

CASE #: C105907

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4

5 **PETITION FOR WRIT OF MANDATE & REQUEST FOR IMMEDIATE STAY**
6 **IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**
7 **THIRD APPELLATE DISTRICT (SACRAMENTO)**
8
9

10 JOEL GILBERT, Petitioner) CASE NO.
11)
12 vs) **PETITION FOR WRIT OF MANDATE**
Sacramento Superior Court) **AND REQUEST FOR IMMEDIATE STAY**
12 (Dept. 21, Hon. Chang))
13 Respondent)
14 and)
15 Shirley N Weber, Secretary of State)
Eric Michael Swalwell,)
16 Real Parties in Interest)

17 **INTRODUCTION**
18

19 This is an emergency election matter requiring immediate intervention before the Secretary of
20 State’s March 26, 2026 certification deadline. The Superior Court is named as respondent in its
21 nominal capacity. Real parties in interest are the Secretary of State and Eric M. Swalwell.

22 The trial court denied relief based on a legal conclusion that a “conclusive presumption” of domicile
23 under Elections Code section 2026 applies, notwithstanding the existence of directly contradictory
24 evidence in the record regarding the predicate residence. The ruling turns on the application of a
25 conclusive presumption without first establishing the predicate fact on which that presumption
26 depends.
27
28

1 Absent immediate relief, certification will proceed within days—likely before this Court can act—
2 rendering this matter effectively unreviewable and allowing a potentially ineligible candidate to
3 appear on the ballot without resolution of a dispositive evidentiary conflict.

4
5 This petition presents a narrow legal question regarding the proper application of a conclusive
6 presumption, and does not require resolution of disputed facts regarding ultimate domicile,
7 including whether Elections Code section 2026 applies at all to gubernatorial eligibility under
8 Article V.

9
10 This Court’s immediate intervention is required to preserve the integrity of the electoral process and
11 to ensure that dispositive legal errors are not insulated from review by the timing of election
12 procedures.

13 **PARTIES**

- 14
- 15 • Petitioner: Joel Gilbert (pro se)
 - 16 • Respondent: Sacramento Superior Court (Dept. 21, Hon. Shelleyanne W.L. Chang)
 - 17 • Real Parties: Secretary of State Weber; Eric Swalwell

18 **PROCEDURAL HISTORY**

- 19
- 20 • Petition filed: January 8, 2026
 - 21 • First Amended Petition: January 16, 2026
 - 22 • Hearing: March 23, 2026
 - 23 • Tentative ruling: Petition denied on March 20, 2026
 - 24 • Final ruling: Tentative ruling adopted; petition denied on March 23, 2026

25 **ISSUE PRESENTED**

26
27 Whether the trial court erred by applying a conclusive presumption of domicile under Elections
28 Code section 2026 without first determining whether the predicate residence was supported by

1 reliable evidence, and in the face of directly contradictory official government records, and whether
2 Elections Code section 2026 applies to gubernatorial eligibility determinations as a matter of law.

3
4 **FACTUAL BASIS (CONDENSED)**

- 5 • Real Party relies on a Livermore address to establish California residency
- 6 • That claim is supported only by a declaration asserting continuous lease since 2017 with no
7 corroborating documentation
- 8 • Official Alameda County records show the property owner claimed the Homeowners'
9 Exemption (2017–2025)
- 10 • That exemption requires owner occupancy as principal residence
- 11 • These representations are mutually exclusive

12
13 **GROUND FOR RELIEF**

14 **I. THE TRIAL COURT MISAPPLIED A CONCLUSIVE PRESUMPTION**

15
16 The issues presented are questions of law subject to de novo review.

17
18 The trial court held that Elections Code section 2026 creates an irrebuttable presumption that
19 Swalwell’s domicile is the Livermore address listed on his voter registration.

20
21 This is legal error because a conclusive presumption cannot attach unless the predicate fact is first
22 established. The trial court applied the presumption without resolving whether the claimed
23 residence was supported by reliable, non-contradicted evidence.

24
25 The presumption applies only if the address qualifies as a “residence” under Elections Code section
26 349.

27 The trial court skipped this predicate inquiry and applied the presumption automatically.
28

1 A conclusive presumption cannot attach where the foundational fact is unsupported or contradicted.

2
3 The trial court's ruling effectively assumes the existence of a valid residence in order to apply the
4 presumption, rather than determining whether such a residence was established in the first instance.

5 **II. ELECTIONS CODE SECTION 2026 DOES NOT GOVERN GUBERNATORIAL**
6 **ELIGIBILITY**

7
8 Elections Code section 2026, by its plain language, applies to determining the domicile of "a
9 Member of the Legislature or a Representative in the Congress of the United States." The statute is
10 limited in scope and does not purport to govern eligibility for a separate constitutional office.

11 The statute addresses how domicile is treated for individuals serving in those offices, not the
12 separate constitutional eligibility requirements for a different office.

13
14 This case concerns eligibility for Governor under Article V, section 2 of the California Constitution,
15 which imposes an independent residency requirement. That requirement is governed by the
16 constitutional standard and the general definition of domicile under Elections Code section 349.

17 Nothing in section 2026 extends its conclusive presumption to gubernatorial eligibility
18 determinations. The trial court's ruling effectively imports a statutory presumption designed for
19 officeholders into a distinct constitutional eligibility context where the Legislature has not
20 authorized such application.

21
22 This constitutes legal error. A conclusive presumption may not be expanded beyond its statutory
23 scope, particularly where doing so displaces a constitutional eligibility requirement.

24
25 Accordingly, the trial court erred not only in its application of section 2026, but in applying the
26 statute at all to the question presented.

1 The Court of Appeal should correct this error.

2

3 **IV. THE COURT’S DUTY ANALYSIS IS DEPENDENT ON THE PRESUMPTION**

4 The trial court concluded that the Secretary of State has no ministerial duty to investigate candidate
5 residency.

6

7 However, that conclusion rests on the assumption that the presumption resolves the residency issue.

8

9 If the presumption was misapplied, the legal conclusion must be reconsidered.

9

10 **V. LIKELIHOOD OF SUCCESS ON THE MERITS**

11 Petitioner is likely to succeed on the merits because the trial court committed legal error in applying
12 a conclusive presumption under Elections Code section 2026 without first determining whether the
13 predicate factual requirement—that the Livermore address qualifies as a “residence”—was
14 supported by reliable, non-contradicted evidence.

15

16 A conclusive presumption cannot attach where the foundational fact is itself disputed or undermined
17 by directly contradictory evidence. Here, the declaration offered to establish residency asserts a
18 continuous lease of the property since 2017, while official Alameda County records reflect that the
19 property owner claimed the Homeowners’ Exemption for the same period, which requires owner
20 occupancy as a principal residence. These representations are mutually exclusive.

21 Rather than resolving this evidentiary conflict, the trial court accepted speculative explanations and
22 applied the presumption automatically. This reverses the required analytical sequence and
23 constitutes reversible legal error. Because the issue presented is a pure question of law, subject to de
24 novo review, Petitioner has a strong likelihood of success on appeal.

25

26 The Court need not resolve the ultimate question of domicile at this stage, but only determine
27 whether the presumption was prematurely applied in the face of unresolved, materially
28 contradictory evidence.

1 This case does not require final adjudication of domicile.

2
3 It requires only determining whether the presumption applies.

4 By applying the presumption first and addressing contradictory evidence afterward, the trial court
5 reversed the proper analytical sequence.

6
7 The Court of Appeal should correct this error.

8 **V. THE COURT'S DUTY ANALYSIS IS DEPENDENT ON THE PRESUMPTION**

9
10 The trial court concluded that the Secretary of State has no ministerial duty to investigate candidate
11 residency.

12 That conclusion rests on the assumption that the presumption resolves the residency issue.

13 If the presumption was misapplied, the legal conclusion must be reconsidered.
14

15 **VI. LIKELIHOOD OF SUCCESS ON THE MERITS**

16 Petitioner is likely to succeed on the merits for two independent reasons. First, the trial court
17 misapplied a conclusive presumption under Elections Code section 2026 without first determining
18 whether the predicate factual requirement—that the Livermore address qualifies as a “residence”—
19 was supported by reliable, non-contradicted evidence. Second, and independently, section 2026
20 does not apply to gubernatorial eligibility at all. By its plain language, the statute governs the
21 domicile of members of the Legislature and Congress in the context of their offices, not the
22 constitutional eligibility requirements for Governor under Article V. The trial court’s extension of
23 that presumption to a gubernatorial eligibility determination constitutes legal error subject to de
24 novo review.

25
26 This error is compounded by the unresolved evidentiary contradiction in the record. A conclusive
27 presumption cannot attach where the foundational fact is itself disputed or undermined by directly
28 contradictory evidence. Here, the declaration offered to establish residency asserts a continuous

1 lease of the property since 2017, while official Alameda County records reflect that the property
2 owner claimed the Homeowners' Exemption for the same period, which requires owner occupancy
3 as a principal residence. These representations are mutually exclusive.

4
5 Rather than resolving this evidentiary conflict, the trial court accepted speculative explanations and
6 applied the presumption automatically. This reverses the required analytical sequence and
7 constitutes legal error. Because the issue presented is a pure question of law, subject to de novo
8 review, Petitioner has a strong likelihood of success on appeal.

9
10 The Court need not resolve the ultimate question of domicile at this stage, but only determine
11 whether the presumption was prematurely applied in the face of unresolved, materially
12 contradictory evidence.

13 Because both errors present pure questions of law—whether a conclusive presumption may be
14 applied absent an established predicate fact, and whether Elections Code section 2026 applies to
15 gubernatorial eligibility—this Court reviews the issues de novo. Under that standard, Petitioner's
16 likelihood of success is substantial, and immediate relief is warranted to preserve meaningful
17 appellate review before certification occurs.

18 19 **VII. IRREPARABLE HARM**

20 The Secretary of State must certify candidates by March 26, 2026.

21
22 Absent immediate relief:

- 23 • Certification will occur within days — and likely before this Court can review the merits
- 24 absent immediate intervention
- 25 • Ballot preparation will proceed
- 26 • Appellate review will become effectively meaningless and the issues presented will become
- 27 moot before they can be adjudicated
- 28

1 Absent a stay, this legal error will evade review entirely. Once certification occurs, no effective
2 relief can be granted.

3
4 **VIII. PUBLIC INTEREST**

5 This case involves:

- 6
- 7 • Constitutional eligibility requirements
 - 8 • Integrity of sworn filings
 - 9 • Use of conclusive presumptions in election law

10 The public interest strongly favors resolution before certification.

11

12 This error is dispositive. The trial court's ruling allows a conclusive presumption to override a
13 failure of proof at its foundation. If left uncorrected, this would permit candidate eligibility to rest
14 on evidence that is internally contradicted by official records, undermining the integrity of the
15 electoral process and insulating such contradictions from judicial review.

16

17 The public interest is not served by allowing a conclusive presumption to override unresolved
18 contradictions in the evidentiary record.

19

20 **IX. REQUEST FOR RELIEF**

21

22 Petitioner respectfully requests that this Court:

- 23
- 24 1. Issue an immediate temporary stay pending further order of this Court to preserve its
25 jurisdiction and ability to provide meaningful review.
 - 26 2. Issue a writ directing the trial court to reconsider its ruling under the correct legal standard
 - 27 3. Grant any further relief the Court deems appropriate

28 **X. REQUEST FOR IMMEDIATE STAY**

1 Petitioner requests an immediate stay because:

- 2 • Certification occurs within 72 hours
- 3 • Without a stay, this case becomes effectively unreviewable
- 4 • The balance of equities favors preserving the status quo
- 5 • Absent a stay, this matter will become moot
- 6 • Petitioner has no adequate remedy at law.

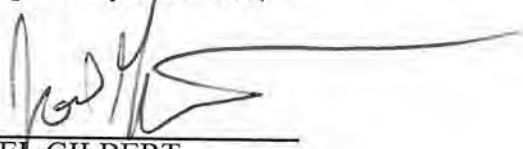
7
8 A brief administrative stay will preserve the Court's ability to provide meaningful review without
9 prejudicing any party. Without a stay, the issues presented will evade review entirely due to the
10 statutory certification deadline.

11
12 **XI. VERIFICATION**

13 I, Joel Gilbert, declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct.

15 Executed on March 23, 2026 at Santa Rosa Valley, California.

16 Respectfully submitted,

17 

18
19 JOEL GILBERT
Petitioner, Pro Se

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1 **DECLARATION OF JOEL GILBERT IN SUPPORT OF PETITION FOR WRIT OF**
2 **MANDATE AND REQUEST FOR IMMEDIATE STAY**

3
4 I, Joel Gilbert, declare as follows:

- 5 1. I am the petitioner in this matter and represent myself pro se. I have personal knowledge of
6 the facts stated herein and, if called as a witness, could and would competently testify
7 thereto.
- 8 2. Attached hereto as **Exhibit A** is a true and correct copy of the tentative ruling issued by the
9 Sacramento County Superior Court in this matter.
- 10 3. Attached hereto as **Exhibit B** is a true and correct copy of the declaration submitted in the
11 trial court by Kristina Mrzywka.
- 12 4. Attached hereto as **Exhibit C** are true and correct copies of official public records from the
13 Alameda County Assessor's Office, together with Petitioner's Notice of Material
14 Misrepresentation and Request for Judicial Notice filed in the trial court, reflecting that the
15 subject property received a Homeowners' Exemption during the same period in which it was
16 claimed to be leased.
- 17 5. Attached hereto as **Exhibit D** are true and correct excerpts from Petitioner's First Amended
18 Petition filed in the trial court, setting forth the legal arguments relevant to the issues
19 presented in this petition.
- 20 6. These exhibits are submitted to provide the Court with the relevant portions of the record
21 necessary to evaluate the Petition for Writ of Mandate and the Request for Immediate Stay.

22
23 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
24 and correct.

25 Executed on March 23, 2026, at Santa Rosa Valley, California
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Joel Gilbert
Petitioner, Pro Se

Exhibit Index

Exhibit A – Tentative Ruling

Exhibit B – Declaration of Mrzywka

Exhibit C – Notice of Misrepresentation (includes Alameda County Records)

Exhibit D – First Amended Petition

Exhibit A

Tentative Ruling

**SUPERIOR COURT OF CALIFORNIA
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Tentative Ruling

The following shall constitute the Court's tentative ruling on the petition for writ of mandate, which is scheduled to be heard by the Court on Monday, March 23, 2026 at 9:00 a.m. in Department 21. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government Code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list, Once the form is signed it must be filed with the clerk.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

Petitioner is admonished that many of his submitted filings do not comply with California Rules of Court Rule 2.111 regarding the format of the first page of each separate filing. This includes the requirement that each filing contain "the name, office address or, if none, residence address or mailing address (if different), telephone number, fax number and e-mail address, and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person."

Petitioner is further **admonished** for repeatedly filing documents in a piecemeal response

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to the opposition briefs, rather than filing a single reply, as ordered in the Court's February 9, 2026 minute order. The Court is aware that Petitioner is proceeding *in pro per*, however, a self-represented litigant "must expect and receive the same treatment as if represented by an attorney – no different, no better, no worse. [Citation.]" (*Nuño v. California State University, Bakersfield* (2020) 47 Cal.App.5th 799, 811.) Thus, "self-representation is not a ground for exceptionally lenient treatment." (*Rappeyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

I. FACTUAL BACKGROUND

By way of this petition for writ of mandate, Petitioner seeks an order prohibiting Respondent Secretary of State from certifying Real Party in Interest, Eric Michael Swalwell, as candidate for Governor of California for purposes of the 2026 election. Petitioner argues Swalwell fails to satisfy the residency requirement imposed by the California Constitution, Article V, section 2. Petitioner further argues that Swalwell filed, "materially false candidate filings under penalty of perjury." In support of these arguments, Petitioner refers to documentation regarding Swalwell's purchase of a residential property in Washington, D.C. Petitioner argues that Swalwell resides in the Washington, D.C. residence, and thus no longer maintains a California residency as required by Article V, section 2.

Respondent argues that she does not have a mandatory ministerial duty to investigate whether a particular candidate files false candidacy documents. Rather, citing to Elections Code sections 8065 and 8082, she argues that she has a mandatory ministerial duty to receive nomination documents from county elections officials and file them, with no discretion to reject or otherwise question the veracity of the statements contained therein.

Swalwell is a current member of the United States House of Representatives. He argues that as a member of Congress, his domicile is his presumptively the residence address indicated on his currently filed affidavit of voter registration^[1], a property in Livermore, California. Further, Swalwell argues that he *does* maintain a California residence in compliance with residency requirements for California Governor candidates.

II. STANDARD

Elections Code section 13314, subdivision (a) provides, in part:

(a)(1) An elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot, county voter information guide, state voter information guide, or other official matter, or that any neglect of duty has occurred, or is about to occur.

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(2) A peremptory writ of mandate shall issue only upon proof of both of the following:

(A) That the error, omission, or neglect is in violation of this code or the Constitution.

(B) That issuance of the writ will not substantially interfere with the conduct of the election.

Code of Civil Procedure section 1085 permits the issuance of a writ of mandate “to compel the performance of an act which the law specially enjoins.” The writ will lie where the petitioner has no plain, speedy and adequate alternative remedy, the respondent has a clear, present and usually ministerial duty to perform, and the petitioner has a clear, present and beneficial right to performance.” (*Sacramento County Alliance of Law Enforcement v. County of Sacramento* (2007) 151 Cal.App.4th 1012, 1020.) “Two basic requirements are essential to the issuance of the writ. (1) A clear, present and usually ministerial duty upon the part of the respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty.” (*Shamsian v. Dept. of Conservation* (2006) 136 Cal.App.4th 621, 640 [citations omitted].)

III. DISCUSSION

Article V, section 2 of the California Constitution provides that, “[t]he Governor shall be an elector who has been a citizen of the United States and a resident of this State for 5 years immediately preceding the Governor’s election.”

California Elections Code section 349 defines “residence” for voting purposes as “a person’s domicile.”^[2] Subdivisions (b) and (c) further define “residence” and “domicile” for voting purposes:

(b) The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile.

(c) The residence of a person is that place in which the person’s habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence.

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Elections Code section 2026 provides for a presumption as to the “domicile” of a member of Congress:

The domicile of a Member of the Legislature or a Representative in the Congress of the United States shall be conclusively presumed to be at the residence address indicated on that person’s currently filed affidavit of registration, as long as the address is a residence under subdivision (c) of Section 349, notwithstanding that the member or representative may have another residence at which any of the following apply:

- (a) A child for whom the member or representative is a parent, step-parent, foster parent, guardian, or caretaker is enrolled in school.
- (b) The spouse, domestic partner, or intimate partner of the member or representative is located for employment.
- (c) The member or representative receives mail or other postal or parcel deliveries.
- (d) The member or representative owns, leases, or rents a dwelling.
- (e) The member or representative claims a homeowner’s exemption or any other similar claim for tax purposes.
- (f) The member or representative maintains accounts or pays for utilities, cable or satellite television, Internet service, home security service, home or landscape maintenance, or other similar services.
- (g) The member or representative registers a vehicle or boat.
- (h) The member or representative maintains policies of insurance.
- (i) The member or representative has items of personal property.

Black’s Law Dictionary defines a “conclusive presumption” as a “presumption that cannot be overcome by any additional evidence or argument because it is accepted as irrefutable proof that establishes a fact beyond dispute.” (Black’s Law Dictionary (12th ed. 2024).)

Kristina Mrzywka declares that since June 2017, she has been in a lease agreement with Swalwell for a property she owns in Livermore, California. Mrzywka declares Swalwell pays rent pursuant to the lease agreement every month, lives at the property when he is in the East Bay, keeps significant belongings there, receives mail at the property, and is registered to vote at the property’s address. Swalwell declares that he has lived in Livermore, California since June

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2017, is registered to vote in California, and has filed state income tax returns in California since 2006.

As part of his repeated filings in this case, Petitioner requests that the Court take judicial notice of documents that he contends are printouts from the Alameda County Assessor's Office, purportedly demonstrating that Mrzywka has received the California Homeowners' Property Tax Exemption for the subject property from 2017 through the present. Petitioner argues that if Mrzywka is receiving this exemption, she must be living at the property, and therefore her statements that Swalwell maintains a residency at the same property, are materially false statements. In support of this argument, Petitioner cites to Revenue and Taxation Code section 218, which provides for the homeowners' taxation exemption, and states that the exemption, "does not extend to property that is rented, vacant, under construction on the lien date, or that is a vacation or secondary home of the owner or owners, nor does it apply to property on which an owner receives the veterans' exemption."

The issue of whether Mrzywka has falsely filed documents claiming entitlement to the homeowners' taxation exemption is not before the Court for purposes of the present litigation. Further, Petitioner has not provided any authority to establish that a person cannot qualify for the homeowners' taxation exemption when they occupy a subject residence and rent out a room to a tenant. Thus, even *if* the Court were to accept the Assessor's records as evidence that Mrzywka claims to live at the same property where Swalwell maintains a California residence, such evidence does not establish that Mrzywka's declaration of such tenancy is false and an act of perjury.

Petitioner asserts that Swalwell owns a home in Washington, D.C. and, as a member of Congress, spends a significant amount of time outside of California. However, as a member of Congress, Swalwell's domicile is "conclusively presumed" to be at the Livermore address listed on his affidavit of registration. (Elec. Code § 2026.) The Court is required to apply this "conclusive presumption" even when presented with evidence that Swalwell owns a residence outside of California, claims a homeowner's exemption at said residence, maintains a policy of insurance at said residence, or has items of personal property at said residence. (*Ibid.*; see also *In re Estate of Mills* (1902) 137 Cal. 298, 303 ["Where the law makes a certain fact a 'conclusive presumption' evidence cannot be received to the contrary"]; *People v. McCall* (2004) 32 Cal.4th 175, 176 [finding that a conclusive presumption is irrebuttable.]

There is no evidence before the Court that Swalwell has been convicted of having falsified his affidavit of registration, or otherwise had his affidavit of registration determined to be invalid. (See, e.g. *People v. Superior Court (Wright)* (2011) 197 Cal.App.4th 511 [permitting criminal charges to proceed on a finding of probable cause that a state senator did not live at a

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particular residence at the time he cast votes, thus engaging in criminal fraudulent conduct]; *People v. Mayer* (2003) 108 Cal.App.4th 403 [permitting criminal charges pursuant to Elections Code section 18203 for a person who submit a false nomination paper or declaration of candidacy].) Thus, Swalwell’s affidavit of registration remains valid, and subject to the “conclusive presumption” that the indicated residence is his domicile for purposes of the Elections Code, and for purposes of establishing candidate residency. As there is no evidence before the Court that Swalwell filed an affidavit of registration for a residence outside of California in the last five years, the Court must, pursuant to this conclusive presumption, find that Swalwell’s domicile has been in California for the period required by the California Constitution.

The Court rejects Petitioner’s contention that the Secretary of State has a mandatory ministerial duty to investigate and determine the candidate’s residency as Petitioner has failed to establish that the Secretary of State has a mandatory ministerial duty to investigate allegations regarding a particular candidate’s Article V, section 2 compliance. Elections Code section 8064 requires a potential candidate to obtain a declaration of candidacy from, and deliver the completed form to, the “elections official of the county in which the candidate resides and is a voter...” The county elections official is required to verify signatures and political preferences, if required, of the signers on any nomination paper, prior to forwarding the document for filing by the Secretary of State. (Elec. Code § 8081.) All nomination documents that are required to be filed in the Secretary of State’s office “shall be forwarded by the county elections official to the Secretary of State, who *shall receive and file them.*” (Elec. Code § 8082)(emphasis added.)

These statutes do not create a mandatory ministerial duty in the Secretary of State to investigate the authenticity of the statements contained in the nomination documents. Further, the plain language of these provisions requires the Secretary of State to file *all* facially valid nomination documents transmitted by the local elections officials. (See *Wittenburg v. Beachwalk Homeowners Assn.* (2013) 217 Cal.App.4th 654, 667 [“Ordinarily, the word ‘may’ connotes a discretionary or permissive act; the word ‘shall’ connotes a mandatory or directory duty.]) Petitioner has not identified any authority imposing upon the Secretary of State a mandatory ministerial duty to investigate the facts alleged in a facially valid nomination document or declaration of candidacy.

The existence of a constitutional requirement for office does not create a mandatory duty on the Secretary of State to enforce that constitutional requirement (*Bowen v. Keyes* (2010) 189 Cal.App.th 647.) Petitioner has failed to establish that the Secretary of State has failed to comply with a mandatory ministerial duty in this matter.

In light of the Court’s findings above, the Court need not address whether Article V,

Exhibit B

Declaration of Mrzywka

1 Jeremy A. Meier (SBN 139849)
2 Ashley M. Boulton (SBN 285305)
3 GREENBERG TRAURIG, LLP
4 400 Capitol Mall, Suite 2400
5 Sacramento, CA 95814
6 Telephone: (916) 442-1111
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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
03/06/2026
By _____ B. Lopez Deputy

6 Attorneys for Real Party in Interest
7 ERIC MICHAEL SWALWELL

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

12 **JOEL GILBERT,**

13 **Petitioner,**

14 **v.**

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

17 **Respondent.**

20 **ERIC MICHAEL SWALWELL,**

21 **Real Party in Interest.**

Case No. 26WM000011

**DECLARATION OF KRISTINA MRZYWKA IN
SUPPORT OF ERIC MICHAEL SWALWELL'S
OPPOSITION TO PETITIONER'S VERIFIED
FIRST AMENDED PETITION FOR WRIT OF
MANDATE**

Date: March 23, 2026
Time: 9:00 a.m.
Dept: 21
Judge: Hon. Shelleyanne W.L. Chang

Petition Filed: January 8, 2026
Amended Petition Filed: January 16, 2026

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I, Kristina Mrzywka, declare:

1. I have personal knowledge of the facts stated in this Declaration and, if called as a witness, could and would competently testify thereto.

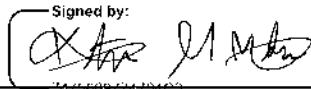
2. I entered a lease agreement with Eric and Brittany Swalwell in June 2017 for a property that I own in Livermore, California. Mr. and Mrs. Swalwell have leased the property from me since June 2017.

3. Mr. Swalwell pays rent pursuant to our lease agreement every month.

4. He lives at the property when he is in the East Bay, and keeps significant belongings there at all times.

5. Mr. Swalwell receives mail at the property and is registered to vote at the address.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct, and that this declaration is executed at Livermore, California, this 6th day of March 2026.

Signed by: 

Kristina Mrzywka

Exhibit C

Notice of Misrepresentation (includes Alameda County Records)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

1
2
3
4 JOEL GILBERT, Petitioner

) CASE NO. 26WM000011

5 vs

6 SHIRLEY N. WEBER, in her
7 capacity as California Secretary
of State

)
) **NOTICE OF MATERIAL MISREPRESENTATION**
) **IN DECLARATION AND REQUEST FOR**
) **JUDICIAL NOTICE OF PUBLIC RECORDS**

8 Respondent

) Date: March 23, 2026

9 and

) Time: 9:00 a.m.

10 Eric Michael Swalwell
11 Real Party in Interest

) Dept: 21

) Judge: Hon. Shelleyanne W.L. Chang

12
13 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

14
15 Petitioner respectfully submits this Notice to inform the Court of official government records that
16 directly contradict a sworn declaration submitted in support of Real Party in Interest's opposition.

17
18 **I. DECLARATION SUBMITTED TO THE COURT**

19 Real Party in Interest submitted a declaration from Kristina Mrzywka in support of his Opposition.
20 In that declaration, Ms. Mrzywka states under penalty of perjury:

21
22 "I entered a lease agreement with Eric and Brittany Swalwell in June 2017 for a property that I own
23 in Livermore, California. Mr. and Mrs. Swalwell have leased the property from me since June
24 2017."

25 The declaration is offered to the Court as evidence that the Swalwells have rented and resided at the
26 Livermore property since 2017.

27
28 **II. OFFICIAL COUNTY RECORDS DIRECTLY CONTRADICT THIS STATEMENT**

1 Public records from the Alameda County Assessor's Office show that the property owned by Ms.
2 Mrzywka is located at 320 Michell Court, Livermore, California, as reflected in the title records
3 attached as Exhibit A, has received the California Homeowners' Property Tax Exemption every
4 year from 2017 through 2025. The assessor's records show a \$7,000 homeowner exemption applied
5 to the property for each tax year. These records are attached as Exhibit B:

- 6 • 2017 tax year – \$7,000 Homeowner Exemption
- 7 • 2018 tax year – \$7,000 Homeowner Exemption
- 8 • 2019 tax year – \$7,000 Homeowner Exemption
- 9 • 2020 tax year – \$7,000 Homeowner Exemption
- 10 • 2021 tax year – \$7,000 Homeowner Exemption
- 11 • 2022 tax year – \$7,000 Homeowner Exemption
- 12 • 2023 tax year – \$7,000 Homeowner Exemption
- 13 • 2024 tax year – \$7,000 Homeowner Exemption
- 14 • 2025 tax year – \$7,000 Homeowner Exemption

16 **III. CALIFORNIA LAW REQUIRES OWNER OCCUPANCY**

17
18 Under California Revenue and Taxation Code §218, the Homeowners' Exemption is available only
19 when the dwelling is: "the principal place of residence of the owner."

20 The exemption applies only where the property is the owner's principal residence and is not leased
21 to tenants as their residence.

22
23 Thus, in order to receive the exemption, the owner must represent to the county that the owner
24 personally occupies the property as their primary residence.

25 **IV. THE DECLARATION AND THE TAX RECORDS CANNOT BOTH BE TRUE**

26
27
28

1 Ms. Mrzywka's declaration states the property has been leased to the Swalwells since June 2017.
2 However, the assessor's records show that Ms. Mrzywka simultaneously claimed the owner-
3 occupied Homeowners' Exemption for every year from 2017 through 2025.

4 These two representations are mutually exclusive. Notably, although the declaration asserts that a
5 lease agreement has existed since June 2017, no lease agreement or other documentation of the
6 alleged tenancy has been submitted to the Court. The declaration submitted by Real Party in Interest
7 therefore fails to reliably establish that the Livermore property was occupied by the Swalwells
8 during the period claimed.
9

10 If the property was rented to tenants beginning in 2017:

- 11 • The Homeowners' Exemption could not lawfully be claimed.

12
13 Conversely, if the exemption was properly claimed:

- 14 • The owner must have been occupying the property as her principal residence.

15
16 Because California law permits the Homeowners' Exemption only when the property is the owner's
17 principal residence, the sworn declaration submitted in this case and the Alameda County
18 Assessor's records cannot both be accurate. The Court therefore faces two mutually exclusive
19 representations made under penalty of perjury regarding the occupancy of the same property during
20 the same period.
21

22 Under California property tax law, eligibility for the Homeowners' Exemption is determined as of
23 January 1 of each tax year. Thus, for the exemption to apply in tax years 2018 through 2025, the
24 owner was required to represent that the property was her principal residence on January 1 of each
25 of those years. This further underscores the conflict between the sworn declaration submitted in this
26 case and the official property tax records.
27
28

1 The declaration is offered to establish that Real Party in Interest resides at the Livermore property.
2 However, the Alameda County Assessor records show that the owner of that property has claimed
3 the California Homeowners' Exemption for each year since 2017, which is available only when the
4 owner occupies the property as their principal residence. The public records therefore indicate that
5 the owner—not tenants—represented to the County that she resided at the property during the same
6 period the declaration claims the Swalwells were leasing and occupying it.

7
8 Real Party in Interest separately declares that he has lived in Livermore, California since June 2017.
9 The declaration of Ms. Mrzywka is offered to corroborate that assertion. Because the declaration
10 relied upon for that purpose directly conflicts with official public records regarding occupancy of
11 the property, the evidentiary support for that claim is correspondingly undermined.

12
13 **V. THE COURT SHOULD DISREGARD THE DECLARATION**

14 Because the sworn declaration directly conflicts with official government records, the reliability of
15 Ms. Mrzywka's declaration is seriously called into question and the Court should accord it little, if
16 any, evidentiary weight.

17
18 The declaration is offered by Real Party in Interest as key evidence regarding Mr. Swalwell's
19 alleged residence.

20 Because the declaration is contradicted by government records, its reliability and credibility are
21 severely undermined.

22
23 Petitioner respectfully requests that the Court:

- 24
25 1. Take judicial notice of the Alameda County Assessor records attached as Exhibit B; and
26 2. Disregard the declaration of Kristina Mrzywka to the extent it conflicts with those official
27 records.

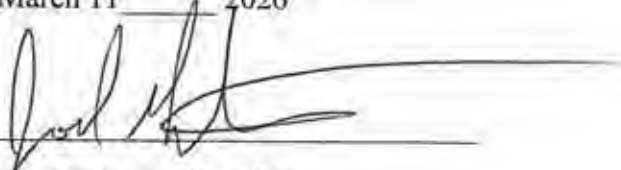
1 **VI. REQUEST FOR JUDICIAL NOTICE**

2
3 Pursuant to California Evidence Code §§452(c) and 452(h), the Court may take judicial notice of
4 official government records and facts not reasonably subject to dispute.

5 The Alameda County Assessor property records attached as Exhibit B are official public records
6 and therefore proper subjects of judicial notice.

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Dated: March 11 2026



Joel Gilbert, Petitioner (Pro Se)

EXHIBIT A



Alameda County, California Clerk-Recorder Web Access

Welcome Visitor.

Welcome | Fictitious Business Names | Marriage | **Real Estate** | FAQ

To order Real Estate copies online, go to: <https://www.acgov.org/auditor>

Other Options

[New Search](#)
[Refine Search](#)
[Back to Results](#)

2022051831

General | Legal Description | Related Documents

2022051831

Image for this record is not available

Document Detail

Instrument #: 2022051831

Multi Seq: 0

Date Filed: 03/11/2022 08:45:00 AM

Document Type: DEED

Book:

Page:

Pages in Image: 5

Image:

Grantor Names

- 1 MRZYWKA KRISTINA M
- 2 PINTO KRISTINA M
- 3 PINTO STEPHEN L
- 4 PINTO STELLA D

Grantee Names

- 1 MRZYWKA KRISTINA M
- 2 MRZYWKA NICHOLAS F

Returnee

Name:

Address:

City, State, Zip:



Alameda County, California

Clerk-Recorder Web Access

Welcome Visitor.

Welcome

Fictitious Business Names

Marriage

Real Estate

FAQ

To order Real Estate copies online, go to: <https://www.acgov.org/auditor/clerk/opr/opr.htm>

Criteria: Party Name Begins With MRZYWKA, KRISTINA;

Showing Records 1 through 4 (4 records found as of 03/11/2022 05:51:55 AM [count again](#))

Other Options
[New Search](#)
[Refine Search](#)

Page 1

Sort By:

#	<input type="checkbox"/>	Instrument # Book-Page	Date Filed	Document Type	Name Associated Name
1	<input type="checkbox"/>	2022051831	03/11/2022	DEED	[R] MRZYWKA KRISTINA M (++) [E] MRZYWKA KRISTINA M (→)
2	<input type="checkbox"/>	2022051831	03/11/2022	DEED	[E] MRZYWKA KRISTINA M (++) [R] MRZYWKA KRISTINA M (++)
3	<input type="checkbox"/>	2022052677	03/11/2022	DEED OF TRUST	[R] MRZYWKA KRISTINA M (++) [E] GUARANTEED RATE INC (++)
4	<input type="checkbox"/>	2022152706	09/02/2022	UCC FIN STMT(3&+PGS)	[R] MRZYWKA KRISTINA M (++) [E] CORNING FEDERAL CREDIT UNION

Property Information

Bedrooms	3	Floors	1
Bathrooms	2	Year Built	1956
Living Sq. Ft	1350	APN#	098a-0607-011
Land Sq. Ft	14158	Type	Single Family Residence/Townhouse

Current Owners

Owner Name Date Owned
Kristina M Mrzywka 03/11/2022

[Find Person Report >](#)

Owner Name
Nicholas F Mrzywka

Ownership Details

Document Number	51831	Property Indicator	Single Family Residence/Townhouse
Sale Date	Feb 28, 2022	Resale New Construction	Resale
Residential Model Indicator	Based On Zip Code And Value Property Is Residential	Recording Date	Mar 11, 2022
Title Company	DOMA TITLE/CA INC	Ownership Relationship Type	Husband/Wife
Owner	Kristina M Mrzywka; Nicholas F Mrzywka 320 Michell Ct, Livermore, California, 94551	Absentee Indicator	Situs Address Taken From Sales Transaction - Determined Owner Occupied
Seller	Pinto Kristina M & Stephen L	Deed Securities Category	Interfamily Transfer, Resale, Residential (Modeled)

EXHIBIT B



ALAMEDA COUNTY ASSESSOR'S OFFICE

Parcel Details for Parcel 98A-607-11

Parcel Number: 98A-607-11 Active: Yes
 Property Address: 320 MICHELL CT, LIVERMORE, CA 94551
 Mailing Address: 320 MICHELL CT, LIVERMORE, CA 94551

Values

Select the year to see value details

Roll Year	Land Value
2020	
2019	
2018	
2017	
2016	

1 2 3 4 5 6

*Corrected values

Use Code 1100
 SINGLE FAMILY RESIDENTIAL HOMES
 USED AS SUCH
[Use Code Reference](#)

No Parent Parcels

Maps

Value Detail



Year 2017 Assessed Value Detail

Parcel Number: 98A-607-11
 Roll Surrender Date: 07/01/2017

Land:	\$148,013
Improvements:	\$345,365
Total Land & Improvements:	\$493,378
Fixtures:	\$0
Total Real Property:	\$493,378
Personal Property:	\$0
Household Personal Property:	\$0
BPP Penalty Included:	No
Total Business Personal Property:	\$0
Total Taxable Value:	\$493,378
Homeowner Exemption:	\$7,000
Other Exemption:	\$0
Total Net Tax Value:	\$486,378



**ALAMEDA COUNTY
ASSESSOR'S OFFICE**

Parcel Details for Parcel 98A-607-11

Parcel Number: 98A-607-11 Active: Yes

Property Address: 320 MICHELL CT, LIVERMORE, CA 94551

Mailing Address: 320 MICHELL CT, LIVERMORE, CA 94551

Values

Select the year to see value details:

Roll Year	Land Value
2020	
2019	
2018	
2017	
2016	

[←](#)
[←](#)
[1](#)
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[3](#)
[4](#)
[5](#)
[6](#)

*Corrected values

Use Code

1100
SINGLE FAMILY RESIDENTIAL HOMES
USED AS SUCH
[Use Code Reference](#)

No Parent Parcels

Maps

Value Detail



Year 2018 Assessed Value Detail

Parcel Number: 98A-607-11

Roll Surrender Date: 07/01/2018

Land:	\$150,973
Improvements:	\$352,272
Total Land & Improvements:	\$503,245
Fixtures:	\$0
Total Real Property:	\$503,245
Personal Property:	\$0
Household Personal Property:	\$0
BPP Penalty Included:	No
Total Business Personal Property:	\$0
Total Taxable Value:	\$503,245
Homeowner Exemption:	\$7,000
Other Exemption:	\$0
Total Net Tax Value:	\$496,245



**ALAMEDA COUNTY
ASSESSOR'S OFFICE**

Parcel Details for Parcel 98A-607-11

Parcel Number: 98A-607-11 Active: Yes
 Property Address: 320 MICHELL CT, LIVERMORE, CA 94551
 Mailing Address: 320 MICHELL CT, LIVERMORE, CA 94551

Values

Select the year to see value details

Roll Year	Land Value
2020	
2019	
2018	
2017	
2016	

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*Corrected values

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 SINGLE FAMILY RESIDENTIAL HOMES
 USED AS SUCH
[Use Code Reference](#)

No Parent Parcels

Maps

Value Detail



Year 2019 Assessed Value Detail

Parcel Number: 98A-607-11
 Roll Surrender Date: 07/01/2019

Land: \$153,992
 Improvements: \$359,316
Total Land & Improvements: \$513,308

Fixtures: \$0
Total Real Property: \$513,308

Personal Property: \$0

Household Personal Property: \$0

BPP Penalty Included: No

Total Business Personal Property: \$0

Total Taxable Value: \$513,308

Homeowner Exemption: \$7,000

Other Exemption: \$0

Total Net Tax Value: \$506,308



ALAMEDA COUNTY ASSESSOR'S OFFICE

Parcel Details for Parcel 98A-607-11

Parcel Number: 98A-607-11 Active: Yes

Property Address: 320 MICHELL CT, LIVERMORE, CA 94551

Mailing Address: 320 MICHELL CT, LIVERMORE, CA 94551

Values

Select the year to see value details

Roll Year	Land Value
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[2020](#)

[2019](#)

[2018](#)

[2017](#)

[2016](#)

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*Corrected values

Use Code

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SINGLE FAMILY RESIDENTIAL HOMES
USED AS SUCH

[Use Code Reference](#)

No Parent Parcels

Maps

Value Detail

X

Year 2020 Assessed Value Detail

Parcel Number: 98A-607-11

Roll Surrender Date: 07/01/2020

Land: \$157,071

Improvements: \$366,499

Total Land & Improvements: \$523,570

Fixtures: \$0

Total Real Property: \$523,570

Personal Property: \$0

Household Personal Property: \$0

BPP Penalty Included: No

Total Business Personal Property: \$0

Total Taxable Value: \$523,570

Homeowner Exemption: \$7,000

Other Exemption: \$0

Total Net Tax Value: \$516,570



ALAMEDA COUNTY ASSESSOR'S OFFICE

Parcel Details for Parcel 98A-607-11

Parcel Number: 98A-607-11 Active: Yes

Property Address: 320 MICHELL CT, LIVERMORE, CA 94551

Mailing Address: 320 MICHELL CT, LIVERMORE, CA 94551

Values

Select the year to see value details

Roll Year	Land Value
-----------	------------

[2025](#)

[2024](#)

[2023](#)

[2022](#)

[2021](#)

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*Corrected values

Use Code

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SINGLE FAMILY RESIDENTIAL HOMES
USED AS SUCH

[Use Code Reference](#)

No Parent Parcels

Maps

Value Detail

X

Year 2021 Assessed Value Detail

Parcel Number: 98A-607-11

Roll Surrender Date: 07/01/2021

Land: \$158,697

Improvements: \$370,295

**Total Land &
Improvements:** \$528,992

Fixtures: \$0

**Total Real
Property:** \$528,992

Personal
Property: \$0

Household
Personal
Property: \$0

BPP Penalty
Included: No

**Total Business
Personal
Property:** \$0

**Total Taxable
Value:** \$528,992

Homeowner
Exemption: \$7,000

Other
Exemption: \$0

**Total Net Tax
Value:** \$521,992



**ALAMEDA COUNTY
ASSESSOR'S OFFICE**

Parcel Details for Parcel 98A-607-11

Parcel Number: 98A-607-11 Active: Yes
 Property Address: 320 MICHELL CT, LIVERMORE, CA 94551
 Mailing Address: 320 MICHELL CT, LIVERMORE, CA 94551

Values
 Select the year to see value details

Roll Year	Land Value
2025	
2024	
2023	
2022	
2021	

*Corrected values

Use Code
 1100
 SINGLE FAMILY RESIDENTIAL HOMES
 USED AS SUCH
[Use Code Reference](#)

No Parent Parcels

Maps

Value Detail ✕

Year 2022 Assessed Value Detail

Parcel Number: 98A-607-11
 Roll Surrender Date: 07/01/2022

Land:	\$181,871
Improvements:	\$377,700
Total Land & Improvements:	\$539,571
Fixtures:	\$0
Total Real Property:	\$539,571
Personal Property:	\$0
Household Personal Property:	\$0
BPP Penalty Included:	No
Total Business Personal Property:	\$0
Total Taxable Value:	\$539,571
Homeowner Exemption:	\$7,000
Other Exemption:	\$0
Total Net Tax Value:	\$532,571



**ALAMEDA COUNTY
ASSESSOR'S OFFICE**

Parcel Details for Parcel 98A-607-11

Parcel Number: 98A-607-11 **Active:** Yes
Property Address: 320 MICHELL CT, LIVERMORE, CA 94551
Mailing Address: 320 MICHELL CT, LIVERMORE, CA 94551

Values

Select the year to see value details

Roll Year	Land Value
2025	
2024	
2023	
2022	
2021	

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*Corrected values

Use Code

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 SINGLE FAMILY RESIDENTIAL HOMES
 USED AS SUCH
[Use Code Reference](#)

No Parent Parcels

Maps

Map Display

Value Detail



Year 2023 Assessed Value Detail

Parcel Number: 98A-607-11
 Roll Surrender Date: 07/01/2023

Land:	\$165,108
Improvements:	\$385,252
Total Land & Improvements:	\$550,360
Fixtures:	\$0
Total Real Property:	\$550,360
Personal Property:	\$0
Household Personal Property:	\$0
BPP Penalty Included:	No
Total Business Personal Property:	\$0
Total Taxable Value:	\$550,360
Homeowner Exemption:	\$7,000
Other Exemption:	\$0
Total Net Tax Value:	\$543,360



**ALAMEDA COUNTY
ASSESSOR'S OFFICE**

Parcel Details for Parcel 98A-607-11

Parcel Number: 98A-607-11 Active: Yes
 Property Address: 320 MICHELL CT, LIVERMORE, CA 94551
 Mailing Address: 320 MICHELL CT, LIVERMORE, CA 94551

Values
 Select the year to see value details

Roll Year	Land Value
2025	
2024	
2023	
2022	
2021	

*Corrected values

Use Code
 1100
 SINGLE FAMILY RESIDENTIAL HOMES
 USED AS SUCH
[Use Code Reference](#)

No Parent Parcels

Maps
[Maps Disclaimer](#)

Value Detail ✕

Year 2024 Assessed Value Detail
 Parcel Number: 98A-607-11
 Roll Surrender Date: 07/01/2024

Land:	\$168,409
Improvements:	\$392,956
Total Land & Improvements:	\$561,365
Fixtures:	\$0
Total Real Property:	\$561,365
Personal Property:	\$0
Household Personal Property:	\$0
BPP Penalty Included:	No
Total Business Personal Property:	\$0
Total Taxable Value:	\$561,365
Homeowner Exemption:	\$7,000
Other Exemption:	\$0
Total Net Tax Value:	\$554,365



**ALAMEDA COUNTY
ASSESSOR'S OFFICE**

Parcel Details for Parcel 98A-607-11

Parcel Number: 98A-607-11 Active: Yes

Property Address: 320 MICHELL CT, LIVERMORE, CA 94551

Mailing Address: 320 MICHELL CT, LIVERMORE, CA 94551

Values

Select the year to see value details

Roll Year	Land Value
<u>2025</u>	
<u>2024</u>	
<u>2023</u>	
<u>2022</u>	
<u>2021</u>	

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*Corrected values

Use Code

1100
SINGLE FAMILY RESIDENTIAL HOMES
USED AS SUCH

[Use Code Reference](#)

No Parent Parcels

Maps

[Maps Disclaimer](#)

Value Detail

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**Year 2025 Assessed Value
Detail**

Parcel Number: 98A-607-11

Roll Surrender Date: 07/01/2025

Land:	\$171,777
Improvements:	\$400,814
Total Land & Improvements:	\$572,591
Fixtures:	\$0
Total Real Property:	\$572,591
Personal Property:	\$0
Household Personal Property:	\$0
BPP Penalty Included:	No
Total Business Personal Property:	\$0
Total Taxable Value:	\$572,591
Homeowner Exemption:	\$7,000
Other Exemption:	\$0
Total Net Tax Value:	\$565,591

Exhibit D

First Amended Petition

01/16/2026

By: R. Lopez Deputy

1 Joel Gilbert
2 Petitioner (Pro Se)
3 13037 Ripple Creek
4 Santa Rosa Valley, CA 93012

5
6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 FOR THE COUNTY OF SACRAMENTO

8 JOEL GILBERT, Petitioner) CASE NO. 26WM000011
9)
10 vs) FIRST AMENDED PETITION FOR
11 SHIRLEY N. WEBER, in her) WRIT OF MANDATE
12 capacity as California Secretary)
13 of State) (Code Civ. Proc. § 1085)
14 Respondent)
15 and)
16 Eric Michael Swalwell)
17 Real Party in Interest)
18)
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I. INTRODUCTION

1. This is a petition for writ of mandate to compel Respondent Secretary of State to perform her ministerial, non-discretionary duty to enforce the qualifications for Governor prescribed by the California Constitution and Elections Code, and to decline certification of an ineligible candidate.
2. Petitioner seeks an order prohibiting Respondent from certifying ERIC MICHAEL SWALWELL as a candidate for Governor of California for the 2026 election because Swalwell fails to satisfy the constitutional residency requirement and filed materially false candidate filings under penalty of perjury.
3. Respondent SHIRLEY N. WEBER is sued in her official capacity as California Secretary of State. ERIC MICHAEL SWALWELL is named as the Real Party in Interest because the relief sought directly affects his asserted candidacy for Governor of the State of California.

1 **II. JURISDICTION AND VENUE**

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- 4. This Court has jurisdiction under Code of Civil Procedure §§ 1085 and 1086.
- 5. Venue is proper in Sacramento County because the acts complained of are performed by a statewide constitutional officer headquartered in Sacramento.

III. PARTIES

- 6. Petitioner Joel Gilbert is a registered California voter eligible to vote in the 2026 gubernatorial election. Respondent’s unlawful certification of an ineligible candidate impairs Petitioner’s right to a lawful ballot.
- 7. Respondent Shirley N. Weber is the California Secretary of State and is responsible for administering and certifying statewide elections.
- 8. Real Party in Interest ERIC SWALWELL is a declared candidate for Governor of the State of California whose eligibility and certification are the subject of this Petition.

IV. FACTUAL ALLEGATIONS

A. Constitutional Residency Requirement

- 9. Article V, section 2 of the California Constitution requires that the Governor be “a resident of this State for five years immediately preceding the Governor’s election.”
- 10. The Secretary of State’s own published qualifications acknowledge this constitutional requirement, notwithstanding a footnoted assertion that the office considers it “unenforceable.”
- 11. The Secretary of State lacks authority to nullify, suspend, or disregard a constitutional provision absent a judicial determination invalidating that provision.

B. Swalwell’s Declared Principal Residence Is Washington, D.C.

1 12. Publicly recorded mortgage documents show that Eric Michael Swalwell and his spouse
2 executed a District of Columbia Deed of Trust dated April 18, 2022, designating 209 S
3 Street NE, Washington, D.C. as the borrower’s principal residence.

4 13. The Deed of Trust includes a standard owner-occupancy clause stating that a borrower is in
5 default if materially false statements are made concerning occupancy as a principal
6 residence.

7 14. No rider, affidavit, or incorporated document in the recorded Deed of Trust disclaims
8 Swalwell’s personal occupancy or assigns the residence solely to his spouse. Even if
9 Swalwell later submitted an affidavit to his lender, such extrinsic statements cannot alter the
10 clear terms of a fully executed Deed of Trust. Under the parol evidence rule, a party cannot
11 unilaterally rewrite an integrated written contract.

12
13 **C. Absence of California Domicile**

14 15. Public records searches reveal no current ownership or leasehold interest held by Eric
15 Swalwell in California, nor any history of any ownership or leasehold interest based on
16 available public records.

17 16. Swalwell’s congressional financial disclosures from 2011 to 2024 list no California real
18 estate ownership.

19 17. Under Elections Code § 349, domicile is the place where habitation is fixed and where a
20 person intends to return and remain, and is determined by objective acts rather than
21 subjective declarations of intent. Swalwell’s declared principal residence in Washington,
22 D.C., coupled with his absence of any California residence, defeats California domicile.
23 Once ballot preparation or certification deadlines pass, no post-hoc judicial remedy can
24 restore a lawful ballot.

25
26 **D. False Candidate Filings Under Penalty of Perjury**

1 18. On December 4, 2025, Swalwell filed California Form 501 (Candidate Intention Statement)
2 listing 400 Capitol Mall, Suite 2400, Sacramento, California as his “home address.”

3 19. That address is not a residence; it is the office address of Swalwell’s campaign attorneys and
4 is properly used on Form 410 for committee purposes—but not as a personal residential
5 address.

6 20. Form 501 is signed under penalty of perjury, and the use of a non-residential address
7 constitutes a material misrepresentation in a filing required to establish candidate
8 qualifications, thereby triggering the Secretary of State’s duty to withhold certification.

9
10 **V. LEGAL DUTY VIOLATED**

11 21. The above facts establish a clear violation of a ministerial duty enforceable by writ. The
12 Secretary of State has a ministerial duty to enforce candidate qualifications prescribed by the
13 Constitution and Elections Code.

14
15 22. The Secretary of State may not substitute her own constitutional interpretation for that of the
16 judiciary, nor selectively decline enforcement of constitutional requirements.

17 23. Certifying a candidate who does not meet the constitutional residency requirement and who
18 has submitted materially false qualification filings violates that duty.

19
20 **VI. IRREPARABLE HARM**

21 24. Placement of an ineligible candidate on the ballot irreparably harms Petitioner and all
22 California voters by:

- 23
24 a) Diluting lawful votes
25 b) Undermining ballot integrity
26 c) Forcing voters to choose among unlawfully certified candidates

27 Such harm cannot be remedied after ballots are printed or votes cast.
28

1 **VII. INCORPORATION OF PREVIOUSLY FILED MATERIALS**

2
3 25. Petitioner incorporates by reference all previously filed Exhibits, Exhibit Index, and Request
4 for Judicial Notice, which remain unchanged and are part of the record in this action.

5 **VIII. PRAYER FOR RELIEF**

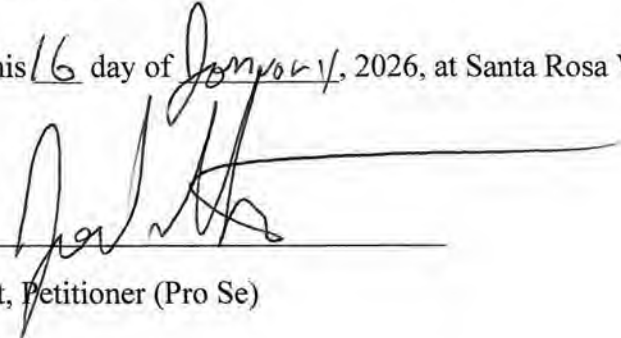
6
7 WHEREFORE, Petitioner respectfully requests that this Court:

- 8 A. Issue a peremptory writ of mandate directing Respondent not to certify Eric Michael Swalwell as
9 a candidate for Governor of California and declaring him ineligible for certification;
10 B. Grant expedited consideration;
11 C. Alternatively, issue an alternative writ and order to show cause;
12 D. Grant such other relief as the Court deems just and proper.

13
14 **VIII. VERIFICATION**

15
16 I, Joel Gilbert, declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed this 16 day of January, 2026, at Santa Rosa Valley, California.

19
20
21 
22 _____

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28
Joel Gilbert, Petitioner (Pro Se)