

1 HARMEET K. DHILLON (SBN: 207873)
harmeet@dhillonlaw.com
2 MARK P. MEUSER (SBN: 231335)
3 mmeuser@dhillonlaw.com
DHILLON LAW GROUP INC.
4 177 Post Street, Suite 700
5 San Francisco, California 94108
Telephone: (415) 433-1700
6 Facsimile: (415) 520-6593

7 Attorney for Petitioner
8 Betty Tom Chu

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO—UNLIMITED JURISDICTION**

11 **BETTY TOM CHU,**
12
13 **Petitioner,**
14 **v.**
15 **SHIRLEY N. WEBER, in her official capacity**
as California Secretary of State,
16 **Respondent.**

Case No.
EMERGENCY VERIFIED APPLICATION
FOR WRIT OF MANDAMUS [CAL. CODE
CIV. PRO. § 1085 & CAL. ELCT. CODE
§13314]
ASSIGNED FOR ALL PURPOSES TO:
JUDGE
IMMEDIATE RELIEF REQUESTED ON
OR BEFORE JULY 21, 2021
Date: TBD
Time: TBD
Dept.: TBD

1 primary election ballot,” which this is not. Further, the elections code specifically states that the
2 provisions of section 8000 of the election code *do not* apply to recall elections. Respondent has kept
3 Mr. Elder off the ballot under false pretenses, as there is no statutory requirement that he file tax
4 returns, redacted or otherwise, to be a gubernatorial recall candidate.

5 Further, even if Mr. Elder were required to file redacted tax returns, in the event that a
6 candidate makes an improper redaction, California Election Code §8903 requires the Secretary of
7 State to properly redact the returns, not throw a candidate out of the race. There is no basis for
8 Respondent’s extraordinary action of removing an otherwise qualified candidate from the ballot
9 because of a harmless redaction error.

10 Finally, if Respondent’s interpretation of the Disclosure Act were correct, it would violate
11 Petitioner’s First Amendment rights. The Disclosure Act may not provide a government actor with the
12 unbridled authority to keep someone from appearing on a ballot for the equivalent of a failure to dot
13 an i or cross a t in their application.

14 Respondent acted ultra vires to remove Mr. Elder from the recall ballot. By this petition for
15 extraordinary relief, Petitioner asks this Court to intervene immediately and uphold the clear and
16 direct requirements of the ordinance at issue here.

17 **PARTIES**

18 Petitioner BETTY TOM CHU is a resident of Los Angeles County.

19 Respondent SHIRLEY N. WEBER is the California Secretary of State and is made a party to
20 this Action pursuant to Cal. Gov. Code §12172.5 since the Secretary of State is the chief elections
21 officer and is responsible for administering the provisions of the Elections Code.

22 **JURISDICTION AND VENUE**

23 This Court has jurisdiction over this action pursuant to the California Constitution, Article VI,
24 Section 10, which grants the superior courts “original jurisdiction in proceedings for extraordinary
25 relief in the nature of mandamus.”

26 Venue for this matter is exclusively in Sacramento County when the Secretary of State is
27 named as a Respondent pursuant to Cal. Elec. Code §13314.

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

QUESTION PRESENTED

The limited question presented here is whether the Disclosure Act confers on Respondent the legal authority to prevent Laurence A. Elder’s name from appearing on the Certified List of Candidates for the 2021 California Gubernatorial Recall Election based solely upon a purported failure to properly redact his tax returns.

TIMELINESS OF PETITION

The Respondent released the list of candidates for the 2021 California Gubernatorial Recall Election on July 17, 2021. The urgency of resolving this issue expeditiously is demonstrated by the fact that Respondent is supposed to release the Certified List of Candidates on July 21, 2021 and, upon information and belief, if Mr. Elder’s name does not appear on the July 21, 2021 list, he will not be allowed to be a Gubernatorial candidate in the September 14, 2021 recall election.

IRREPARABLE INJURY/NECESSITY FOR RELIEF

Petitioner has no plain, speedy and adequate remedy at law, other than the relief sought in this request. Petitioner’s irreparable injury is founded on the fundamental principle that the Secretary of State cannot remove people from the ballot contrary to law. If this Court does not intervene, upon information and belief Mr. Elder’s name will not appear on the September 14, 2021, ballot and Respondent will have violated Petitioner’s right to select a qualified candidate of her choosing.

PRAAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court:

(a) Issue an order to show cause why Petitioner’s Application for Writ of Mandamus, which commands Respondent to place the name of Laurence A. Elder on the Certified List of Candidates so that his name can appear on the ballot, sample ballot, and voter guides, should not be granted, issue the interim stay relief requested herein commanding Respondent to place Laurence A. Elder’s name on the Certified List of Candidates; or,

(b) Grant the Petitioner’s Petition for Peremptory Writ of Mandate without a hearing, commanding Respondent to place Laurence A. Elder’s name on the Certified List of Candidates so that his name can appear on the ballot, sample ballot, and voter guides;

(c) For attorneys’ fees and costs pursuant to Code Civ. Proc., § 1021.5;

(d) For costs of suit incurred herein; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(e) For such other and further relief as the Court deems just and proper.

Date: July 20, 2021

DHILLON LAW GROUP INC.

By: 
Mark P. Meuser
Attorneys for Petitioner BETTY TOM CHU

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.
Reynolds v. Sims, 377 U.S. 533, 555 (1964)

[T]he right to vote would be empty indeed if it did not include the right of choice for whom to vote But it does mean that in judging the validity of a restraint upon eligibility for elective office, we must be mindful that the restraint is upon the right to vote as well.... Far from being unrestricted, the power to prescribe qualifications for elective office is sharply limited by the constitutional guaranty of a right to vote....
Thomas v. Mellon (1973) 9 Cal.3d 96, 99 quoting *Zeilenga v. Nelson* (1971) 4 Cal.3d 716, 721.

STATEMENT OF FACTS

California Voters submitted 1,719,943 signatures in order to trigger a recall election for Governor Gavin Newsom. Petitioner is one of the 1,719,943 Californians who signed the petition. The recall election is scheduled for September 14, 2021.

The filing deadline for candidates to run in the recall election was July 16, 2021. On July 17, 2021, the Secretary of State sent a notice to the candidates that had qualified their ballot designation and party preference. This notice stated that a “Certified List of Candidates will be available on July 21, 2021.” On July 17, 2021, the Secretary of State also sent a letter to Mr. Elder stating that he “did not qualify as a candidate for the upcoming September 14, 2021, California Gubernatorial Recall election ... [because] Incomplete redacted and/or unredacted income tax returns were filed.”¹ Petitioner has been an active and vocal supporter for Mr. Elder in his run to replace California Governor Gavin Newsom.

ARGUMENT

On July 11, 2019, Governor Newsom signed into law Senate Bill 27, now codified as Part 5 of Division 8 of the California Elections Code (hereinafter “Disclosure Act”). The Disclosure Act provides, in relevant part:

Notwithstanding any other law, the name of a candidate for Governor shall not be printed on a direct primary election ballot, unless the candidate, at least 98 days before

¹ Based upon information and belief, Petitioner understands that Laurence Elder never received this notice until July 18th.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the direct primary election, files with the Secretary of State copies of every income tax return the candidate filed with the Internal Revenue Service in the five most recent taxable years, in accordance with the procedure set forth in Section 8903.

Cal. Elec. Code §8902(a).

The Secretary of State is then required to review the redacted copy and can prepare a new version if the tax return does not comply with Cal. Elec. Code §8903(a)

The Secretary of State shall review the redacted copy of each tax return submitted by the candidate to ensure that the redactions comply with subdivision (a). If the Secretary of State determines that the candidate has redacted information other than that permitted by subdivision (a), the Secretary of State shall prepare a new version of the tax return with only the redactions permitted by that subdivision.

Cal. Elec. Code §8903(b).

A. THE PLAIN LANGUAGE OF THE STATUTE SHOWS RECALL ELECTION CANDIDATES ARE NOT REQUIRED TO FILE TAX RETURNS

A plain reading of Cal. Elec. Code §8902 shows that the requirement to produce one’s tax returns in a gubernatorial election only applies to a “direct primary election.” California law expressly states that the chapter on “Direct Primary” elections does not apply to “Recall Elections.” See Cal. Elec. Code §8000(a) (stating Election Code chapter 8000 “does not apply to: (a) Recall elections.”). While “Direct Primary” elections are governed by Cal. Elec. Code §8000 *et. seq.* “Recall Elections” are governed by Cal. Elec. Code §11000 *et. seq.*, and Cal. Elec. Code §11000 has no similar tax return requirement.

Therefore, since this is a recall election and not a direct primary election, the Respondent had no authority to request, and Mr. Elder was not required to provide, tax returns—redacted or otherwise. Certainly, Respondent lacked the authority to keep a qualified candidate off the ballot due to a statute which does not govern his candidacy. This Court should act immediately to enforce the plain meaning of the statute.

B. RESPONDENT’S REMOVAL OF MR. ELDER FROM THE BALLOT WAS ULTRA VIRES AND A CLEAR VIOLATION OF CAL. ELEC. CODE §8903(b)

“[T]he usual rule with California codes is that ‘shall’ is mandatory and ‘may’ is permissive unless the context requires otherwise.” (*Walt Rankin & Associates, Inc. v. City of Murrieta* (2000) 84 Cal.App.4th 605, 614, 101 Cal.Rptr.2d 48.) California Election Code §8903(b) states upon the Secretary of State’s review, “[i]f the Secretary of State determines that the candidate has redacted

1 information other than that permitted by subdivision (a), the Secretary of State *shall* prepare a new
2 version of the tax return with only the redactions permitted by the at subdivision.” (emphasis added).
3 Nothing in the context of the statute suggests the legislature intended the word “shall” in California
4 Election Code §8903(b) to be permissive rather than mandatory. Further, no language in the statute
5 suggests that, if an otherwise qualified gubernatorial candidate makes a redaction error, the Secretary
6 of State may take the extraordinary step as to deprive California voters of the opportunity to vote for
7 their desired candidate due to improper redaction.

8 Even if this Court should find that Mr. Elder failed to properly redact his tax returns, a plain
9 reading of California Election Code shows that Respondent’s only remedy for an improperly redacted
10 tax return would be to prepare a properly redacted return. Cal. Elec. Code §8903(b). California
11 Election Code §8903 does not give the Secretary of State authority to take the unprecedented step of
12 removing a candidate from the ballot who provided a copy of their tax returns and also prepared a
13 redacted version that erroneously redacted (or failed to redact) sensitive material.

14 The requirement that a gubernatorial candidate provide tax returns on its face does not apply to
15 a recall election. But even if it did, Respondent acted *ultra vires* in removing Mr. Elder from the ballot
16 as, when a gubernatorial candidate has a redaction error in their tax submission, the Respondent has a
17 mandatory duty to correct the error, not throw the candidate off the ballot.

18 **C. RESPONDENT IS VIOLATING PETITIONER’S FIRST AMENDMENT RIGHT**
19 **TO VOTE**

20 The First Amendment, as incorporated against California by the Fourteenth Amendment,
21 guarantees, *inter alia*, “the right[s] of individuals to associate for the advancement of political beliefs,
22 and the right of qualified voters, regardless of their political persuasion, to cast their votes
23 effectively.” *Ill. State Bd. Of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) (quoting
24 *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)). By barring candidates from running for California
25 governor who allegedly improperly redacted their tax returns, the Respondent’s interpretation of the
26 Disclosure Act violates the fundamental constitutional right to vote, and inflicts a severe,
27 unreasonable, and discriminatory burden on Petitioner.

28 In *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992),
the U.S. Supreme Court established the standard to evaluate the constitutionality of burdens on voting

1 rights such as the Disclosure Act. When a Petitioner’s First and Fourteenth Amendment rights “are
2 subjected to ‘severe’ restrictions, the regulation must be ‘narrowly drawn to advance a state interest of
3 compelling importance.’” *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289
4 (1992)). The Supreme Court has stated that the rights of individual voters to associate with, and vote
5 for, the candidate of their choosing “rank among our most precious freedoms.” *Williams*, 393 U.S. at
6 30-31 (citing *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964)). “[N]o right is more precious in a free
7 country than that of having a voice in the election of those who make the laws” and “[o]ther rights,
8 even the most basic, are illusory if the right to vote is undermined.” *Id.*

9 If this Court declines to apply strict scrutiny, the *Anderson-Burdick* test requires it to
10 determine the Disclosure Act’s validity by weighing: (1) the character and magnitude of the asserted
11 injury to the rights protected by the First and Fourteenth Amendments; (2) the precise interest and
12 justifications put forward by the state for the imposed ballot restriction; and (3) the extent to which the
13 state’s interest make it necessary to burden the plaintiffs’ rights. *Anderson*, 460 U.S. at 789. Those
14 “restrictions that impose a lesser burden” are subject to a lower burden; they must “be reasonably
15 related to achieving the state’s ‘important regulatory interests.’” *Chamness v. Bowen*, 722 F.3d 1110,
16 116 (9th Cir. 2013).

17 If the Disclosure Act did in fact confer on Respondent the extensive authority to keep a
18 candidate off the ballot because of the *de minimus* error of an improper redaction, the Disclosure act
19 would fail the *Anderson-Burdick* test just as did the burdensome filing deadline challenged in
20 *Anderson*. The Disclosure Act imposes a substantial burden on the voting rights of Petitioner and
21 other registered voters in California by prohibiting them from voting for the otherwise eligible
22 candidate of their choice to potentially replace Governor Newsom.

23 Respondent’s interpretation of the Disclosure Act gives her almost unlimited authority to find
24 a potentially errant redaction of one’s personal tax returns and remove that candidate from the ballot.
25 This interpretation thus gives the Secretary of State the ability to only cursorily investigate her
26 personal friends’ or political allies’ tax returns, while imposing a different standard to the tax returns
27 of those who she does not politically favor. The Respondent’s interpretation of the Disclosure Act is
28 not consistent with the law.

The vast authority Respondent claims to wield as a result of the Disclosure Act does not pass

1 constitutional muster. It is neither narrowly drawn nor does it advance any compelling state interest.
2 The Disclosure Act includes a purpose statement alleging that it is necessary to “educate” voters. Cal.
3 Elec. Code §8900. While California is entitled to educate voters, it may not “dictate electoral
4 outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints”
5 under the guise of voter education. *Cook*, 531 U.S. at 531. In *Cook*, the Supreme Court struck down a
6 Missouri constitutional amendment dictating the Secretary of State to clearly identify candidates who
7 did not pledge to support federal term limits on the state’s ballot. *Id.* at 514-515. Rather than
8 legitimately seeking to educate voters, the Respondent’s interpretation of her powers under the
9 Disclosure Act is an attempt to foist her political thumb on the scales of the election.

10 Even taken at face value, the Disclosure Act’s claimed interest in voter education is woefully
11 inadequate to justify the Respondent’s sweepingly overbroad interpretation that she can summarily
12 disqualify otherwise valid candidates for improper redactions. The severe burden imposed by
13 Respondent is wholly unnecessary to promote California’s state interest in transparency and voter
14 education. California’s alleged concerns about a candidate’s “potential conflict of interest, business
15 dealings, [and] financial status” are already addressed by the “Political Reform Act of 1974” (Cal.
16 Gov. Code §81000).

17 If Respondent’s interpretation of the Disclosure Act is deemed correct, the Act itself should be
18 struck down as it broadly deprives Petitioner and other registered voters wishing to cast a ballot for an
19 otherwise qualified candidate who does not properly redact their tax returns in accordance with the
20 Respondent’s wishes from casting their votes for the qualified candidate of their choice. The
21 Respondent’s interpretation of the Disclosure Act will keep Mr. Elder off of California’s 2021
22 California Gubernatorial Recall Election and prevent Petitioner and every other registered voter in
23 California from effectively casting their ballots for Mr. Elder. The voters’ interest in these
24 fundamental rights far outweighs the Respondent’s interpretation of her powers under the Disclosure
25 Act. The Respondent’s interpretation of the Disclosure Act is unconstitutional and must be enjoined.

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the reasons stated above, this Court should immediately enter an order requiring Respondent to list Laurence A. Elder on the Certified List of Candidates, together with such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: July 20, 2021

DHILLON LAW GROUP INC.

By: 
Mark P. Meuser

Attorney for Petitioner BETTY TOM CHU

VERIFICATION OF EMERGENCY APPLICATION FOR WRIT OF MANDAMUS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, Betty Chu, declare as follows:

1. I am Petitioner in this Action.

2. I have read the foregoing Emergency Verified Petition for Writ of Mandamus and know the contents thereof. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Petition, and if called on to testify I would competently testify as to the matters stated herein.

3. As to all other matters stated in the Petition, I am informed and believe them to be true.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 20, 2021, at Villa Park, California

DocuSigned by:
Betty Tom Chu
62254C2BF264480...

Betty Chu

1 HARMEET K. DHILLON (SBN: 207873)
harmeet@dhillonlaw.com
2 MARK P. MEUSER (SBN: 231335)
mmeuser@dhillonlaw.com
3 DHILLON LAW GROUP INC.
4 177 Post Street, Suite 700
San Francisco, California 94108
5 Telephone: (415) 433-1700
6 Facsimile: (415) 520-6593

7 Attorney for Petitioner
8 Betty Tom Chu

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO—UNLIMITED JURISDICTION**

11 **BETTY TOM CHU,**

12 **Petitioner,**

13 **v.**

14 **SHIRLEY N. WEBER, in her official capacity**
15 **as California Secretary of State,**

16 **Respondents.**

Case No.

**[PROPOSED] ORDER GRANTING
EMERGENCY VERIFIED APPLICATION
FOR WRIT OF MANDAMUS [CAL. CODE
CIV. PRO. § 1085 & CAL. ELCT. CODE
§13314]**

ASSIGNED FOR ALL PURPOSES TO:
JUDGE

**IMMEDIATE RELIEF REQUESTED ON
OR BEFORE JULY 21, 2021**

**Date: TBD
Time: TBD
Dept.: TBD**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Court, having received and reviewed Petitioner’s Verified Emergency Application for Writ of Mandamus and good cause appearing therefor, IT IS ORDERED:

_____ Order to Show cause why Petitioner’s Petition for Writ of Mandate, which ORDERS Respondent to place Laurence A. Elder onto the Certified List of Candidates for the 2021 California Gubernatorial Recall Election, should not be granted, issue the interim stay relief requested herein ORDERING Respondent to place Laurence A. Elder onto the Certified List of Candidates for the 2021 California Gubernatorial Recall Election;

OR

_____ Grant the Petitioner’s Petition for Peremptory Writ of Mandate without a hearing, ORDERING the Respondent to place Laurence A. Elder onto the Certified List of Candidates for the 2021 California Gubernatorial Recall Election.

IT IS SO ORDERED.

Date: July __, 2021

Superior Court Judge