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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,)	REPLY IN OPPOSITION TO
vs.)	LETTER TO THE COURT
SHIRLEY N, WEBER,)	
Secretary of State)	
Defendant.)	

1. Plaintiff requests that the letter to the court from the Letter filed on August 5, 2021 in Opposition to the Plaintiff’s TRO Motion be disregarded and the motion be treated as being unopposed for the following

**I. THE DEFENDANT HAS FAILED TO COMPLY WITH THE LOCAL
RULES OF COURT IN HER OPPOSITION.**

1 (5) Argument by the party, citing pertinent authorities.

2 The Defendant has not complied with either set of requirements and instead just
3 submitted a rambling unsupported argument which distorts the factual and
4 procedural history of the action

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6 3. The defendant anywhere in the letter refute the factual allegation
7 that the voting act was violated. The defendant also does not deny that the
8 election was accelerated only to help Governor Newsom win this election. The
9 Defendant also does not deny the allegation regarding the denial of write
10 candidates of their right to have a candidate statement published. The Defendant
11 also does not deny that she required tax return disclosures from candidates which
12 requirement was subsequently struck down by the Superior Court of California.
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15 4. All of these are violations of the Voting Rights Act and each of
16 which is sufficient because of its deleterious and disparate impact on the election
17 to require the TRO being issued as redress
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19 5. As the Defendant has not complied neither with the local rules the
20 defendant's letter should be disregarded in its entirety the TRO application
21 treated as being unopposed.
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25 **II. THE COURT DOES NOT HAVE THE JURISDICTION TO**
26 **DISREGARD THE SUPREME COURT AS SOUGHT BY THE**
27 **DEFENDANT**
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2 6. The Defendant seeks to have the TRO denied because of the
3 closeness of the election. That is exactly what the Defendant and State of
4 California planning to argue if their conduct was questioned in Court for voting
5 rights.

6
7 7. The only reason the time may be short is because the defendant
8 arranged for it to be short by their acceleration of the election. The fault is on the
9 defendants who now claim the shortness of time before election which they
10 caused is ground for the court not to redress the constitutional and voting rights
11 violations even though there is plenty of time to do so

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14 8. All that the Plaintiff asks is that the election be put back at lease a
15 month so California can then comply with the law in effect before the partisan
16 SB152 was enacted just to move the election up and rig the election for Governor
17 Newsom in his recall.

18
19 9. The Defendant does not deny that SB152 was passed for the purpose
20 of rigging the election. Regardless, it still had a deleterious and disparate impact
21 on the election. It cannot be denied because it is shown in the defendant's own
22 web site that 94 people wanted to run and had filed a Form 500 Candidate
23 Intention but of those 94 only 44 people could complete everything needed to
24 be done in the accelerated one week filing period. That is clear proof that the
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1 acceleration disparately affected the majority of the potential candidates' ability
2 to be able to run, the classic violation of the Voting Rights Act.

3 10. Another voting rights violation which cannot in good faith be denied
4 is the illegal tax return disclosure requirement.. A California Superior court
5 ordered the Defendant to stop requiring it. Its intent and its effect on the election
6 is obvious, people otherwise wishing to run were discouraged. The declaration of
7
8 Mr. Venkat points that out in one instance

9
10 11. The arbitrary candidate statement exclusion for write in candidates is
11 equally violative of the Voting Rights Act as well as the 14th and 15th
12 amendments for the Constitution.

13
14 12. An argument similar to the Defendant's was both made and lost
15 before the Supreme Court in *McCarthy vs Driscoll* 492 us (1976) covered in
16 the moving papers. The Supreme Court was not persuaded by the argument that
17 shortness of time before the election prevented redress of the constitutional
18 violations even though the lower courts were. and ordered redress for the
19
20 violations

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22 13. In this case nothing has gone to the printers yet so the election can
23 be continued or the the ballots and voters guide printed even if the election sis not
24 continued with no adverse efecton the State

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26 14. Defendant has not cited any authority for this court that shows that
27 the Supreme Court reversed its holding of McCarthy and that now the
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1 Constitution and Voting Rights Act can be violated with no repercussions just
2 with an argument that doing so is bothersome to the State.

3 15. We are either a country of law or order or a banana republic where
4 the party in power can rig an election openly with all to see without judicial
5 review.
6

7 **CONCLUSION**
8

9 16. Since the Defendant has not complied with neither the local rules of
10 court, the TRO should be treated as being unopposed.

11 17. The Plaintiff is simply unable to respond to arguments never made
12 or to points and authorities never submitted.
13

14 18. Both the Supreme Court and the Voting Rights Act set forth the
15 responsibility of the State is to conduct full and free elections and liabilities are
16 imposed when that is not done.
17

18 19. The time line of the case are shown in the docket sheet and shows
19 that the plaintiff has worked promptly and tirelessly to get to this point for
20 resolution by this Court. The complaint was filed on July 21 and served July 23
21 just a week after the election filing deadline expired any only 2 days after the
22 Defendant released the materials on July 19, for people to be able to file as wrote
23 in candidates, This as followed in the next week by the filing of an amended
24 complaint which was then followed by the first TRO which was denied solely
25 for procedural grounds not on its merits with leave to amend. It was refiled on
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1 the next day and served on August 2. It is now August 5 and everything is still
2 open for the Defendant.

3 20. The Voter Guide has gone as yet to the printers and the putting the
4 election back does nothing more than placing it back to where it was originally
5 supposed to be held to begin. The only person actually harmed is the Governor
6 who would have to face a full and fair election with candidate neither intimidated
7 not forced from running by the acceleration of the election nor the illegal
8 requirement of disclosing their tax returns.
9
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11 21. We are dealing here in this case with both Constitutionally
12 guaranteed rights as well the Voting Rights Act which was passed to guarantee
13 the rights of all Americans including minorities, to be able to have their election
14 free from rigging.
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17 22. If the court does not stop such conduct under these conditions, when
18 as shown: the election was improperly accelerated just to make it more difficult
19 for opposition candidates to enter, when illegal conditions are attached in order
20 to keep them from running like imposing illegal tax return disclosure
21 requirements and finally arbitrarily keeping qualified candidates from having
22 their candidate statements published when would it act?
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25 23. Each of the Defendant's action were deliberately intended to have a
26 chilling and disparate impact on the election and for that reason they must be
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1 redressed. This case is nearly very similar to McCarthy factually and like
2 McCarthy injunctive relief should be granted.
3

4 Respectfully submitted

5
6 Dated. August 5, 2021

/s/ Michael Lynn Gabriel

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