15 itself of all auxiliary writs as aid in the performance of its duties, when the use of
16 such historic aids is calculated in its sound judgment to achieve the ends of
17 justice entrusted to it.” *United States v. New York Tel. Co.*, 434 U.S. 159, 172–73
18 (1977) (quotation marks omitted).
19
20
21

22 59. For the reasons explained above, only an emergency injunction can
23 stop the Defendant’s violations, protect Plaintiff’s constitutional rights, and
24 prevent electoral chaos.
25

26 60. No other legal remedy will suffice at this late stage. *See Clinton v.*
27 *Goldsmith*, 526 U.S. 529, 537 (1999) (“The All Writs Act invests a court with a
28

1 power essentially equitable and, as such, not generally available to provide
2 alternatives to other, adequate remedies at law.”). An injunction is also necessary
3 to protect this Court’s power to ensure that it is able to grant full relief necessary
4 to protect Plaintiffs and the integrity of the federal election. *Cf. New York Tel.*
5 *Co.*, 434 U.S. at 172 (“This Court has repeatedly recognized the power of a
6 federal court to issue such commands under the All Writs Act as may be
7 necessary or appropriate to effectuate and prevent the frustration of orders it has
8 previously issued in its exercise of jurisdiction otherwise obtained.”).

11 61. Plaintiffs have also shown that “there is a likelihood that irreparable
12 injury will result if relief is not granted.” *Am. Trucking Ass’ns, Inc.*, 483 U.S. at
13 1308. “Any time a State is enjoined by a court from effectuating statutes enacted
14 by representatives of its people, it suffers a form of irreparable injury.” *Maryland*
15 *v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers). The violation of
16 Plaintiff’s equal protection rights is also a form of irreparable injury. *See CBS,*
17 *Inc. v. Davis*, 510 U.S. 1315 (1994) (Brennan, J., in chambers) (granting stay
18 where irreparable harm would have resulted from First Amendment violation).

22 62. Plaintiff would also suffer irreparable harm because Election Day is
23 only days away and they will likely lose any prospect of meaningful relief should
24 the Defendant continue to implement her actions. *See Williams*, 89 S. Ct. at 2
25 (1968) (Stewart, J., in chambers) (granting injunction in election case where
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1 failing to do so would lead to “difficult if not insurmountable practical problems”
2 in terms of the ability to grant later relief).

3 63. Finally, there is no risk of harm to the public because the public
4 interest strongly favors safeguarding “public confidence in the integrity of the
5 electoral process.” *Crawford v. Marion Cty Election Bd.*, 553 U.S. 181, 197
6 (2008). Changing the voting landscape now would create uncertainty and
7
8 confusion among voters.

9
10 **V. THERE ARE NO VALID REASONS TO DENY**
11 **INJUNCTIVE RELIEF.**

12
13 64. Nothing prevents this Court from granting the requested relief.
14 *First*, with respect to standing, Plaintiff has standing to bring an Equal
15 Protection Clause challenge because as a write in candidate he will not be treated
16 the same as a replacement candidate when it comes to having his candidate
17 statement included in the voters guide, Plaintiff has therefore alleged the
18 concrete and particularized injury of being arbitrarily and disparately subject to a
19 different set of procedures than those of replacement candidates’ “The fact that
20 an injury may be suffered by a large number of people does not of itself make
21 that injury a nonjusticiable generalized grievance.” *Spokeo, Inc. v. Robins*, 578
22 U.S. ___, 136 S. Ct. 1540, 1548 n.7 (2016); *see also Fed. Election Comm'n v.*
23 *Akins*, 524 U.S. 11, (1998) (“Often the fact that an interest is abstract and the fact
24 that it is widely shared go hand in hand. But their association is not invariable,
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1 and where a harm is concrete, though widely shared, the Court has found ‘injury
2 in fact.’ . . . This conclusion seems particularly obvious where (to use a
3 hypothetical example) . . . *large numbers of voters suffer interference with voting*
4 *rights conferred by law.*”) emphasis added).

6 65. Second , abstention “rarely should be invoked, because the federal
7 courts have a ‘virtually unflagging obligation ... to exercise the jurisdiction given
8 them.”” *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992) (quoting *Colo. River*
9 *Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). *Pullman*
10 abstention does not apply because the Defendant’s actions raises federal
11 questions that cannot be answered by state law (or, at the least, present no
12 unsettled issues of state law). In addition, Plaintiffs’ challenge to the Defendant’s
13 actions implicates the United States Constitution, and does not involve a
14 “sensitive area of social policy upon which the federal courts ought not to enter.”
15 *Moore v. Sims*, 442 U.S. 415, 428 (1979).

19 **CONCLUSION**

21 66. For these reasons, Plaintiffs respectfully request that the Court
22 enjoin the Defendant’s actions by

- 23 a. Refusing to accept on the ballot anyone qualifying for as a write in
24 candidate for the California Governor Recall election if they register
25 by August 6, 2021 as a write in candidate; and
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1 b. Refusing to accept for publication in the Voter's Guide a candidate
2 statement from any write in candidate who registers for the election
3 by August 6, or until Oct 14l 2021 if the election is continued to
4 October 14 and both pays the required fee and submits a candidate
5 statement in conformity with the rules set forth in the Defendant's
6 Candidate Statement Guidelines.
7

8 c. holding the election on September 14, 2021 and instead moving the
9 date of the election back thirty days to Oct 14, 2021
10

11 pending entry by the Court of a final judgment in this action.
12

13 Dated July 29, 2021 Respectfully Submitted

14
15 s Michael Lynn Gabriel

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**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA
SAN JOSE**

	)	Case No.: 21-5605
MICHAEL LYNN GABRIEL	)	DECLARATION OF
)	
Plaintiff,	)	VIGNESH VENKAT
)	
vs.)	
)	
SHIRLEY N, WEBER,)	
Secretary of State)	
)	
Defendant.)	
))	

I, Vignesh Venkat declare under penalty of perjury of the United States of America

I am a person of Indian descent:

1. I would have considered running for governor except that the imposed requirement of disclosing 5 years of tax returns was both burdensome and , I felt, an invasion of my privacy

2. Now that the Superior Court of California of Sacramento County in the case of candidate Larry Elder has removed that requirement of filing tax returns as a condition for filing for running for governor, I am considering doing so if I can make the ballot and not be listed as a write in candidate.

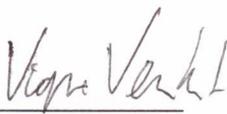
3. If the election is put back to Oct 14 where it would have been held if SB 152 had not be passed, then I can properly file as a replacement candidate and without having to file produce my tax returns

4. The special law SB152 which was passed solely to move up the election date was another factor in me not considering to run. Because of SB 152. there was only one week from July 9 to July 16 to prepare, assemble and file the required election materials: ie the Declaration of Candidacy, the nominating petition with 65 signatures, the Form 700 and the Forms 410 and 460 and the now unconstitutionally required tax returns. This all seemed too much to do in such short time especially given my other work and personal demands.

5. If the election is pushed back to Oct 14, I can then also submit a candidate statement and have it published in the Voters Guide which I cannot do if I can only run as a write in Candidate.

I declare under penalty perjury that the foregoing and correct under the laws of the United States of America.

Dated July28, 2021



Vignesh Venkat

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**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA
SAN JOSE**

	)	Case No.: 21-5605
MICHAEL LYNN GABRIEL	)	DECLARATION OF
)	
Plaintiff,	)	MICHAEL LYNN GABRIEL
)	
vs.)	
)	
SHIRLEY N, WEBER,)	
Secretary of State)	
)	
Defendant.)	
))	

1 I, Michael Lynn Gabriel, declare that:

2
3 1. I am the Plaintiff in this action.

4 2. I am a registered voter in California and my residence is in San
5 Mateo, County, Californians

6
7 3. I wished to run as a replacement candidate in the recall election of
8 Governor Newsom

9
10 4. On June 28, 2021, the California Legislature passed SB 152 which
11 moved up the election date at least 30 days by removing a statutorily mandated
12 30 day review period before the election could be held.

13
14 5. Because the review period was eliminated, instead of having at
15 least 40days to prepare for the election filing, a replacements candidates were
16 only able to register within a week period between June 9 through July 16.

17
18 6. I as well as 50 of the previously announced candidates were unable
19 to complete the filing requirements within that short 1 week period As such, we
20 will have to run as write in candidates.

21
22 7. While I missed the replacement candidate filing deadline, I did meet
23 the filing deadline for the placing my candidate statement in the Voters; Guide.

24
25 8. The Candidate Statement Guidelines required for publication of my
26 candidate statement in the Voters' Guide that I

- a. file the Form 500 Candidate Intention which I did
- b. submit a 250 word candidate statement which I did
- c. agree to campaign spending limitations which I did and
- d. pay the \$6,250 publication fee which I did with a cashiers check drawn on my Campaign Account with Bank of America

9. On July 16, 2021, I received email notice that because I will be a write in candidate and not a replacement candidate my candidate statement will not be published in the Voter's Guide.

10. I have, at this time, 111 signatures on nominating petitions for the election whereas only 65 valid signatures are needed to become an official write in candidate.

11. I can file at any time and become a write in candidate. When I do so, I will then also have to file the Form 700 Statement of Economic Interests.

12. I am willing to file now the both the nominating petitions and the Form 700 before the August 6 date if by doing so I can make the Voters Guide. Otherwise I can wait until August 31 and do it then ans still be a write in candidate.

13. I will do it before August 6 if I can get my candidate statement in the Voters Guide.

1 14. Replacement candidates have until August 6 to pay for their
2 candidate statement placement or it will not be in the Voters Guide. That means
3 that the Voters Guide will not be submitted for publication until after the August
4 6 date,
5

6 15. I can be a write in candidate before August 6 and if so I should be in
7 the Voters Guide.
8

9 16. It is a blatant denial of equal protection to keep me off the Voter
10 Guide simply because I am a write in candidate especially when I have timely
11 fulfilled all of the requirements and paid the money
12

13 17. If I am not going to be in the Voters Guide then the State should
14 refund my money. However, I do not want my money back. I want to be in the
15 Voters Guide for which I paid to be in so voters can see my planks.
16

17 18. I have detailed and significant solutions for the problems facing
18 California which run the gamut from the Access to American Courts Bill,
19 Immigration Reform, Environmental Reform, Legislative Reform Housing
20 Reform, Tax Reform and others. The Voters deserve to see my candidate
21 statement so they can evaluate and compare my solution and proposals with those
22 of the other candidates.
23
24

25 19. The state will not be burdened by publishing my candidate statement
26

1 as I have paid for its publication and the Voters' Guide is not yet finalized.

2 20. The Supreme Court has of California has held that running for office
3 is a fundamental right. Therefore included in the running for office is the
4 dissemination of the campaign message. As such, any limitation on getting the
5 message out to the voters should be subject to strict scrutiny.
6

7 21. Under the strict scrutiny test, no justification can be found to exist
8 for denying the publication of my candidate statement, when there is nothing to
9 do, the Voting Guide has not been finalized and full payment was made within
10 the submission period. The only stated reason for denial of the inclusion of my
11 candidate statement in the Voter's Guide is that I am a write in candidate which
12 makes no sense. The voters will be voting for write in candidates the same as
13 replacement candidates. Therefore, there is no reason for treating their candidate
14 statements differently before the Voters' Guide is submitted for publication
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18 22. I declare under penalty of perjury under the laws of the United
19 States of America that the foregoing is true and correct,
20

21 Dated. July 28, 2021

22 /s/ Michael Lynn Gabriel

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**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA
SAN JOSE**

MICHAEL LYNN GABRIEL	)	Case No.: 21-5605
Plaintiff,	)	SECOND DECLARATION OF
)	
vs.	)	MICHAEL LYNN GABRIEL
)	
SHIRLEY N, WEBER,)	
Secretary of State)	
Defendant.)	

I, Michael Lynn Gabriel, declare that:

1. The Defendant was served with the original complaint on July 23, 2021. The Proof of service has been filed with the Court.
2. The First Amended Complaint was served on the defendant on July 30. The proof of service for it has been filed with the court.

1 7. If the Plaintiff's candidate statement is not included in the Voters
2 Guide then his ability to reach all of the electorate before the election with his
3 message is virtually nil. The state has gone to almost an entirely mail in election.
4 In 2020 of the 17.785.151 votes cast 15,423,301 were mail in ballots.

6 8. As most voters submit their ballots through the mail most of them
7 would have made their decision based in the candidate statements in the Voters
8 Guide among which the Plaintiff would not be presented.

10 9. The list of write in candidates is only disclosed on the Secretary of
11 State's web site and at each county polling place. The only effective way for the
12 write in candidate to let all voters know that he or she is in the race is through a
13 candidate statement published in the Voters Guide. Plaintiff's candidate
14 statement will inform the voters that he is in the race and that the voters can go to
15 his web site to see his platform before making their decision

18 10. If the candidate statement of the Plaintiff is not published in the
19 Voters Guide the most effective avenue of campaigning would be closed to the
20 Plaintiff solely because he was a write in candidate.

22 11. There is no legitimate state interest advanced in denying write in
23 candidates having their candidate statements published in the Voters Guide
24 especially when in this situation
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- 1 1. The submission as made in full compliance set forth in the
- 2 Candidate Statement Guidelines which did not state a prohibition of
- 3 write in candidates not being in the Voters Guide.
- 4 2. It was paid for at the time
- 5 3. The Voters Guide submissions are still open
- 6 4. Denying the publication treats minority write in candidate
- 7 differently from other candidates and is both a denial of equal
- 8 protection and a violation of the Voting Rights Act.

9 12. A decision not to publish a candidate statement might be defensible
10 if the submission was made after the submission period. But that is not the case
11 herein. In that instance, it might be necessary for the state to redo everything.
12 That is not the case herein as nothing has yet been done. Nothing has been sent
13 out for printing and will not be for several more days, if at all.

14
15 **B. BEING DENIED A FUNDAMENTAL RIGHT IS IN ITSELF**
16
17 **IRREPARABLE HARM**

18 13. The California Supreme Court in *Thompson v. Mellon* 9 Cal. 3D 96
19 (1973) in striking down residency requirements to run for office that the right to
20 run for office is a fundamental right and that any state action impeding that right
21 must undergo strict scrutiny.
22

23 14. In applying the strict scrutiny test, there is found no justification for
24 not including the Plaintiff's candidate statement just because the Plaintiff is a
25 write in candidate. There will be no delay in the normal processing of the voters
26 guide nor will it cost any more money or effort on the part of the State to do so
27
28

1 and finally Plaintiff has already paid for the publication. Therefore the violation
2 of a fundamental right in unconstitutionally refusing to publish the candidate
3 statement is in itself a cause of irreparable harm.
4

5 **C. BREACH OF CONTRACT CAUSING IRREPARABLE HARM**
6

7 15. The Defendant committed a breach of contract with the Plaintiff in
8 her subsequent decision not to publish the candidate statement. The Plaintiff had
9 fully complied with the requirements set forth in the Candidate Statement
10 Guidelines so as to be published ad then paid for the publication which created an
11 enforceable contract.
12

13 16. The defendant in subsequently revising the candidate statement
14 guidelines so as to limit publication to only replacement candidates and then not
15 even refunding the payment is a breach of contract for which specific
16 performance is the proper remedy.
17

18 17. If Plaintiff is to have any hope of winning the election, the Plaintiff
19 needs to get his message before the voters and the single most cost effective way
20 to do so is through the candidate statement. The bottom line is that unless
21 Plaintiff's candidate statement is included in the Voters Guide a rather significant
22 number of voters will not see his message.
23

24 18. The irreparable harm is that Plaintiff is entitled to have the contract
25 enforced and his candidate statement published in the voters guide so as to reach
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1 the voters before the election. Not doing so prevents the Plaintiff from reaching
2 those voters who solely use the Voters Guide to determine for whom to vote.

3 19. Plaintiff does not have millions of dollars at his disposal to cover for the
4 Defendant's breach and pay for alternative advertising sufficient enough to reach
5 all the 17 million plus voters who would be reached through the Voters Guide.
6 As such the Plaintiff will suffer irreparable harm by the contract not be
7 specifically enforced because he cannot get his message to the voters in the most
8 efficient and practical manner.
9
10

11
12 **II. VIOLATION OF THE VOTING RIGHTS ACT WHICH CAUSED**
13 **MINORITY CANDIDATES NOT TO RUN IS IRREPARABLE HARM**
14

15
16 20. Plaintiff in addition to seeking a TRO based on his candidate
17 statement not being published, is also seeking the TRO to extend the election date
18 back 30 days to where it should have been based on the irreparable harm caused
19 by the violation of the Voting Rights Act in preventing a full and free election.

20
21 21. The actions of the Defendant requiring that tax returns be produced
22 and released as a condition for a person being a candidate was illegal.
23

24 22. The Secretary of State has acknowledged the illegality and
25 following the court decision has reversed her position and is no longer requiring
26 tax returns as a condition for candidacy. Defendant now states on her website:
27
28

1 “Income Tax Returns. Based on a recent court proceeding Election
2 Code Section 8902 was determined not to apply to recall election all
3 replacement candidates tax returns have been removed from the
4 Secretary of State's website”

5 23. No longer requiring tax returns, however, does not cure or remedy
6 the damage and harm caused to the election process. The Defendant had adopted
7 and implemented a practice in violation of the Voting Rights Act which
8 intimidated and coerced potential candidates into not running by requiring them
9 to unconstitutionally disclose and release their tax returns as a condition for
10 running for office. Actions by the state which unconstitutionally restrict access to
11 participation in an election violate the Voting Rights Act.
12
13

14 24. Such actions by the Defendant harm not only the potential candidate
15 but the minority community as well as all other voters by illegally limiting and
16 restricting those who can be candidates in the election
17

18 25. The TRO is designed to remedy and reverse the damage caused with
19 virtually no effect on the state. By simply moving the election back 30 days, it
20 will be exactly where it would have been had SB 152 not been passed to
21 improperly advance the election. By doing that, all candidates and especially
22 minority candidates who were dissuaded only because of the illegal tax return
23 requirement from running, will have the opportunity previously denied of filing
24 for the election without needing to waive their constitutional rights to do so.
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1 process unavailable to independent candidates for the office of
2 President. In taking that action, the Texas Legislature provided
3 no means by which an independent Presidential candidate might
4 demonstrate substantial voter support. *Given this legislative*
5 *default, the courts were free to determine on the existing record*
6 *whether it would be appropriate to order Senator McCarthy's*
7 *name added to the general election ballot as a remedy for what*
8 *the District Court properly characterized as an*
9 *"incomprehensible policy" violative of constitutional rights.*
10 *This is a course that has been followed before both in this*
11 *Court, see Williams v. Rhodes, 89 S. Ct. 1,21 L. Ed. 2d 69*
12 *(1968) (STEWART, J., in chambers), and, more recently, in*
13 *three District Court decisions involving Senator McCarthy,*
14 *McCarthy v. Nael, No. 76-0402 (RI Sept. 24, 1976); McCarthy v.*
15 *Tribbitt, No. 76-300 (Del. Sept. 16,1976); McCarthy v. Askew,*
16 *No. 76-1460-Civ-NCR (Fla. Sept. 15, 1976)."*

17 33. As in McCarthy, because of the Defendant's actions, the Plaintiff is
18 forced to run as a write in candidate rather than being listed in the ballot. The
19 Supreme Court recognized that harm attendant forced by the unconstitutional
20 actions of the State:

21
22 "And in *Lubin v. Panish*, 415 U. S. 709 (1974), the Court
23 characterized as "dubious at best" the intimation that write-in
24 provision was an acceptable means of ballot access: "The realities of
25 the electoral process . . . strongly suggest that 'access' via write-in
26 votes falls far short of access in terms of having the name of the
27
28

1 candidate on the ballot. . . . That disparity would, itself, give rise to
2 constitutional questions" *Id.*, at 719 n. 5.

3 34. It was specifically because the state had moved up the election in
4 violation of the Voting Right Act with it disparate impact on minority candidates
5 that the Plaintiff was unable to collect the filing within the week period but was
6 able to do so within a week later. Had the election date not been illegally
7 advanced, the Plaintiff would have had another full thirty days more to complete
8 the filing and would have done so with 23 days to spare
9

10
11 35. The Plaintiff will suffer irreparable harm if he is not placed on the
12 ballot both because

- 13 a. of the difficulty it would cause voters in being able to find and
14 discover that Plaintiff was a candidate in the election and
15 b. it would make it harder for Plaintiff to get his message out to the
16 voters
17

18 which was the intention of the Legislature in accelerating the election. This harm
19 is eliminated if the Plaintiff is added to the ballot list as a remedy for the
20 Defendant's unconstitutional violations and voting rights violations.

21 36. I declare under penalty of perjury under the laws of the United
22 States of America that the foregoing is true and correct.
23

24 Dated. July 31, 2021

/s/ Michael Lynn Gabriel

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**IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA
SAN JOSE**

	)	Case No.: 21-5605
MICHAEL LYNN GABRIEL)	
	)	[PROPOSED] TEMPORARY
Plaintiff,	)	RESTRAINING ORDER AND
	)	ORDER TO SHOW CAUSE WHY A
vs.	)	PRELIMINARY INJUNCTION
SHIRLEY N, WEBER,	)	SHOULD NOT ISSUE
Secretary of State)	
)	
Defendant)	
)	
)	

The Court has considered Plaintiff United States’ Ex Parte Application for a Temporary Restraining Order and an Order to Show Cause Why a Preliminary Injunction Should Not Issue, and the Declaration and Memorandum in support thereof.

1 IT IS HEREBY ORDERED that pending time to allow a full hearing for
2 determination of the Order to Show Cause Why a Preliminary Injunction Should
3 Not Issue, Defendant Shirley N. Weber, and all of her respective agents,
4 employees, or attorneys, shall be and hereby are restrained and enjoined from
5

6 a. Refusing to accept on the ballot anyone qualifying for as a write in
7 candidate for the California Governor Recall election if they register
8 by August 6, 2021 as a write in candidate; and
9

10 b. Refusing to accept for publication in the Voter's Guide a candidate
11 statement from any write in candidate who registers for the election
12 by August 6, or until Oct 14, 2021 if the election is continued to
13 October 14 and both pays the required fee and submits a candidate
14 statement in conformity with the rules set forth in the Defendant's
15 Candidate Statement Guidelines.
16
17

18 c. holding the election on September 14, 2021 and instead moving the
19 date of the election back thirty days to Oct 14, 2021,
20

21 pending entry by the Court of a final judgment in this action.

22 IT IS FURTHER ORDERED that the parties shall appear at _____
23 a.m./p.m. on _____, 2021, before the Honorable
24 _____ in Courtroom _____ located at
25 _____
26 _____ to discuss an appropriate schedule
27 for discovery, briefing, and a hearing to show cause why the Defendant and all
28

1 of her respective agents, employees, or attorneys, should not be preliminarily
2 enjoined from

3 a. Refusing to accept on the ballot anyone qualifying for as a write in
4 candidate for the California Governor Recall election if they register
5 by August 6, 2021 as a write in candidate; and

6
7 b. Refusing to accept for publication in the Voter's Guide a candidate
8 statement from any write in candidate who registers for the election
9 by August 6, or until Oct 14, 2021 if the election is continued to
10 October 14 and both pays the required fee and submits a candidate
11 statement in conformity with the rules set forth in the Defendant's
12 Candidate Statement Guidelines.

13
14
15 c. holding the election on September 14, 2021 and instead moving the
16 date of the election back thirty days to Oct 14, 2021,

17
18 IT IS SO ORDERED.

19 DATED: July , 2021

20 _____
21 The Hon. _____
22 United States District Judge

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, Bar number, and address): LAW OFFICE MICHAEL LYNN GABRIEL 1903a Cooley Avenue Palo Alto, CA 94303 TELEPHONE NO.: 650-888-9189 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): MICHAEL LYNN GABRIEL			FOR COURT USE ONLY
United States District Court, Northern District of California STREET ADDRESS: 280 S 1st St MAILING ADDRESS: 280 S 1st St CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Robert F. Peckham Federal Building			
PLAINTIFF/PETITIONER: MICHAEL LYNN GABRIEL		CASE NUMBER: 21-5605	
DEFENDANT/RESPONDENT: SHIRLEY N, WEBER, SECRETARY OF STATE			
PROOF OF SERVICE (CIVIL)	HEARING DATE/TIME: 	HEARING DEPT./DIV.: 	
Ref. No. or File No.: REF-8528205			

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of (specify documents):
DECLARATION OF VIGNESH VENKAT; SECOND DECLARATION OF MICHAEL LYNN GABRIEL; PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION; DECLARATION OF MICHAEL LYNN GABRIEL; MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
3. a. Party served (specify name of party as shown on documents served):
SHIRLEY N, WEBER, SECRETARY OF STATE
- b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b whom substituted service was made) (specify name and relationship to the party named in item 3a):
Eric Anderson, PERSON AUTHORIZED TO ACCEPT, who accepted service with direct delivery, with identity confirmed by subject stating their name, a black-haired white male approx. 45-55 years of age, 5'8"-5'10" tall and weighing 200-240 lbs.
4. Address where the party was served:
1500 11th Street, Sacramento, CA 95814
5. I served the party (check proper box)
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **08/02/2021** at (time): **2:09 PM**
 - b. **by substituted service.** On (date): _____ at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): _____ from (city): _____ or a declaration of mailing is attached.
 - (5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.

BY FAX



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- c. **by mail and acknowledgement of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): _____ (2) from (city): _____
- (3) with two copies of the *Notice and Acknowledgement of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40)
- d. **by other means** (*specify means of service and authorizing code section*): _____
- Additional page describing service is attached.

6. Person who served papers

- a. Name: **Roman White**
- b. Address: **2333 Cortez Lane, Sacramento, CA 95825**
- c. Telephone number: **916-504-6936**
- d. The fee for service was: **\$ 200.00**
- e. I am:

- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) registered California process server:
- (i) owner employee independent contractor. For: **ABC Legal Services, LLC**
- (ii) Registration No.: **2019-041** Registration #: **6779**
- (iii) County: **Sacramento County** County: **Los Angeles**

BY FAX

7. **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- or
8. **I am a California sheriff or marshal and I certify** that the foregoing is true and correct.

Date: 08/02/2021

Roman White

 (NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

Roman White

 (SIGNATURE)



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**PROOF OF SERVICE
(CIVIL)**

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