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capacity as California Secretary of State*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

13 **THOMAS JEFFERSON CARES,**

Petitioner,

15 v.

16 **ALEX PADILLA, in His Official Capacity**
17 **as Secretary of State of the State of**
18 **California,**

Respondent.

Case No. 34-2018-80002823

**OPPOSITION TO PETITION FOR WRIT
OF MANDATE**

Date: March 12, 2018

Time: 10:00 a.m.

Dept: 42

Judge: The Honorable Allen H. Sumner

Trial Date:

Action Filed: March 7, 2018

1 Petitioner, who may or may not qualify for the ballot to run for Governor, would like his
2 candidate statement to be included in the official Voter Information Guide for the June primary.
3 However, he missed the submission deadline. He now seeks a court order requiring the Secretary
4 of State to include his candidate statement in the voter guide. The petition is meritless and should
5 be denied. Petitioner simply missed the deadline and has not alleged any violation of his statutory
6 or constitutional rights.

7 BACKGROUND

8 The California Statewide Direct Primary Election will be held on June 5, 2018. Under the
9 controlling statutes, the Secretary of State has authority to establish “timeframes and procedures”
10 for the submission of candidate statements for inclusion in the Voter Information Guide. (Gov.
11 Code, § 85601, subd. (a).) For the upcoming primary, the deadline to submit candidate
12 statements set by the Secretary of State was February 14, 2018. (See Declaration of Paul Stein,
13 Exhibit A, Secretary of State’s “Key Dates and Deadlines,” p. 1 [“Candidate Statement Period for
14 State Voter Information Guide (U.S. Senate and Constitutional Offices)” — Jan 25-Feb 14”].)¹
15 This deadline is necessitated by requirements that: (1) the Voter Information Guide be put on
16 public display for a period of “[n]ot less than 20 days” before it is sent to the State Printer (Elec.
17 Code, § 9092); and (2) the Voter Information Guide be sent to the State Printer no later than
18 March 12, 2018, so it can be mailed to voters in a timely fashion before the primary. (Secretary
19 of State’s “Key Dates and Deadlines,” p. 2 [“Copy Provided to State Printer — Mar 12”].)

20 The public display period for the June primary commenced on February 20 and concludes
21 on March 12. (Secretary of State’s “Key Dates and Deadlines,” p. 1 [“Public Inspection Period
22 — Feb 20-Mar 12”].) The purpose of the public display period is to give members of the public a
23 chance to seek, and a court to require, changes to the Voter Information Guide if any material is
24 proved by “clear and convincing proof” to be “false, misleading, or inconsistent with the
25 requirements of [the Elections Code or the Government Code].” (Elec. Code, § 9092.)
26
27

28 ¹ See <http://www.sos.ca.gov/elections/upcoming-elections/statewide-direct-primary-june-5-2018/key-dates-deadlines-june-5-2018/> (last accessed March 8, 2018).

1 SUMMARY OF PETITION

2 Petitioner, who is an “intended candidate for Governor,” alleges that he wishes to purchase
3 space to place a candidate statement in the statewide Voter Information Guide. (Petition, pp. 1-
4 2.) Petitioner admits that: (1) he has not yet qualified for the ballot, and the deadline for doing
5 that is March 9, i.e., today, at 5 p.m.; (2) he has not yet submitted his candidate statement to the
6 Secretary of State’s office for inclusion in the Voter Information Guide; and (3) it is too late to
7 submit a candidate statement because the deadline was February 14, 2018. (*Ibid.*) Petitioner
8 nonetheless requests that the Court order the Secretary of State to include his candidate statement
9 in the voter information guide in the event that petitioner “qualifies to be on the ballot.” (*Id.*, p.
10 2.) Petitioner further requests that the Court “affirm that nothing in petitioner’s statement [which
11 is attached to the petition] is unacceptable.” (*Ibid.*)²

12 ARGUMENT

13 **A. The petition lacks merit and should be denied.**

14 Petitioner cites no statutory or constitutional authority supporting the requested relief, and
15 there is none. As Petitioner admits, the controlling statutes provide that his candidate statement
16 was due “in accordance with timeframes and procedures set forth by the Secretary of State for the
17 preparation of the state ballot pamphlets.” (Gov. Code, § 85601, subd. (a); see Petition, p. 3.)
18 Thus, Petitioner’s contention that the Secretary of State “[did] not have the statutory authority” to
19 set the deadline on February 14 is plainly incorrect. The Government Code expressly authorizes
20 the Secretary of State to establish the relevant “timeframes,” and Petitioner alleges no facts
21 demonstrating a violation of any ministerial duty, or an abuse of discretion, by the Secretary.

22 Nor has Petitioner cited any case or other authority (and we are not aware of any) that even
23 contemplates the relief requested by Petitioner. If the Court were to order the Secretary of State
24 to include Petitioner’s candidate statement in the Voter Information Guide at this late date, there
25 would be no opportunity for public review (because the guide must be sent to the State Printer by

26 ² In his candidate statement, Petitioner promises, among other things, to: “revolutionize
27 credit with a platform where every Californian can create their own cryptocurrency”; bring about
28 “incarceration rates below Canada’s, instead of 6 times higher”; usher in a “ground-breaking
digital direct democracy platform, with no binding power initially, that will eventually become
the standard for political systems worldwide.” (Petition, p. 5.)

1 March 12). This would effectively nullify the public inspection regime mandated by Elections
2 Code section 9092. Moreover, contrary to Petitioner’s suggestion, it is not the Court’s role to
3 “affirm that nothing in petitioner’s statement is unacceptable” (Petition, p. 2), but rather to rule on
4 challenges brought by members of the public, based on evidence submitted by the parties. (Elec.
5 Code, § 9092.) There is no legal or evidentiary basis upon which this Court could decide whether
6 Petitioner’s statement is “unacceptable” or not. More fundamentally, because no member of the
7 public has come forward to challenge Petitioner’s candidate statement (due to the fact that he
8 missed the deadline for submitting it), there is no justiciable controversy over his statement that
9 this Court could resolve.³

10 Contrary to Petitioner’s contentions, requiring submission of his candidate statement before
11 the last day for submitting his declaration of candidacy does not violate his free speech rights.
12 (Petition, p. 3.) The February 14 deadline is reasonable, non-discriminatory, and amply justified
13 by the need to ensure adequate time for the public review period and the other election deadlines
14 and milestones that follow it. (*Burdick v. Takushi* (1992) 504 U.S. 428, 434 [where a state
15 election requirement imposes “reasonable, non-discriminatory restrictions . . . the State’s
16 important regulatory interests are generally sufficient to justify the restrictions]”, internal
17 quotations and citation omitted; *Rawls v. Zamora* (2003) 107 Cal.App.4th 1110, 1116 [“[c]ourts
18 will uphold . . . restrictions that are generally applicable, even-handed, politically neutral, and
19 which protect the reliability and integrity of the election process”], internal quotations and
20 citations omitted.) Indeed, the alleged burden here is exceedingly slight, if one exists at all. (See
21 Petition, p. 3 [arguing that the February 14 deadline “pressure[s] a potential candidate, still
22 deciding whether to commit themselves to the ballot, to author content on the hypotheticals of
23 how they would promote their candidacy if they were to run”].) Petitioner has yet to qualify for
24 the ballot, but he had no trouble submitting his candidate statement to the Court for its review and
25

26 ³ Petitioner acknowledges that one reason the Secretary of State requires the submission of
27 candidate statements by February 14 is to allow sufficient time for public review and court
28 challenges; “[p]resumably . . . the Secretary of State does not wish to arbitrate which content
would not be allowed . . .” (Petition, p. 2.) By the same token, the Court’s job is not to decide
whether Petitioner’s candidate statement is acceptable in the absence of a challenge by the public.

1 approval in connection with this petition; and he has not alleged any facts suggesting that he
2 could not have submitted exactly the same statement to the Secretary of State by February 14.

3 Finally, it would not be misleading to anyone, let alone “afflict[] a falsehood against
4 Petitioner,” if Petitioner’s candidate statement were not included in the Voter Information Guide.
5 (See Petition, p. 3.) A candidate who accepts the voluntary expenditure limits has the option of
6 submitting a statement for the voter guide, but is not required to do so. (See Gov. Code, § 85601,
7 subd. (a).) Therefore, there would be no basis for anyone to assume that Petitioner “did not
8 accept the limit,” or had “no statement he wished to make.” (Petition, p. 3.)⁴

9 **B. An immediate ruling is essential to preserve the election schedule.**

10 In order to preserve the state’s election schedule, the Court’s ruling on this petition must
11 issue no later than 5:00 p.m. on March 12, 2018. Elections Code section 9092 provides in part
12 that a peremptory writ of mandate requiring state voter information guide revisions shall issue
13 only if “*issuance of the writ will not substantially interfere with the printing and distribution of*
14 *the state voter information guide as required by law.*” (Emphasis added; see also Gov. Code,
15 § 88006 [same].) Elections Code section 9094 requires that the bulk of the mailing of voter
16 information guides to approximately 11 million households be completed no later than 21 days
17 before the election, which is May 15, 2018. (See Declaration of David Gerald Hill, California
18 State Printer [attached hereto as Exhibit 1], ¶ 3; Declaration of Jana M. Lean, Chief of Elections
19 Division, California Secretary of State [attached hereto as Exhibit 2], ¶ 3.) In light of the
20 necessary preparation work, and even with state printing presses operating on a 24-hour-a-day
21 basis, all textual changes must be finalized by 5:00 p.m. on March 12, 2018, if the State is to meet
22 the specified mailing and distribution deadlines. (See Hill Decl., ¶¶ 4-6; Lean Decl., ¶ 5.) Any
23 changes made in the text after that time will affect the printing process and cause a delay in the
24 delivery of the voter information guides to the voters and county elections officials. (See Hill
25 Decl., ¶ 7; Lean Decl., ¶ 5.)

26
27 ⁴ Petitioner’s related request for an order requiring the Secretary of State to include his
28 photograph in the voter information guide (see Petition, p. 6) should be denied for all the reasons
discussed above.

1 Accordingly, the Secretary of State requests that this Court rule on the petition in time to
2 permit the Secretary of State to furnish the State Printer with the final text of the state voter
3 information guide by 5:00 p.m. on March 12, 2018.

4 **CONCLUSION**

5 For the reasons discussed above, the petition should be denied.

6
7 Dated: March 9, 2018

Respectfully Submitted,

8 XAVIER BECERRA
9 Attorney General of California
10 TAMAR PACHTER
11 Supervising Deputy Attorney General



12
13 PAUL STEIN
14 Deputy Attorney General
15 *Attorneys for Respondent Alex Padilla, in
16 his official capacity as California Secretary
17 of State*

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EXHIBIT 1

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DECLARATION OF JANA M. LEAN

I, Jana M. Lean, declare as follows:

1. I am the Chief of the Elections Division, employed in the Office of the California Secretary of State. I have served in that capacity at all times pertinent to this action.

2. The Secretary of State is empowered by statute to perform numerous duties regarding California ballot measures. These include the placing of qualified initiatives and other ballot measures on the statewide ballot, the solicitation of arguments in favor of and against proposed ballot measures, the preparation and distribution of state voter information guide, and the overall supervision of the State's election process.

3. To date, the Legislature has placed five ballot measures on the ballot for the Statewide Direct Primary Election on June 5, 2018. By statute, the state voter information guide must be mailed to approximately 11 million households in ten different languages under strict statutory deadlines.

4. The entire process by which ballot measures are qualified for and placed on the ballot is subject to stringent time constraints imposed by law. On February 20, 2018, as required by law, the Secretary of State placed the state voter information guide on public display for a 20-day period ending on March 12, 2018.

5. I am informed and believe that, due to strict printing and logistical constraints, the State Printer must receive the final version of the state voter information guide by 5:00 p.m. on March 12, 2018, in order to ensure that the approximately 13 million required copies of the guide will be printed, bound, and distributed within the legally prescribed deadline. Printing of the guides in ten languages (English plus nine other languages) takes approximately four to six weeks. Under applicable law, guides must begin to be mailed to registered voters by April 26, 2018, and the mailing must be completed by May 15, 2018.

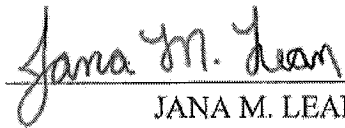
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6. I have personal knowledge of these facts and would competently testify to them if called as a witness to these proceedings.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 20, 2018, in Sacramento, California.



JANA M. LEAN
Chief, Elections Division
Office of the California Secretary of State

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EXHIBIT 2

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DECLARATION OF DAVID GERALD HILL

I, David Gerald Hill, declare as follows:

1. I am the State Printer of the State of California, appointed pursuant to Government Code section 14872. I have served in that capacity at all times pertinent to this action.
2. As the State Printer, I am responsible for printing and assisting in coordinated distribution of approximately 13 million state voter information guides for use prior to the statewide Primary Election on June 5, 2018.
3. By statute, these state voter information guides must be mailed to the bulk of the voters no later than 21 days before the election. To accomplish this, the printing and mailing of the guides must be completed by May 15, 2018, which is 21 days before the June 5, 2018 election. The small number of guides mailed after this date, for late registrants, does not alter the printing schedule.
4. To ensure that the state voter information guide is printed and mailed by the statutory deadline of May 15, 2018, the final text must be delivered to the Office of State Publishing no later than 5:00 p.m. on March 12, 2018.
5. The Office of State Publishing will require 55 working days to complete the printing of the current state voter information guide and mailing by both the Office of State Publishing and a private vendor under contract with the Secretary of State. This 55-day schedule assumes operation of the printing plant 24 hours per day, 6 days per week between March 12 and May 15, 2018, reserving the seventh day each week to address mechanical problems as necessary and to make up for any time lost in the printing processes as a result of such problems.
6. The 55-day schedule also assumes that the state voter information guides will be mailed by both the Office of State Publishing and a private vendor(s), at state expense, in order to meet the May 15, 2018 deadline.
7. Any changes in the text of the state voter information guide made after 5:00 p.m. on March 12, 2018, will affect the printing process and will likely delay delivery of the guide to voters in approximately 11 million households and county clerks beyond the legally prescribed

1 deadline. To be sure that the guides are mailed by the date required by law, no change in the text
2 can be made after 5:00 p.m. on March 12, 2018.

3 8. I have personal knowledge of these facts and would competently testify to them if
4 called as a witness to these proceedings.

5 I declare under penalty of perjury that the foregoing is true and correct and that this
6 declaration was executed on February 12, 2018, in Sacramento, California.

7
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9 

10 DAVID GERALD HILL
11 State Printer

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13 SA2017109577
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1 XAVIER BECERRA
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2 TAMAR PACHTER
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capacity as California Secretary of State*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

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11
12
13 **THOMAS JEFFERSON CARES,**

Petitioner,

14
15 v.

16 **ALEX PADILLA, in His Official Capacity**
17 **as Secretary of State of the State of**
18 **California,**

Respondent.

Case No. 34-2018-80002823

DECLARATION OF PAUL STEIN

Date: March 12, 2018
Time: 10:00 a.m.
Dept: 42
Judge: The Honorable Allen H. Sumner
Trial Date:
Action Filed: March 7, 2018

1 I, PAUL STEIN, declare as follows:

2 1. I am a deputy attorney general for the State of California and a counsel of record for
3 Respondent in this case. I base this declaration on my personal knowledge and, if called upon,
4 could and would testify as to its accuracy.

5 2. On March 8, 2018, I visited the California Secretary of State's website
6 ([http://www.sos.ca.gov/elections/upcoming-elections/statewide-direct-primary-june-5-2018/key-](http://www.sos.ca.gov/elections/upcoming-elections/statewide-direct-primary-june-5-2018/key-dates-deadlines-june-5-2018/)
7 [dates-deadlines-june-5-2018/](http://www.sos.ca.gov/elections/upcoming-elections/statewide-direct-primary-june-5-2018/key-dates-deadlines-june-5-2018/)) and printed out a copy of the Secretary of State's "Key Dates and
8 Deadlines" for the June 2018 primary election. A true and correct copy of the "Key Dates and
9 Deadlines" is attached to this declaration as Exhibit A.

10 I certify under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct.

12 
13 Dated: March 8, 2018 _____

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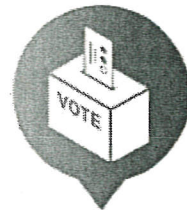
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EXHIBIT A

Alex Padilla
California Secretary of State

What can we help you with?

Search



Key Dates and Deadlines

Statewide Direct Primary Election - June 5, 2018

Candidate Filing

Key Dates and Deadlines

Description of Event	Deadline
Signatures-In-Lieu of Filing Fee Period	Dec 14, 2017 - Feb 7, 2018
Candidate Statement Period for State Voter Information Guide (U.S. Senate and Constitutional Offices)	Jan 25 - Feb 14
Declaration of Candidacy and Nomination Paper Period	Feb 12* - Mar 9
Candidate Statement Period for County Voter Information Guides (U.S. House of Representatives, State Senate, and State Assembly)	Feb 12* - Mar 9
Nomination Period Extension if Incumbent Does Not File	Mar 10* - Mar 14
Randomized Alphabet Drawing	Mar 15
Notice to Candidates for Voter-Nominated Offices	Mar 24**
Certified List of Candidates	Mar 29
Statement of Write-In Candidacy and Nomination Paper Period for Voter-Nominated Offices	Apr 9 - May 22
Certified List of Write-In Candidates	May 25

Voter Information Guide

Key Dates and Deadlines

Description of Event	Deadline
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Legislative Measure Qualification Deadline	Jan 25
Ballot Label and Title and Summary Deadline	Feb 2
Argument Submission Deadline	Feb 6
Argument Selection and Exchange	Feb 11**
Analysis, Text, and Bond Statement Deadline	Feb 15
Rebuttal Argument and Summary Information Deadline	Feb 15
Public Inspection Period	Feb 20-Mar 12
Copy Provided to State Printer	Mar 12
Voter Information Guide Mailing Period	Apr 26-May 15

Registration and Voting

Key Dates and Deadlines

Description of Event	Deadline
Military and Overseas Voter Vote-By-Mail Ballot Delivery Period	Apr 6 - Apr 21***
Vote-By-Mail Ballot Mailing Period	May 7 - May 29
15-Day Close of Registration	May 21
New Citizen (sworn in after May 21, 2018) Voter Registration Period	May 22 - Jun 5
Last Day to Request Vote-By-Mail Ballot	May 29
Election Day (7:00 a.m. to 8:00 p.m.)	Jun 5
Last Day to Receive Vote-By-Mail Ballot Postmarked No Later Than June 5, 2018	Jun 8

* Date falls on a weekend or state holiday; the action may be conducted on the next business day.

**Date falls on a weekend or state holiday; it does not move forward to the next business day.

***E-45 is on April 21, 2018, which is a Saturday; this deadline does not move forward to the next business day.

DECLARATION OF SERVICE

Case Name: *Thomas J. Cares, v. Alex Padilla, et al.*

No.: **34-2018-80002823**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.

On March 9, 2018, I served the attached **OPPOSITION TO PETITION FOR WRIT OF MANDATE** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope with the **GOLDEN STATE OVERNIGHT**, addressed as follows:

Thomas Jefferson Cares
3739 Balboa Street, #1179
San Francisco, CA 94121

Email Address: Tom@Coin.care

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 9, 2018, at San Francisco, California.

Susan Chiang

Declarant



Signature