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ORRIN E. HEATLIE, MIKE NETTER, and THE  
9 CALIFORNIA PATRIOT COALITION –  
RECALL GOVERNOR GAVIN NEWSOM

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SACRAMENTO**

13 GAVIN NEWSOM,

14 Petitioner,

15 vs.

16 DR. SHIRLEY N. WEBER, in her official  
17 capacity as Secretary of State of the State of  
California,

18 Respondent,

20 ORRIN E. HEATLIE, MIKE NETTER, and  
21 THE CALIFORNIA PATRIOT  
COALITION – RECALL GOVERNOR  
22 GAVIN NEWSOM,

23 [PROPOSED] Real  
Parties in Interest.

Case No.: 34-2021-80003666-CU-WM-GDS

**EX PARTE APPLICATION OF  
PROPOSED INTERVENORS ORRIN E.  
HEATLIE, MIKE NETTER, and THE  
CALIFORNIA PATRIOT COALITION –  
RECALL GOVERNOR GAVIN  
NEWSOM, TO INTERVENE IN ACTION**

**[DECLARATION OF ORRIN E.  
HEATLIE FILED CONCURRENTLY  
HEREWITH]**

Date: TBD

Time: TBD

Dept: 17

[The Honorable James P. Arguelles]



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1 Proposed Intervenors ORRIN E. HEATLIE, MIKE NETTER, and THE CALIFORNIA  
2 PATRIOT COALITION – RECALL GOVERNOR GAVIN NEWSOM (“Proposed Intervenors”)  
3 respectfully file this *Ex Parte* Application to Intervene in the above-captioned action and for  
4 permission to file an Opposition to Petitioner Gavin Newsom’s (“Newsom” or “Petitioner”)  
5 Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunctive Relief.

6 **PRELIMINARY STATEMENT**

7 1. **The Proposed Intervenors simply seek to have Newsom follow the law.** The  
8 arguments articulated by Newsom in his Petition/Complaint reveal precisely why his recall is  
9 being sought in the first place. Rather than adhere to the clearly established law of this state,  
10 Newsom instead seeks to thwart the rules to suit his own convenience and political positions (or,  
11 as in this case, his own incompetence). Making matters worse – Newsom is the very person who  
12 signed into law the statute he now seeks to skirt.

13 2. Elections Code section 11320(c) clearly and unequivocally states that the officer  
14 subject to a recall “*shall* inform the Secretary of State whether the officer elects to have a party  
15 preference identified on the ballot *by the deadline for the officer to file an answer* with the  
16 Secretary of State.” (Emphasis added.) The Legislature’s use of the term “shall” states a  
17 mandatory requirement.

18 3. As his lawsuit now readily admits, Newsom failed to meet this deadline. In fact,  
19 he did not file his notice of party preference until *over a year after* his answer was filed, and thus  
20 more than a year after his law required his notice of party preference to be filed.

21 4. Ideally, a competent and forthright leader in this situation would have followed the  
22 law – his law – in the first place, and once he violated the law, accepted the consequences thereof.  
23 Newsom is no such leader. On the contrary, Newsom now attempts to convince this Court that  
24 this rule should not apply to him, as it is somehow purposeless and unnecessary

25 **I. INTRODUCTION**

26 **A. The Proposed Intervenors**

27 The Proposed Intervenors in this action have a direct interest in seeing that Newsom  
28 follows California law and is recalled. Orrin E. Heatlie is the Lead Proponent of the recall, a

1 registered California voter and a Founding Member of the California Patriot Coalition – Recall  
2 Gavin Newsom (the “Coalition”). Mike Netter is a registered California voter and also a  
3 Founding Member of the Coalition. The California Patriot Coalition – Recall Governor Gavin  
4 Newsom (FPPC ID No. 1424018) is a primarily formed political action committee to recall  
5 Governor Gavin Newsom.

6 California Elections Code section 11320(c) was added by the Legislature through Senate  
7 Bill 151, which became effective January 1, 2020, after being signed into law by Governor  
8 Newsom. SB 151, ch. 556, 2019 Cal. Leg. 2019-2020 Sess. California Elections Code section  
9 11320(c) provides among other things, certain deadlines with respect to the now scheduled  
10 September 14, 2021 special election to recall Governor Newsom. Accordingly, Newsom was  
11 required to file his party preference election in February 2020, when he was required to file his  
12 answer to the initial notice of intent to circulate the recall petition. Elec. Code, § 11320(c).

13 On June 28, 2021, Newsom filed this lawsuit which seeks to allow him to skirt that very  
14 law.

15 **B. This Action in a Nutshell**

16 In a nutshell, Newsom is suing Secretary of State Shirley N. Weber to cause his party  
17 affiliation (Democrat) to appear next to his name on the ballot for the recall election that will  
18 determine if he is forced out of office. The lawsuit comes after his campaign failed to file the  
19 appropriate paperwork that was due *sixteen (16) months ago* when he responded to Mr. Heatlie’s  
20 recall petition, to indicate whether he wanted his party reference printed by his name on the ballot.  
21 That requirement was part of a new law Newsom signed that took effect in January 2020. Elec.  
22 Code, § 11320(c).

23 Newsom’s instant lawsuit follows his backroom effort to get Dr. Weber to voluntarily  
24 excuse Newsom’s failure. To her credit, Respondent opted to uphold the law. Before the law,  
25 politicians targeted in recalls were not allowed to have their party next to their names.

26 In short, Newsom signed a law allowing him to place his party preference next to his name  
27 on the ballot, violated that law by failing to meet the deadline by over a year, tried unsuccessfully

1 to get the Secretary of State to help him skirt the law, and when she refused, Newsom brought this  
2 lawsuit.

3 Left with no choice but to try and avoid his own law, Newsom now remarkably criticizes  
4 the law in his Petition, stating for example, that there is “no discernable reason” for the law’s  
5 requirement he now seeks to change. Newsom conveniently argues that “no prejudice results”  
6 from his failure to comply with section 11320(c). In so doing, he makes light of the serious  
7 repercussions of his error. However, as will be argued more fully in the Proposed Intervenors’  
8 Opposition to the Writ, Newsom’s remarkable act of suing his own appointed Secretary of State,  
9 provides exhibit A of the potential magnitude and prejudice of his filing error and of his requested  
10 relief. It is a rare day indeed when a state governor sues his own secretary of state, and it is even  
11 more rare when the lawsuit is brought to help further the governor’s own personal political  
12 interests. In this regard and without limitation, Newsom well knows what one former Democrat  
13 political strategist was recently quoted as saying:

14 “Most California voters are not deeply engaged, and some may not know  
15 Newsom’s party affiliation. ... It makes all the sense in the world for the governor  
16 to want to be identified on the ballot as a Democrat because ... [i]f he can make  
17 sure that Democratic voters in California know there’s a recall ... and know that he  
18 is one of them, he beats the recall.”<sup>1</sup>

19 Thus, the prejudice to those seeking to recall Newsom, including to the Proposed  
20 Intervenors, will be significant should Newsom be allowed to provide himself with a  
21 significant advantage of putting a “D” or “Democrat” next to his name on the ballot in  
22 violation of the requirements of Elections Code section 11320(c) -- which clearly provides  
23

24

25 <sup>1</sup> *California Governor Sues to Get Party ID on Recall Ballot*, Kathleen Ronayne, June 29, 2021,  
26 Associated Press, quoting Darry Stragow. Although not directly in issue here, Newsom and his party have  
27 for many years taken merciless advantage of the “not deeply engaged” voters which Newsom now tacitly  
28 asserts must be educated. (See e.g. Proposition 47 which was falsely sold to the voters as “The Safe  
29 Neighborhoods and Schools Act” and which has led to a massive explosion in crime throughout  
30 California. See also, Proposition 6, which asked the voters to repeal approximately 60 cents in taxes on  
31 every single gallon of gasoline they bought at the pumps, but which proposition was defeated because it  
32 was disingenuously sold to the voters as eliminating road repair and transportation funding.)

1 that the officer subject to a recall “*shall* inform the Secretary of State whether the officer  
2 elects to have a party preference identified on the ballot *by the deadline for the officer to*  
3 *file an answer* with the Secretary of State.” And no one can doubt for a moment, that if  
4 the tables were turned and for example, a prominent candidate for the special recall  
5 election fails to timely comply with the nomination documents, Newsom and the Secretary  
6 of State will provide them no leniency whatsoever and preclude such candidate from  
7 appearing on the recall ballot.

8 It is left to the Proposed Intervenors to argue for themselves and the great People of  
9 California to require that Newsom follow the law and not be given special treatment.

## 10 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### 11 **A. Chronology Of Recall Petition**

12 On February 20, 2020, Proposed Intervenor Orrin E. Heatlie filed a Notice of Intent to  
13 Circulate a Recall Petition against Governor Gavin Newsom with the Secretary of State.  
14 (Declaration of Orrin E. Heatlie (“Heatlie Decl.”), ¶ 4.) *See* Elec. Code §§ 11006, 11020, 11021,  
15 11022. Section 11020(b) requires a “statement, not exceeding 200 words in length, of the reasons  
16 for the proposed recall.” Proposed Intervenor’s notice identified the following reasons:

17 Governor Newsom has implemented laws which are detrimental to the citizens of  
18 this state and our way of life. Laws he endorsed favor foreign nationals, in our  
19 country illegally, over that of our own citizens. People in this state suffer the  
20 highest taxes in the nation, the highest homelessness rates, and the lowest quality of  
21 life as a result. He has imposed sanctuary state status and fails to enforce  
22 immigration laws. He unilaterally over-ruled the will of the people regarding the  
23 death penalty. He seeks to impose additional burdens on our state by the following;  
24 removing the protections of Proposition 13, rationing our water use, increasing  
25 taxes and restricting parental rights. Having no other recourse, we the people have  
26 come together to take this action, remedy these misdeeds and prevent further  
27 injustices. (Heatlie Decl., ¶ 4.)

28 Because the recall was launched before the Covid-19 pandemic, the statement of reasons  
29 did not include the Governor’s subsequent curtailment of Californians’ civil liberties in response  
30 to the pandemic. However, those measures took a central importance to the recall campaign.





1 On or about March 2, 2020, Governor Newsom filed his answer with the Secretary of  
2 State. Between March and early June, Heatlie was in contact with Respondent Weber's  
3 predecessor, Alex Padilla's office regarding the content of the recall petition and submitted several  
4 drafts of the petition for the Secretary of State's approval.

5 On June 10, 2020, the Secretary of State approved petitions for circulation for the recall of  
6 Governor Newsom. (Heatlie Decl., ¶ 7.)

7 On or about June 28, 2021, in an apparent effort to schedule the recall election as soon as  
8 possible, the Democrat controlled Legislature approved a budget trailer bill, AB 152, which  
9 eliminated the need for the Joint Legislative Budget Committee to review and comment on the  
10 cost of the election. This legislative move (which carved approximately at least one month out of  
11 the election scheduling process) allowed the Respondent to certify the recall and on July 1, 2021.

12 On September 14, 2021, the Lieutenant Governor called the special election for September  
13 14, 2021.

14 **B. During the Recall Process, Proposed Intervenors Gained Unique Rights and**  
15 **Held and Oversaw Many Functions and Responsibilities Relating to the**  
16 **Massive and Historic Recall**

17 Mr. Heatlie was appointed by the California Secretary of State on June 10, 2020 to be  
18 Lead Proponent of the recall. As a result, Mr. Heatlie's name appears on all recall petitions. The  
19 Proposed Intervenors oversaw, supervised and were directly involved in California Patriot  
20 Coalition's historic and massive recall effort. (Heatlie Decl., ¶ 8.)

21 By way of example and without limitation, the Proposed Intervenors gathered names of  
22 proponents, prepared the requisite petitions, organized hundreds of volunteers statewide,  
23 developed, maintained and updated the Coalition's website for public use and access, oversaw  
24 and ran a statewide publication campaign, handled fundraising efforts, contracted with an outside  
25 service to pre-verify petition signatures, regularly delivered signed petitions to county Registrar  
26 Records offices statewide, commenced legal action to extend the signature deadline because of  
27 the Pandemic, established and ran a central mailroom to oversee and preserve petitions, oversaw  
28 traditional and social media regarding the recall effort, established and provided a running tally of

1 signatures by county for public transparency, and held regular communications meetings to keep  
2 the public informed of how the recall was proceeding and to answer questions. (Heatlie Decl.,  
3 ¶ 9.)

4 The recall campaign had a large network of volunteers who were recruited to support the  
5 signature-gathering efforts. The campaign which had a team of regional and county chairpersons  
6 overseeing a network of several hundred volunteers managing petition circulation and drop-off  
7 locations throughout the state. By approximately October 2020, the campaign had 17 regional  
8 managers, and 139 county-level administrators, and dozens of additional volunteers serving in a  
9 managerial or supervisory capacity as “authorized personnel” to help organize the campaign’s on-  
10 the-ground operations. Also by October 2020, the recall campaign was actively relying on the  
11 more than 5,000 volunteers who had registered with the campaign to collect and process  
12 signatures. (Heatlie Decl., ¶ 10.)

13 **C. Newsom Violates Elections Code Section 11320(c) And Fails To Timely File**  
14 **His Party Preference Request**

15 Newsom’s campaign failed to file the appropriate paperwork that was due in February  
16 2020 when he responded to Mr. Heatlie’s recall petition, to indicate whether he wanted his party  
17 reference on the ballot as required by California Elections Code section 11320(c), which provides:

18 The following shall appear on the ballots at every recall election, except in the case  
19 of a landowner voting district, with respect to each officer sought to be recalled:

20 (a) The question “Shall [name of officer sought to be recalled] be recalled  
(removed) from the office of [title of office]?”

21 (b) To the right of the foregoing question, the words “Yes” and “No” on separate  
22 lines with an enclosed voting space to the right of each.

23 (c) If the officer sought to be recalled holds a voter-nominated office, the officer  
24 may elect to have the officer’s party preference identified on the ballot. **The officer**  
25 **shall inform** the Secretary of State whether the officer elects to have a party  
26 preference identified on the ballot **by the deadline for the officer to file an**  
27 **answer with the Secretary of State** pursuant to Section 11023. The Secretary of  
State shall disseminate this information to all appropriate county elections officials.  
The statement of party preference shall appear immediately to the right of and on  
the same line as the officer’s name, or immediately below the officer’s name if  
there is not sufficient space to the right of the officer’s name, and shall appear in  
substantially the following form:

1 (1) If the officer stated a political party preference on the officer’s affidavit of  
2 registration, the statement shall read: “Party Preference: \_\_\_\_\_” (inserting the name  
3 of the qualified political party stated on the affidavit of registration.) The listed  
4 political party preference shall be the political party preference stated on the  
5 officer’s affidavit of registration at the time the notice of intention is filed with the  
6 elections official pursuant to Section 11021.

7 (2) If the officer did not state a political party preference on the officer’s affidavit  
8 of registration, the statement shall read: “Party Preference: None.”

9 (3) If the officer elects not to have the officer’s political party preference identified  
10 on the ballot, or if the officer fails to inform the Secretary of State whether the  
11 officer elects to have a party preference identified on the ballot by the deadline  
12 for the officer to file an answer with the Secretary of State, the statement of  
13 party preference shall not appear on the ballot.

14 *(Amended by Stats. 2019, Ch. 566, Sec. 1. (SB 151) Effective January 1, 2020.) (Highlighting and*  
15 *Emphasis added.)*

16 **D. Newsom Files His Petition For Writ Of Mandate Against His Own Secretary**  
17 **Of State Who Does Not Represent The Interests Of The Recall Proponents**

18 On or about June 19, 2021, Newsom sought a backroom deal by Respondent to grant him  
19 permission to circumvent the section 11320(c) filing deadline. (Petition at ¶ 10 & Exh. B.)  
20 Respondent declined Newsom’s request and essentially told him to go to Court. (Petition at ¶ 10.)

21 On or about June 28, 2021, with full knowledge of his party’s ongoing and politically  
22 supercharged efforts to speed up the date of the recall election (based on the apparent belief that  
23 the sooner the election is held, the better it will be for Newsom), Newsom filed this action.

24 The only Respondent presently in the action is Dr. Weber. Although to her credit, Dr.  
25 Weber refused to accept Newsom’s backroom effort to circumvent section 11320(c), the Proposed  
26 Intervenor’s interests are not adequately represented by the Respondent and they highly doubt that  
27 a vigorous opposition will be offered by Respondent to what Newsom apparently believes will be  
28 a rubberstamp by the Court approving his request. Consequently, the Proposed Intervenor who  
29 have a direct interest relating to the action and disposition of the action plan to submit that  
30 Opposition.

1 **III. LEGAL ARGUMENT**

2 **A. Proposed Intervenors Are Entitled To Intervene As A Matter Of Right**

3 A court shall allow a nonparty to intervene in an action or proceeding as a matter of right  
4 if (1) the request for intervention is timely, (2) the non-party seeking intervention claims an  
5 interest relating to the property or transaction that is subject of the action and the disposition of  
6 the action may impair or impede that person’s ability to protect that interest, and (3) the non-  
7 party’s interest is not adequately represented by one or more of the existing parties. Cal. Code  
8 Civ. Proc. § 387(d)(1)(B); see also *Siena Court Homeowners Assn. v. Green Valley Corp.*, 164  
9 Cal.App.4th 1416, 1423-1424 (2008). “The purpose of allowing intervention is to promote  
10 fairness by involving all parties potentially affected by a judgment, and for that reason the  
11 provision should be liberally construed in favor of intervention.” *Lindelli v. Town of San Anselmo*,  
12 139 Cal.App.4th 1499, 1504-1505 (2006). “A nonparty shall petition the court for leave to  
13 intervene by noticed motion or ex parte application.” Cal. Code Civ. Proc. § 387(c).

14 **1. Proposed Intervenors’ Request For Intervention Is Timely**

15 “[I]t is the general rule that a right to intervene should be asserted within  
16 a reasonable time and that the intervenor must not be guilty of an unreasonable delay after  
17 knowledge of the suit.” *Allen v. California Water & Tel. Co.*, 31 Cal.2d 104, 108 (1947). In  
18 determining whether a motion to intervene is timely, courts consider three factors: (1) the stage of  
19 the proceedings at which intervention is sought; (2) prejudice to the other parties, and (3) the  
20 reason for and length of any delay. *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th  
21 Cir. 2004). Courts should evaluate the timeliness of a motion to intervene based on the totality of  
22 the circumstances. *Day v. Apoliona*, 505 F.3d 963, 965 (9th Cir. 2007).<sup>2</sup>

23 Proposed Intervenors clearly have satisfied the reasonable timeliness requirement. This  
24 action was filed on June 28, 2021. This *ex parte* application was filed on the first Court day  
25

26  
27 <sup>2</sup> See also *Carlsbad Police Officers Association v. City of Carlsbad*, 49 Cal.App.5th 135,  
151 (2020) (“[S]ection 387 is modeled in part after rule 24 of the Federal Rules of Civil  
Procedure. Statutory language allowing intervention of right was added to section 387 in 1977  
and ‘is in substance an exact counterpart’ to the parallel federal rule. . . and we may look to  
authorities construing the parallel federal rule for guidance.”)

1 following the July 4, 2021 holiday. There has been no delay and there is no prejudice whatsoever  
2 to the parties by caused by the timeliness of the instant filing. *See United States v. Carpenter*, 298  
3 F.3d at 1125 (allowing intervention 18 months after complaint had been filed); *Sage*  
4 *Electrochromics, Inc. v. View, Inc.*, 2013 WL 6139713, at \*2 (N.D. Cal., Nov. 21, 2013, 12-CV-  
5 06441-JST) (finding seven month delay to not be “extraordinary” and permitting intervention);  
6 *Continental Ins. Co. v. Cota*, 2008 WL 4848652, at \*2 (N.D. Cal., Nov. 7, 2008, 07-5800 SC)  
7 (intervention was timely when sought within two months after learning interests may be  
8 implicated).

9                   **2.       Proposed Intervenors Have An Interest Relating To Subject Of This**  
10   **Action**

11                   Article II, section 1 of the California Constitution proclaims:

12                   **“All political power is inherent in the people. Government is instituted for**  
13                   **their protection, security, and benefit, and they have the right to alter or**  
14                   **reform it when the public good may require.”** (Emphasis added.)

15                   The power of the electorate to recall and remove elected officials is enshrined in  
16 that same Article II, sections 13 through 19.

17                   Pursuant to Elections Code sections 11006 and 11020-11022, Proposed Intervenors filed  
18 and published the notice of intention to circulate a recall petition. Proposed Intervenors  
19 undertook the obligation of drafting the recall petition and statement of grounds for recall,  
20 circulated and published the petition, and ran and oversaw a Herculean statewide operation,  
21 ultimately successfully collecting the requisite number of signatures required for certifying the  
22 recall. *See Elec. Code*, §§ 11041-11047, 11103.

23                   Under these statutory provisions, the official proponents of a recall campaign are  
24 recognized as having a distinct role – involving both authority and responsibilities that differ from  
25 other supporters of the measure – with regard to the recall measure the proponents have  
26 sponsored. The Proposed Intervenors likewise expended and donated massive amounts of their  
27 personal time and effort to oversee the scores of matters required to certify only the second recall

1 election in California history. The Proposed Intervenors have staked their reputations on  
2 successfully satisfying the daunting requirements of recalling a sitting California Governor.

3 In analogous circumstances, cases are legion in California permitting proponents of a  
4 ballot initiative to participate as parties in proceedings involving challenges to an initiative  
5 measure. *See Independent Energy Producers Association v. McPherson*, 38 Cal. 4th 1020 (2006)  
6 (proponent of ballot initiative permitted to participate as real party in interest to pre-election  
7 challenge); *Costa v. Superior Court*, 37 Cal. 4th 986, 1001 (2006) (same); *Senate of the State of*  
8 *California v. Jones*, 21 Cal. 4th 1142 (1999) (same); *Brosnahan v. Eu*, 31 Cal.3d 1 (1982) (same).  
9 Case law holds likewise in the federal context. *Yniguez v. State of Arizona*, 939 F.2d 727, 735  
10 (9th Cir. 1991) (“there is a virtual *per se* rule that the sponsors of a ballot initiative have sufficient  
11 interest in the subject matter of the litigation to intervene pursuant to Fed. R. Civ. P. 24(a).”);  
12 *Perry v. Brown*, 671 F.3d 1052, 1064 (9th Cir. 2012) (conferring authority on the official  
13 proponents of Proposition 8 to defend the constitutionality of that initiative); *Prete v. Bradbury*,  
14 438 F.3d 949, 954 (9th Cir. 2006) (ruling that a public interest group and chief petitioner who  
15 supported “an initiative [had] a ‘significant protectable interest’ in defending the legality of the  
16 measure”); *Washington State Bldg. & Constr. Trades Council v. Spellman* 684 F.2d 627, 630 (9th  
17 Cir. 1982) (holding that “the public interest group that sponsored the [challenged] initiative[] was  
18 entitled to intervention as a matter of right under Rule 24(a)”).

19 Recently the California Supreme Court unanimously ruled that “the official proponents of  
20 the initiative are authorized ... to appear and assert the state’s interest in the initiative’s validity.”  
21 *Perry v. Brown*, 52 Cal. 4th 1116, 1127 (2011). In making its ruling, the California Supreme  
22 Court stated:

23 Plaintiffs have not cited, and our research has not disclosed, any decision in which  
24 the official proponents of an initiative measure were precluded from intervening  
25 or appearing as real parties in interest in a postelection case challenging the  
26 measure’s validity, even when they did not have the type of distinct personal,  
27 legally protected interest in the subject matter of the initiative measure that would  
ordinarily support intervention or real party in interest status on a particularized  
interest basis. Instead, they have been permitted to participate as parties in such  
litigation simply by virtue of their status as official proponents of the challenged  
measure.

1 *See Perry v. Brown*, 52 Cal. 4th at 1147-1148.

2 Here, Proposed Intervenors are the official proponents of the Recall Campaign and, as  
3 such, they hold unique legal statuses regarding the Recall. By way of example and without  
4 limitation:

5 Mr. Heatlie was appointed by the California Secretary of State on June 10, 2020 to be  
6 Lead Proponent of the recall. As a result, Mr. Heatlie’s name appears on all recall petitions. The  
7 Proposed Intervenors oversaw, supervised and were directly involved in California Patriot  
8 Coalition’s historic and massive recall effort. (Heatlie Decl., ¶ 8.)

9 By way of example and without limitation, the Proposed Intervenors gathered names of  
10 proponents, prepared the requisite petitions, organized hundreds of volunteers statewide,  
11 developed, maintained and updated the Coalition’s website for public use and access, oversaw  
12 and ran a statewide publication campaign, handled fundraising efforts, contracted with an outside  
13 service to pre-verify petition signatures, regularly delivered signed petitions to county Registrar  
14 Records offices statewide, commenced legal action to extend the signature deadline because of  
15 the Pandemic, established and ran a central mailroom to oversee and preserve petitions, oversaw  
16 traditional and social media regarding the recall effort, established and provided a running tally of  
17 signatures by county for public transparency and held regular communications meetings to keep  
18 the public informed of how the recall was proceeding and to answer questions. (Heatlie Decl.,  
19 ¶ 9.)

20 In this case, Petitioner Newsom is directly challenging certain aspects of the recall election  
21 under the California Elections Code. It is well settled under California law that the Proposed  
22 Intervenors’ unique legal status as the Recall Campaign’s official proponents endow them with a  
23 significantly protectable interest in protecting and preserving the legitimacy of this recall election  
24 that permits them to intervene as a matter of right. *See Yniguez*, 939 F.2d at 733 (“[State] law  
25 recognizes the ballot initiative sponsor’s heightened interest in the measure by giving the sponsor  
26 official rights and duties distinct from those of the voters at large”).

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1    **3.        Proposed Intervenors’ Interest Is Not Adequately Represented By The**  
2    **Existing Parties**

3    “The burden on proposed intervenors in showing inadequate representation is minimal,  
4 and would be satisfied if they could demonstrate that representation of their interests ‘may be’  
5 inadequate.” *Arakak v. Cayetanoi*, 324 F.3d 1078, 1086 (9th Cir. 2003). Courts consider three  
6 factors in determining the adequacy of representation: “(1) whether the interest of a present party  
7 is such that it will undoubtedly make all of a proposed intervenor’s arguments; (2) whether the  
8 present party is capable and willing to make such arguments; and (3) whether a proposed  
9 intervenor would offer any necessary elements to the proceeding that other parties would  
10 neglect.” *Id.* The most important factor in determining the adequacy of representation is “how  
11 the interest compares with the interests of existing parties.” *Id.*

12    As the Supreme Court in *Perry* held albeit in a case concerning an initiative as  
13 distinguished from existing law, but which applies with similar import here:

14  
15    [A]lthough public officials ordinarily have the responsibility of defending a  
16 challenged law, in instances in which the challenged law has been adopted  
17 through the initiative process there is a realistic risk that the public officials may  
18 not defend the approved measure ‘with vigor’. This enhanced risk is attributable  
19 to the unique nature and purpose of the initiative power, which gives the people  
20 the right to adopt into law measures that their elected officials have not adopted  
21 and may often oppose. Second, .... because of the risk that public officials may  
22 not defend an initiative’s validity with vigor, a court should ordinarily permit the  
23 official proponents of an initiative measure to intervene in an action challenging  
24 the validity of the measure in order ‘to guard the people’s right to exercise  
25 initiative power.’

26    *Perry v. Brown*, 52 Cal. 4th at 1149-1150 (citations omitted) (citing *Building Industry Assn. v.*  
27 *City of Camarillo*, 41 Cal. 3d 810, 822 (1986) (“Despite the fact that the city or county would  
28 have a duty to defend the ordinance, a city or county might not do so with vigor if it has  
29 underlying opposition to the ordinance”); see also *Yniguez* 939 F.2d at 733 (“...the government  
30 may be less than enthusiastic about the enforcement of a measure adopted by ballot initiative; ....  
31 The people generally resort to a ballot initiative precisely because they do not believe that the



1 ordinary processes of representative government are sufficiently sensitive to the popular will with  
2 respect to a particular subject.”)

3 **B. Proposed Intervenors Also Have Satisfied The Requirements For Permissive**  
4 **Intervention**

5 Even assuming *arguendo* that Proposed Intervenors are not entitled to intervene as a  
6 matter of right, then they should be permitted to intervene under Section 387(d)(2) of the  
7 California Code of Civil Procedure. The Court has discretion to permit a non-party to intervene  
8 in an action or proceeding if (1) the non-party has a direct and immediate interest in the matter in  
9 litigation; (2) the intervention will not enlarge the issues in the case; and (3) the reasons for  
10 intervention outweigh any opposition by the parties presently in the action. Cal. Code Civ. Proc.  
11 § 387 (d)(2); see also *Reliance Ins. Co. v. Superior Court*, 84 Cal.App.4th 383, 386 (2000). A  
12 non-party has a “direct and immediate interest in the litigation” when the non-party stands to  
13 “gain or lose by direct legal operation and effect of the judgment,” even if no specific interests in  
14 the property or transaction at issue exists. *Simpson Redwood Co. v. State of California*, 196  
15 Cal.App.3d 1192, 1200 (1987).

16 Those factors are readily satisfied here. As asserted in Section II.A.2 above, the Proposed  
17 Intervenors have a direct and immediate interest in the matter in litigation, their intervention will  
18 not enlarge the issues in the case as they simply seek to oppose the central issue in the case –  
19 Newsom’s effort to get around the requirements of section 11320(c), and there is no valid  
20 argument that the parties to the action can present which outweigh the reasons for the proposed  
21 intervention.

22 **IV. CONCLUSION**

23 Proposed Intervenors have significantly protectable interests in this matter. The  
24 Respondent Secretary of State will not adequately represent their interests because she will almost  
25 certainly not interpose any response to Newsom’s Petition and she will not present all of Proposed  
26 Intervenors positions. Without Proposed Intervenors intervention, there will be no truly  
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1 adversarial proceeding. The Court is thus respectfully asked to allow Proposed Intervenors to  
2 intervene in this action and to file an Opposition to the Petition.

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Respectfully submitted,

Dated: July 5, 2021

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