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DEPARTMENT OF JUSTICE

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August 5, 2021

VIA E-FILE

Hon. Lucy H. Koh
U.S. District Court, Northern District of California
San Jose Courthouse, Courtroom 8 – 4th Floor
280 South 1st Street
San Jose, CA 95113

RE: ***Gabriel v. Weber***, Case No: 5:21-cv-05605-LHK

Dear Judge Koh:

I write on behalf of Defendant, Dr. Shirley N. Weber, in her official capacity as California Secretary of State. On July 29, Plaintiff filed an Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, dated July 28, 2021. ECF No. 7. The following day, on July 30, the Court denied the motion, without prejudice. ECF No. 10. On August 2, 2021, Defendant was served with Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, dated July 28, 2021, and supporting papers. On August 3, Plaintiff re-filed with the Court his Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, dated July 28, 2021. ECF No. 14.

Given this unusual sequence of events, it is not clear whether the motion served on Defendant is the same motion the Court previously denied, and it is therefore not clear whether any response is required at this time. Accordingly, Defendant does not intend to file a response unless the Court so requests (and in the event the Court is inclined to grant any relief, Defendant respectfully requests the opportunity to respond before any relief issues).

In the meantime, Defendant wishes to inform the Court of several relevant events and deadlines governing the administration of the September 14, 2021, California Gubernatorial Recall Election.

- On July 21, 2021, the Secretary of State transmitted to elections officials in all 58 counties a certified list of the names of all candidates to be placed on the ballot for the September 14, 2021, Gubernatorial Recall Election. Cal. Elec. Code, § 8120.
- On July 31, the first set of ballots, which included the certified list of candidates, were mailed to overseas military voters. *Id.*, § 3114.
- At 5:00 p.m. tomorrow, August 6, the final text of the state voter information guide will be delivered to the Office of State Publishing for printing and distribution. This August 6 deadline follows the conclusion of a 20-day public viewing period which began on July 17, 2021, during which any elector may seek a writ of mandate in Sacramento County Superior Court to

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have any text amended or deleted from the guide. *Id.*, §§ 9082; 9092. Plaintiff did not seek such relief.

Any modification of the ballot at this juncture would result in an untenable situation where different voters receive different ballots with different lists of candidates. And any alteration of the August 6 deadline for finalization of the voter information guide will jeopardize the State's ability to print and distribute the nearly 14 million guides by the relevant deadlines under California law—the first of which is on August 24. *See id.*, § 9094(a). For these reasons alone, Plaintiff's request for the extraordinary remedy of a temporary restraining order should be denied. And, as noted above, Defendant is prepared to offer a fulsome response in opposition should the Court request it.

Respectfully submitted,



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Deputy Attorney General

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Attorney General

*On behalf of Defendant Dr. Shirley N. Weber, in her
official capacity as California Secretary of State*