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10 The Recall of Jessie Lopez, Sponsored by Santa Ana
Police Officers Association Independent Expenditure
11 Committee

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
15

16 GUADALUPE OCAMPO,

17 Petitioner,

18 v.

19 JENNIFER L. HALL, Santa Ana City Clerk;
20 BOB PAGE, Orange County Registrar of Voters;
SANTA ANA CITY COUNCIL; CITY OF
21 SANTA ANA,

22 Respondents.

23
24 TIM RUSH; RESIDENTS FOR RESPONSIBLE
LEADERSHIP IN SUPPORT OF THE RECALL
25 OF JESSIE LOPEZ, SPONSORED BY SANTA
ANA POLICE OFFICERS ASSOCIATION
26 INDEPENDENT EXPENDITURE COMMITTEE

27 Real parties in interest.
28

Case No.: 30-2023-01359338-CU-WM-CJC
(Assigned to Judge Griffin, N-17)

**OPPOSITION TO EX PARTE
APPLICATION FOR
PETITION FOR WRIT OF MANDATE AND
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF TIM
RUSH (filed concurrently) AND MARK S.
ROSEN**

**DATE: November 7, 2023
TIME: 8:30 a.m.
DEPT: N-17**

1 Real parties in interest Tim Rush and Residents for Responsible Leadership in Support of
2 The Recall of Jessie Lopez, Sponsored by Santa Ana Police Officers Association Independent
3 Expenditure Committee (hereinafter "Committee") oppose this action for the following reasons:
4

5 I.
6 INTRODUCTION

7 The current lawsuit is a mean-spirited and cynical attempt by the target of a recall, Jessie
8 Lopez, to deprive the voters of Ward 3 their constitutional right to recall an elected official who has
9 betrayed them and acted improperly during her term in office. Afraid to face the voters, she has
10 pulled this last-minute stunt, with a strawman petitioner, as a Hale Mary attempt to stop the vote.

11 The election is set for November 14, 2023, *one week from now*. Real parties in interest
12 obtained sufficient signatures on a petition to recall Lopez, based on numbers and ward lines
13 provided by the city clerk. They submitted the petition to the city clerk in June. The Registrar of
14 Voters and the city clerk certified their sufficiency in July. The proponents did everything they were
15 told to do to qualify the recall for the ballot.

16 "Recall is the power of the electors to remove an elective officer." (Cal.Constitution, Article
17 II, §13). "As was said in *Reites v. Wilkerson*, 99 Cal.App.2d 500 at 502: 'The courts are ever mindful
18 of the desirability of having recall petitions presented to the people through election without delay or
19 excessive expenditure of time, money, and effort. *Gage v. Jordan*, 23 Cal.2d 794, 799. And
20 legislation affording the people a right to initiate legislation, repeal legislation or recall a public
21 official is to be given the same liberal construction as that extended to election statutes generally.'" *Moore v. City Council of the City of Maywood* (1966) 244 Cal.App.2d 892, 901.

22
23 It is unheard of to cancel an election one week in advance. Case law is adamant that a court
24 should not take the drastic step of cancelling an election this close to election day. Both sides have
25 spent money on campaigns. Ballot pamphlets were printed and mailed, and ballots went out. People
26 have begun voting¹. Polling places have been set up.

27
28

1 See the attached declaration of Mark S. Rosen with the most recent voting figures.

1 Petitioners are wrong to try to cancel the election for several reasons, as set forth herein.

2 These reasons include:

3 1. The courts should refrain from cancelling elections or changing the rules of the election so
4 close to the day of the election.

5 2. Petitioners should have brought their action much earlier, at times allowed for in the
6 statutory process. If nothing else, they are subject to laches for not having brought it earlier. There
7 were opportunities much earlier to challenge the election. In fact, there were in fact two lawsuits
8 concerning this election, and neither raised the issue of incorrect boundaries.

9 3. The city clerk and the Registrar are estopped from asserting there are different boundaries
10 than those that were used to collect signatures. The recall petitions were circulated based on figures
11 provided by the Registrar and the city clerk back in June when the recall proponents first started the
12 recall effort. At all times there was total reliance on the information provided by the Registrar. The
13 Registrar and the city clerk certified the recall. There is no provision for either of these officials to
14 rescind their certification once the results were certified and the election was declared.

15 4. On the merits, the Registrar in fact chose the proper lines. The Santa Ana Charter uses the
16 new lines, not the old lines. Had the Registrar done a little more legal research and not acted in such
17 haste to try to cancel his certification, he would have realized he was correct the first time.

18 5. Finally, the petitioner, Ocampo, does not have standing. She has not been disenfranchised.
19 The precincts that were removed from Ward 3 in 2022 were put into Ward 6. Ward 6 elected a
20 councilmember in 2022. If she were allowed to vote in this election, she would have *two*
21 councilmembers. She is the wrong petitioner.

22
23 **II.**

24 **THE FACTS**

25 Jessie Lopez was elected to the city council in Ward 3 in 2020. Ward 3 covers the northern
26 tier of Santa Ana (see the map which is Exhibit B to the Declaration of Tim Rush.) Santa Ana is a
27 charter city.

1 The city had to adjust its boundary lines following the 2020 census to equalize the population
2 of its districts. The charter of the City of Santa Ana requires this. The city council did so and adopted
3 new lines in April of 2022. It did so through the adoption of Resolution 2022-022, adopted by the
4 City Council on April 5, 2022, on a 7-0 vote (including Lopez) and signed by then-mayor Sarmiento.
5 A copy of Resolution 2022-022 is attached hereto as Exhibit A.

6 Section 2 of the resolution prescribes the effect of the resolution. It says in part: "Pursuant to
7 Elections Code §21621 and Santa Ana Charter §101.2, the Santa Ana City Council hereby adopts the
8 ward boundaries set forth in the Recommended Map. . . for use in the City's General Municipal
9 Election on November 8, 2022 and subsequent elections thereafter until a further redistricting is
10 required. . .". The resolution creates no exception for special elections or recall elections.

11 The lines of Ward 3 were slightly adjusted. Some precincts that were previously in Ward 3
12 were moved to Ward 6. A map showing those precincts is attached as Exhibit B.

13 Odd-numbered wards were designated for the 2024 election. Even-numbered wards were
14 designated for the 2022 election. Ward 6 held its election in 2022 and elected David Penaloza as its
15 councilmember. Thus everybody who had been moved from Ward 3 to Ward 6 was able to vote for a
16 councilmember in Ward 6 and is currently represented by Councilmember Penaloza. Presumably this
17 includes the petitioner, Guadalupe Ocampo, if she was registered to vote.

18 By 2023, there was sufficient dissatisfaction with Councilmember Jessie Lopez to cause a
19 recall effort to begin. The Committee prepared a Notice of Intention to Recall and served it on Lopez
20 (Elections Code §11020). Lopez served an answer (Elections Code §11023). The city clerk ultimately
21 approved the form of the petition and authorized it for the collection of signatures (§11042).

22 As a prerequisite for circulating the petition, the elections official has to calculate the number
23 of signatures that are required. Elections Code §11221 bases this number on the number of
24 "registered voters in the electoral jurisdiction" as of the last report of registration by the county
25 elections official to the Secretary of State. This is an exact number. The Registrar of Voters and the
26 city clerk gave an exact number to the Committee. That number was based on the electoral
27 jurisdiction for the recall. The number that was given was calculated on and corresponded to the
28 Ward 3 lines adopted by Resolution 2022-022.

1 It was based on that information from the city clerk and the Registrar of Voters that the
2 Committee began circulating the petition. Had the elections officials given instructions that the old
3 lines should have been used, the Committee would have circulated the petition within the old lines.
4 The Committee relied on the elections officials.

5 On or about June 12, 2023, the Committee completed its circulation and submitted the recall
6 petition consistent with the provisions of Elections Code §11200 *et. seq.* The petition was timely
7 submitted to city clerk Jennifer Hall. Hall retained the county registrar of voters, Bob Page, to
8 determine the validity of the petitions and signatures.

9 The Elections Code prescribes how the petitions are to be handled and the time limits for
10 making determinations. Under §11222, the elections official first determines if the number of
11 signatures submitted equals or is in excess of the minimum number of signatures required.

12 If the requisite number of signatures are there, the elections official must accept the petition
13 for filing. The elections official then has 30 days, excluding Saturdays, Sundays, and holidays, to
14 examine the petition “and from the records of registration, ascertain whether or not the petition is
15 signed by the requisite number of voters” (Elections Code §11224(a)). If the examination shows there
16 are enough valid signatures, “the elections official shall certify the petition to be sufficient”.
17 Furthermore, “if the petition is found sufficient, the elections official shall certify the results of the
18 examination to the governing board at its next regular meeting” (§11224(d), §11227),

19 On July 17, 2023, Page issued a certificate that he had examined or caused to be examined the
20 signatures on the recall petition and found there were sufficient signatures. He signed the certificate
21 and sent it to city clerk Hall on that date. A copy of the certificate is attached to the accompanying
22 declaration as Exhibit C. Also on July 17, 2023, Hall issued a certificate of sufficiency of the recall
23 petition. A copy of that certificate is attached to the accompanying declaration as Exhibit D.

24 The next regular meeting of the Santa Ana city council was July 18, 2023. The submittal of
25 the certificate triggered a fourteen day period for the city council to issue an order to call the recall
26 election (Elections Code §11240).

27 The city clerk, Hall, informed the city council of the certificate at the meeting of July 18,
28 2023. The city clerk stated at the meeting of July 18, 2023 that the Registrar of Voters had completed
the counting and had determined that the required number of valid signatures were affixed to the

1 petition in accordance with the Brown Act and the Elections Code. A copy of the city clerk's
2 statement is attached to the accompanying declaration as Exhibit E.

3 The next meeting of the city council after July 18 was August 1, 2023. Under Elections Code
4 §11240, this was the meeting at which the city council was obligated to issue an order calling the
5 election. However, on a 3-3 vote (councilmember Lopez recusing herself) the city council refused to
6 call the election. Instead, the city council postponed the subject to its meeting of August 15, 2023.

7 Pursuant to Elections Code §11241, if the governing board fails to issue the recall election
8 order within the time specified in §11240, the county elections official within five days shall set the
9 date for holding the election. The election proponents believed the city council should set the election
10 at its August 1 meeting. As a result, real party in interest Rush, together with a resident, Ernesto
11 Gomez, filed a petition for writ of mandate on or about August 7, 2023, to compel the city council or
12 the Registrar of Voters to call the election. That case was *Gomez v. Page*, Case No 30-2023-
13 01341303-CU-WM-WJC. A copy of the petition for writ of mandate is attached as Exhibit F. The
14 court, per Judge Nathan Scott, held an ex parte hearing on August 14, 2023, but declined to make any
15 order. At its meeting the next day, the city council called the election and set it for November 14.

16 At the same time, there was a lawsuit filed on July 31, 2023, by the opponents of the recall,
17 asserting various grounds to stop the recall. That case was *Castillo v. City Council of the City of*
18 *Santa Ana*, Case No. 30-2023-01339759-CU-WM. A copy of that petition is attached as Exhibit G.
19 The petition claimed there were false statements in the statement of reasons for the recall. No hearing
20 was held on the petition.

21 The city proceeded with the election. On October 16, 2023, ballot pamphlets and early voting
22 by mail ballots were sent to the voters. (See Registrar of Voters election schedule, attached as Exhibit
23 H). Voters have been returning their ballots. Early voting centers opened on November 4. The
24 campaigns, both pro and con, have been mobilizing their supporters and money has been spent for
25 ads, mailers, and other forms of voter persuasion.

26 Then, out of the blue, on October 26, 2023, the Registrar wrote a letter to city clerk Hall
27 questioning whether the right boundaries had been used. That letter is attached as Exhibit I. The letter
28 was a last-minute slapdash attempt to suggest to the city that *it* should cancel the election. How do we
know it was slapdash? Because the letter cited Elections Code §21606 as the basis for reconsidering

1 the boundaries. But §21606 only applies to general law cities, not charter cities. The letter did not
2 reference the statute that does apply to charter cities, §21626, and did not engage in any analysis of
3 whether the Santa Ana city charter superseded the statute (see discussion, *infra*). The letter also did
4 not put a full address for city hall (it used a P.O. Box with no number) and misspelled the first name
5 of the Santa Ana city attorney. The letter was a superficial brush at the issue without any serious legal
6 or factual research.

7 The city council called a special meeting for October 30 to consider the question. At the
8 meeting, the council took no action to cancel the election. The vote was 3-3. The Registrar sent a
9 letter on October 30, 2023, purporting to rescind the certificate of July 17, 2023. That letter had no
10 legal effect as the Registrar had taken the position that he was only serving in a ministerial capacity
11 to conduct the election on behalf of the city.

12 On November 1, 2023, the Committee sent a letter to the Registrar and the city clerk
13 critiquing the “superficial legal assertions and wild nonlegal accusations” that had arisen, and setting
14 forth the Committee’s legal views, which are reflected in this opposition. A copy of that letter is
15 attached as Exhibit J.

16 The election is continuing. Voters are voting and both sides are still spending money on the
17 election (to the extent campaign resources are not diverted by this legal battle).

18 19 III.

20 ELECTIONS SHOULD NOT BE TAMPERED WITH SO CLOSE TO THE 21 ELECTION DATE.

22 To begin with, it would be an abuse of judicial power to cancel an election one week before
23 the scheduled date. Ballots have gone out; campaigns have been in full swing; polling places have
24 been up and running; and money has been spent. In *Finnie v. Town of Tiburon* (1988) 199
25 Cal.App.3d 1, a lawsuit was filed 14 days before an election to try to stop it. The court took note of
26 the stage of the process and found that laches was applicable:

27 “It is well settled that laches is established by showing unreasonable delay in bringing
28 the action and prejudice to defendant resulting from this delay (*Conti v. Board of Civil Service
Commissioners* (1969) 1 Cal.3d 351, 359; *Forker v. Board of Trustees* (1984) 160 Cal.App.3d

1 13, 20). It is likewise recognized that the defense of laches can be asserted in injunction cases
2 (*Tustin Community Hospital, Inc. v. Santa Ana Community Hospital Assn.* (1979) 89
3 Cal.App.3d 889, 894).

4 “Herein, both elements of laches are supported by the evidence. Appellants' counsel
5 first learned about the settlement stipulations and the planned March 3, 1987, election on
6 November 19, 1986, when the City Council held a public hearing at which both matters were
7 discussed. Appellants' counsel also participated in several subsequent public hearings,
8 including the December 11, 1986 workshop; these hearings dealt with the settlement
9 stipulations, the planned March 3, 1987, ballot measure and the election.
10 Nevertheless, appellants did not commence the action seeking an injunction of the election
11 until February 17, 1987—three months after first learning of and just two weeks before the
12 scheduled election.

13 “The prejudice resulting from the delay in bringing the action is likewise amply
14 demonstrated. The sworn declaration of Ms. Hennessy, Assistant Town Clerk, sets forth that
15 by the time appellants' lawsuit was filed, the Town had taken all the necessary steps to hold
16 the special election: the notice of election had been published; the sample ballot including the
17 analysis and arguments for and against the measure had been prepared and printed; and the
18 absentee ballots had been mailed and the absentee voting had commenced. Her declaration
19 established further that the Town had incurred expenses of \$5,845 in connection with election
20 preparations. Moreover, postponement of the election would have constituted a breach of the
21 stipulated agreements with its attendant monetary consequences.”

22 The court not only denied the effort to stop the election, but found the effort to be frivolous and
23 awarded sanctions, which were upheld on appeal.

24 The United States Supreme Court has also repeatedly held that elections should not be
25 cancelled, or the rules changed, when an election is imminent. See *Purcell v. Gonzalez* (2006) 549
26 U.S. 1. In *Purcell*, the Ninth Circuit Court of Appeals issued an order on October 5, 2006, enjoining
27 the enforcement of certain election rules for an election scheduled for November 7. The Supreme
28 Court issued a unanimous per curiam opinion on October 20 reversing the Court of Appeals. The
Court said: “Given the imminence of the election and the inadequate time to resolve the factual

1 disputes, our action today shall of necessity allow the election to proceed without an injunction
2 suspending the voter identification rules”. In a concurring opinion, Justice Stevens observed that
3 allowing the election to move forward would allow for a better record. He wrote: “Allowing the
4 election to proceed without enjoining the statutory provisions at issue will provide the courts with a
5 better record on which to judge their constitutionality . . . Given the importance of the constitutional
6 issues, the Court wisely takes action that will enhance the likelihood that they will be resolved
7 correctly on the basis of historical facts rather than speculation.”

8 The Court took the same path in *Merrill v. Milligan* (2022) 142 S.Ct. 879. The court stayed a
9 preliminary injunction in an election that would have changed the outline of congressional districts.
10 In a concurring opinion, Justice Kavanaugh said: “That principle – known as the *Purcell* principle –
11 reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must
12 be clear and settled. Late judicial tinkering with election laws can lead to disruption and to
13 unanticipated and unfair consequences for candidates, political parties, and voters, among others.”²

14 The Elections Code sets forth time limits to challenge aspects of the recall. At the beginning,
15 there was a ten day period to challenge the petitions for any reason, under Elections Code §11042.5.
16 Then, when the petitions were submitted, there was a 30 day period to examine the petitions and
17 ascertain whether or not the petitions were signed by the requisite number of voters, under Elections
18 Code §11224. That was the statutory opportunity for the Registrar to challenge any signatures,
19 including for being in the wrong district. The Elections Code does not allow for the Registrar to
20 extend that time or to change his mind afterwards.

21 Furthermore, as noted, there were the two lawsuits filed, much earlier in the process, when
22 any deficiencies could have been raised. These court actions put this entire election under a
23 microscope. Both lawsuits presented an opportunity for anybody to challenge the propriety of the
24 election, but nobody raised the issue of the lines.

25 Petitioner cites to Elections Code §13314(a)(1). That section allows for challenges by petition
26 for writ of mandate when an elector alleges “that an error or omission has occurred, or is about to
27 occur, in the placing of a name on, or in the printing of, a ballot, county voter information guide, state

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² The subsequent history of this case is set forth in *Allen v. Milligan* (2023) 143 S.Ct. 1487.

1 voter information guide, or other official matter, or that any neglect of duty has occurred, or is about
2 to occur.” However, the challenge has to be timely, usually within the ten-day period set forth in
3 Elections Code §13313. And, to the point in this case, the writ can only be issued if “issuance of the
4 writ will not substantially interfere with the conduct of the election.”

5 Here the writ sought by the petitioner would not only interfere with the election, it would
6 cancel it – without any opportunity by the court to consider the facts and the law in a reasonable
7 considered manner, and after all the money has been spent and the ballots printed and mailed.
8 Petitioner had her chance – it is now too late.

9 **IV.**

10 **THE REGISTRAR AND THE CITY ARE ESTOPPED FROM**
11 **CANCELLING THE ELECTION.**

12 Beyond this, there are two important reasons why the election is being properly held and
13 should continue. First, at this stage the city and the Registrar are estopped from contending the wrong
14 lines were used. Second, the Registrar and the city clerk were in fact legally correct to use the new
15 lines.

16 At all times the proponents and the city relied on information provided by the Registrar, and
17 there were numerous opportunities before now to challenge the lines that were being used. When the
18 proponents first filed the notice of intent and prepared the recall petition, the Registrar and the city
19 clerk gave them the number of signatures they needed to qualify the recall for the ballot. That number
20 was calculated on the new lines. In reliance on that number and those instructions, the proponents
21 circulated the petition and obtained signatures. Had the Registrar given different instructions, the
22 proponents would have sought the signatures in the lines prescribed by the Registrar. The opponents
23 also relied on those lines in seeking to invalidate signatures.

24 Given all this, it is too late in the day for the Registrar to now try to cancel the election. See
25 *Preserve Shorecliff Homeowners v. City of San Clemente* (2008) 158 Cal.App.4th 1427, 1452-3,
26 applying the doctrine of estoppel to an election. There the court, citing *Assembly v. Deukmejian*
27 (1982) 30 Cal.3d 638, 651–652, held that reliance on printed election material and past practice,
28

1 excused a technical noncompliance with the statute. See also *Costa v. Superior Ct.*, (2006) 37 Cal.
2 4th 986 (upholding state initiative where there was substantial compliance); *Ruiz v. Sylva* (2002) 102
3 Cal. App. 4th 199 (applying substantial compliance doctrine to uphold recall petitions that did not
4 comply with the Elections Code requirements).

5 The Registrar and city clerk's own actions and lack of action prevent the Registrar and the
6 city from taking the drastic step of cancelling the election, and allow it to be upheld at this late stage.

7 **V.**

8 **THE LINES ARE THE PROPER LINES.**

9 The Registrar and the city clerk were in fact correct in using the new lines. As the Registrar's
10 October 26, 2023, letter concedes, the Elections Code provisions he relies upon do not apply when a
11 city charter provides differently. The charter of the City of Santa Ana indeed provides differently by
12 calling for the use of new lines for all elections once those lines have been adopted. This is shown by
13 Resolution 2022-022, adopted by the City Council on April 5, 2022, on a 7-0 vote and signed by
14 then-mayor Sarmiento. Section 2 of the resolution says in part: "Pursuant to Elections Code §21621
15 and Santa Ana Charter §101.2, the Santa Ana City Council hereby adopts the ward boundaries set
16 forth in the Recommended Map. . . for use in the City's General Municipal Election on November 8,
17 2022 and subsequent elections thereafter until a further redistricting is required. . .".

18 Significantly, this language does not make any exception for special elections or recall
19 elections. It applies to all elections. In contrast, the otherwise applicable state statute, Elections Code
20 §21626(b), refers to using the newly adopted boundaries "excluding a special election to fill a
21 vacancy or a recall election". This language is not in the city charter or in Resolution 2022-022.

22 Charter provisions also provide that the new boundaries, once adopted, become applicable to
23 incumbents for electoral purposes. For example, Charter section 401 provides an exemption to
24 residency requirements for incumbent councilmembers who are residents of a different ward based on
25 a change in boundaries. That section could have provided that new ward boundaries become
26 applicable at the end of an incumbent's term, but instead specifically applies new boundaries to
27 incumbents and exempts the incumbents from residency requirements.

1 If there is a conflict between the state Elections Code and the city charter, then the city charter
2 prevails. Numerous cases have held that municipal elections are not a matter of statewide concern but
3 are instead a municipal affair, and therefore a city charter prevails over state statutes that conflict with
4 the charter. *Johnson v. Bradley* (1992) 4 Cal.4th 389, 397-98 (allowing a charter city to provide public
5 financing of campaigns even though state law forbade it); *Cawdrey v. City of Redondo Beach* (1993)
6 15 Cal.App.4th 1212 (upholding a charter city's council term limits). In *Bradley*, the court explained:

7
8 ““Article XI, section 5 of the state Constitution (hereafter article XI, section 5)
9 addresses the home rule” powers of charter cities in two distinct subdivisions. Subdivision (a)
10 sets out the general principle of local self-governance, and provides: “It shall be competent in
11 any city charter to provide that the city governed thereunder may *make and enforce all*
12 *ordinances and regulations in respect to municipal affairs*, subject only to the restrictions and
13 limitations provided in their several charters and in respect to other matters they should be
14 subject to general laws. City charters adopted pursuant to this Constitution⁷ shall supersede
15 any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent
16 therewith.” (*Id.*, subd. (a), italics added.)

17
18 ¶ Whereas subdivision (a) of article XI, section 5, articulates the general principle of
19 self-governance, subdivision (b) sets out a nonexclusive list⁸ of four “core” categories that
20 are, by definition, “municipal affairs.” The first three categories of municipal affairs are: (1)
21 regulation, etc., of “the city police force”; (2) “subgovernment in all or part of a city”; and (3)
22 “conduct of city elections.” The final category gives charter cities exclusive power to regulate
23 the “manner” of electing “municipal officers.” It provides, “(4) *plenary authority* is hereby
24 granted, subject only to the restrictions of this article, to provide [in all city charters for] *the*
25 *manner in which, the method by which, the times at which, and the terms for which the*
26 *several municipal officers ... shall be elected....*” (Italics added.)”

27 Therefore the Registrar and the city clerk acted properly in using the new lines for a recall in
28 2023 because that is what Santa Ana had prescribed.

VI.

THE REGISTRAR DOES NOT HAVE THE AUTHORITY TO RESCIND HIS CERTIFICATION.

29 The calling of the election is a ministerial action. In *Baroldi v. Denni* (1961) 197 Cal.App.2d
30 472, a city councilman tried to enjoin certification of recall petitions. The court found the city clerk
31 and city council had a ministerial duty to call the election. The court said at page 477:

1 “When this point had been reached it became the ministerial duty of the City Clerk
2 to file the petitions with his certificate with the City Council without delay. Upon the
3 filing thereof, it became the ministerial duty of the City Council to order at once a
4 special election for a date not less than 60 or more than 75 days from the date of the
5 order to determine the question of recall. [citations omitted]

6 “Findings Unnecessary. In the case here at bar the pleadings, without conflict,
7 establish all of the necessary facts to place upon the City Clerk the duty to file the
8 petitions with Council and the duty of the Council to call an election.”

9 Similarly, in *Tilden v. Blood* (1936) 14 Cal.App.2d 407, the target of a recall petition argued
10 that the city clerk had the discretion to reject the petitions. The court strongly disagreed:

11 “Appellant further contends that in any event the rejection by him of said signatures, if
12 unwarranted, amounted to no more than error in the exercise of a discretionary power,
13 which cannot be reviewed or corrected by the court in a proceeding of this kind. The
14 negative answer to this contention is to be found in a number of decisions, among
15 them being *Hartsock v. Merritt*, 93 Cal.App. 365, 269 P. 757; *Hartsock v. Merritt*, 94
16 Cal.App. 431, 271 P. 381, and *Ratto v. Board of Trustees, supra*. As said in the first
17 Hartsock Case, *supra*, it is the duty of the city clerk to examine the individual
18 certificates, for the purpose of ascertaining whether they comply with the requirements
19 of the charter, and, if a sufficient number of valid certificates are filed, he must certify
20 that fact to the council, and the election must then be called. *Ratto v. Board of*
21 *Trustees, supra*. The citizen is entitled to have this duty performed honestly and fairly,
22 and if it is shown to have been done fraudulently or arbitrarily, the action may be
23 controlled by mandamus. Again, in the second Hartsock Case, *supra*, the court, in
24 restating the same doctrine, says the general rule is that mandamus does not lie to
25 compel a public official to exercise his discretion in any particular manner, but, where
26 the law imposes upon him specific duties and he either whimsically or arbitrarily
27 refuses to perform those duties, or where his refusal to perform is based upon an
28 erroneous conclusion of his legal duties, or where the right of the individual is so fixed
that the refusal of the official to act is a clear abuse of discretion, mandamus is the

1 proper remedy. [citations omitted] And, in dealing generally with this same subject-
2 matter, the Supreme Court, in the case of *Ley v. Dominguez, supra*, goes on to say that
3 the duties of a city clerk in determining the sufficiency of a petition of this kind are
4 purely ministerial and not judicial, and that under the law he should exercise his
5 powers and perform his duties in such a manner as will, whenever possible, produce
6 rather than defeat the right of the people in the exercise of their electoral franchise.”

7 There was a time limit to certify the results. There is no statutory provision for an elections
8 officer to extend that time, or to rescind the certification. Once the results were certified, the election
9 had to, and still has to, go forward.

10 **VII.**


11 **PETITIONER DOES NOT HAVE STANDING.**

12 Finally, it is a myth that anybody was disenfranchised. Most of the voters who were in Ward 3
13 in 2020 and who now are not, were put into Ward 6. That includes the petitioner, Guadalupe
14 Ocampo. Those voters got to vote for their councilmember in 2022 and are currently represented by
15 the Ward 6 councilmember now. If they were allowed to vote in a Ward 3 election, they would end
16 up with two council representatives. They would be overenfranchised, not disenfranchised.
17

18 **CONCLUSION**

19 These are significant legal issues that are worthy of detailed study. They should not be
20 decided by snap decisions. The election should proceed and then, if the recall is successful, there may
21 be post-election opportunities provided for in state law for the courts to give detailed consideration of
22 all of these matters.
23

24
25
26 DATED: November 6, 2023



27 MARK S. ROSEN
28 NICHOLAS L. SANDERS
Co-Counsel

DECLARATION OF MARK S. ROSEN

I, Mark S. Rosen, declare as follows:


1. I am an attorney duly authorized to practice law in all of the courts of the State of California. I am co-counsel with Nicholas L. Sanders for the real parties in interest in this case. I have personal knowledge of the facts set forth herein and, if called as a witness, could testify competently thereto.

2. This declaration is in addition to the declaration of Tim Rush which is being filed as a separate court document.

3. My clients contacted the Registrar of Voters on Friday, November 3, 2023, to find out how many people had voted in the election set for November 14 in Santa Ana. The Registrar gave my clients print-outs showing how many ballots had gone out and how many had voted by mail. A copy of the printouts are attached hereto. The printouts show that 26,943 vote by mail ballots had been issued. As of November 3, 2023, 3,365 vote-by-mail ballots had been returned as well as 3 military and veteran ballots. When my clients spoke to the Registrar on November 6, the total votes returned by vote-by-mail or at drop boxes was 3,370.

4. My research shows that there is a special election currently in the City of Los Angeles to replace councilmember Nuri Martinez, and under their charter they are using the newly drawn lines for the election.

I declare under penalty of perjury the foregoing is true and correct. Executed this 6th day of November, 2023, at Mission Viejo, California.


MARK S. ROSEN

1:06

5G+



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Orange County Registrar of Voters Registration Voting Results Data Media Community About

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2023 City of Santa Ana Special Recall Election

Select ballots issued or returned: Ballots Returned

Current Total Ballots Returned	
Breakdown of countywide turnout	
Vote-by-Mail ballots	3,368
Military and overseas ballots	3
Total vote-by-mail ballots returned	3,368
All ballots returned by party	
DEM	1,583
REP	1,036
AI	110
GRN	11
LIB	38
P-F	9
N-P	528
Daily breakdown of vote-by-mail ballots returned	See Link
Raw Count of In-Person Ballots Cast	See Link

Customized view by City, District:

Santa Ana Ward Division 3



Current Ballots News

03/09/2020	Public Notice of Election
04/05/2018	Heads Up OC 2018
11/12/2016	Post Election Ballot

Current Ballots Press Release

03/11/2020	Orange County Audit of Precincts
05/04/2018	\$8.71 Required
10/30/2016	Vote-by-Mail Act

Current Ballots Election Studies

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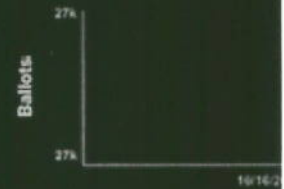
2023 City of Santa Ana Special Recall Election

Select ballots issued or returned:

Current Total Ballots Issued

Vote-by-Mail ballots	26,943
Military and overseas ballots	83
Total vote-by-mail ballots	27,026
Vote-by-mail ballots issued by party	
DEM	13,149
REP	6,267
AJ	859
GRN	141
LIB	345
P-F	196
N-P	6,065
Daily raw count of vote-by-mail ballots mailed	26,766

Vote-by-Mail B...



Customized view by City, District :

Vote-by-mail Ballots Issued

AJ	859
DEM	13,149
GRN	141
LIB	345
N-P	6,065
P-F	196
REP	6,267
Total	27,022

Current Ballots News

03/09/2020	Public Notice of Election
04/05/2018	Heads Up OC Voters 2018
11/12/2016	Post Election Ballot

Current Ballots Press Release

03/11/2020	Orange County Audit of Presidential
05/04/2018	\$0.71 Required
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Current Ballots Election Stu...

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service I was over 18 years of age and not a party to this action. My email address is pattielegalasst@aol.com and my business address is 27281 Las Ramblas, Ste. 200, Mission Viejo, California 92691.

On November 6, 2023, I served the following documents:

I served the documents on the person(s) below as follows: OPPOSITION TO EX PARTE APPLICATION FOR PETITION FOR WRIT OF MANDATE AND MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF TIM RUSH (filed concurrently) AND MARK S. ROSEN

I served the documents on the person(s) below as follows:

SEE ATTACHED

The documents were served by the following means (specify):

() BY MAIL: I enclosed the documents in a sealed envelope or package addressed to the addressee above and (specify one): () deposited the sealed envelope with the United States Postal Service with postage fully prepaid; or () placed the envelope for collection and mailing, following our ordinary business practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepared. I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Mission Viejo, California.

(X) BY EMAIL: electronic service: I electronically served the documents to the addressee listed above at the addressee's email address listed above

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 6, 2023, at Mission Viejo, California.


PATTIE LIMON

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