

02/10/2026

By: C. Torres Deputy

## SUPERIOR COURT OF THE STATE OF CALIFORNIA

## FOR THE COUNTY OF SACRAMENTO

JOEL GILBERT, Petitioner ) CASE NO. 26WM000011  
 )  
 vs ) PETITIONER'S OPENING MEMORANDUM  
 SHIRLEY N. WEBER, in her ) OF POINTS AND AUTHORITIES  
 capacity as California Secretary )  
 of State ) (Code Civ. Proc. § 1085)  
 Respondent )  
 )  
 and )  
 )  
 Eric Michael Swalwell )  
 Real Party in Interest )  
 )

**I. INTRODUCTION**

This case presents a narrow but fundamental question of California constitutional law: whether the California Secretary of State may decline to enforce an explicit constitutional qualification for Governor based solely on the Secretary's unilateral assertion that the requirement is "unenforceable."

Article V, section 2 of the California Constitution requires that a candidate for Governor be a resident of California for five years immediately preceding the election. No court has invalidated that requirement. No statute authorizes the Secretary of State to disregard it. Yet the Secretary has announced, by internal guidance, that the requirement will not be enforced.

Petitioner seeks a writ of mandate compelling the Secretary of State to perform her ministerial duty to enforce the Constitution as written and to withhold certification of a candidate who does not meet the constitutional residency requirement and who has submitted materially false candidate filings under penalty of perjury.

1 **II. STANDARD FOR WRIT RELIEF**

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3 A writ of mandate under Code of Civil Procedure section 1085 lies to compel a public official to  
4 perform an act that the law specifically requires as a duty resulting from office.

5 To obtain relief, a Petitioner must show:

- 6  
7 1. A clear, present, and ministerial duty on the part of the respondent; and  
8 2. A clear, beneficial right to performance of that duty.

9  
10 Where, as here, the relevant facts are undisputed and the duty arises directly from the Constitution,  
11 writ relief is appropriate and expeditious resolution is required.

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13 “A duty is ministerial when the law requires performance in a prescribed manner without the  
14 exercise of judgment or discretion.” (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432,  
15 442.)

16  
17 The factual allegations supporting this Petition are set forth in detail in the First Amended Petition  
18 and supporting exhibits, which are incorporated by reference.

19  
20 **III. THE SECRETARY OF STATE’S DUTY TO ENFORCE CONSTITUTIONAL**  
21 **QUALIFICATIONS IS MINISTERIAL**

22  
23 The Secretary of State is an executive officer charged with administering and certifying elections.  
24 Her authority is ministerial, not judicial, and is limited to duties assigned by statute and the  
25 Constitution.  
26

27  
28 California courts have consistently held that election officials may not exercise independent

1 constitutional judgment or decline to enforce eligibility requirements enacted by the voters. Where  
2 qualifications are prescribed by the Constitution itself, the Secretary's role is limited to  
3 enforcement—not evaluation or suspension.

4  
5 No provision of the Elections Code grants the Secretary discretion to ignore constitutional  
6 qualifications for statewide office. Nor may an executive officer nullify constitutional text through  
7 internal memoranda, footnotes, or published summaries.

8  
9 Until a court declares a constitutional provision invalid, the Secretary remains bound to enforce it.

10  
11 The Elections Code expressly characterizes the Secretary of State's role as ministerial. (Elec. Code,  
12 § 10.) Respondent has no discretion to suspend enforcement of constitutional qualifications based  
13 on policy preferences or administrative interpretation

14  
15 **IV. ONLY THE JUDICIARY MAY DECLARE A CONSTITUTIONAL PROVISION**  
16 **UNENFORCEABLE**

17  
18 Under basic separation-of-powers principles, determinations of constitutional validity rest  
19 exclusively with the judiciary. An executive officer may not:

- 20
- 21 • suspend a constitutional requirement,
  - 22 • declare it unenforceable,
  - 23 • or selectively decline its application.
- 24

25 Even if the Secretary believes a constitutional provision may conflict with federal law, the remedy  
26 is to seek judicial guidance—not unilateral non-enforcement. To hold otherwise would permit  
27 executive nullification of constitutional text without voter approval or judicial review.

1 *An executive officer may not suspend or refuse to enforce constitutional provisions absent judicial*  
2 *authorization. (See People v. Superior Court (Romero) (1996) 13 Cal.4th 497, 516.)*

3  
4 **V. ARTICLE V, SECTION 2 REMAINS VALID AND BINDING**

5 Article V, section 2 has never been invalidated by any court. It remains part of the California  
6 Constitution and continues to bind both candidates and election officials.

7  
8 The Secretary's published assertion that the residency requirement is "unenforceable" has no legal  
9 effect. Administrative guidance cannot amend or override constitutional text.

10  
11 Accordingly, unless and until a court holds otherwise, the Secretary retains a mandatory duty to  
12 enforce the five-year residency requirement for candidates for Governor.

13  
14 Publicly recorded documents and sworn filings reflect that the Real Party in Interest has identified  
15 his Washington, D.C. residence as his principal residence while omitting a California residence  
16 from his Form 501 filed under penalty of perjury.

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19 **VI. CERTIFICATION OF AN INELIGIBLE CANDIDATE CONSTITUTES A FAILURE**  
20 **TO PERFORM A MANDATORY DUTY**

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22 Petitioner has alleged, based on publicly recorded documents and sworn candidate filings, that the  
23 Real Party in Interest does not meet the constitutional residency requirement and has submitted  
24 materially false information under penalty of perjury.

25  
26 Certification of a candidate who fails to meet constitutional qualifications constitutes a failure to  
27 perform a ministerial duty and is properly corrected through writ relief.

1 Once ballot preparation deadlines pass, no post-election remedy can restore a lawful ballot. Courts  
2 therefore routinely entertain pre-election writ petitions to prevent irreparable harm to voters and  
3 ballot integrity.

## 4 5 **VII. IRREPARABLE HARM AND THE PUBLIC INTEREST**

6  
7 Allowing an ineligible candidate to appear on the ballot irreparably harms:

- 8
- 9 • voters' right to a lawful election,
  - 10 • the integrity of the ballot,
  - 11 • and public confidence in constitutional governance.
- 12

13 These harms cannot be remedied after ballots are printed or votes are cast. The public interest  
14 strongly favors enforcement of constitutional qualifications as written.

## 15 16 **VIII. CONCLUSION**

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18 This Court need not decide any abstract or ultimate constitutional question to grant relief. The sole  
19 issue presented is whether the Secretary of State may disregard an explicit constitutional  
20 qualification absent a judicial determination invalidating it.

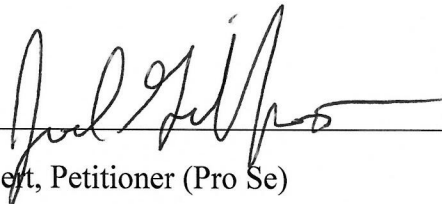
21  
22 The answer is no.

23  
24 Petitioner respectfully requests that the Court issue a writ of mandate compelling Respondent to  
25 enforce Article V, section 2 of the California Constitution and to withhold certification of any  
26 candidate who does not meet its requirements.

## 27 28 **IX. DECLARATION**

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

3 Executed this 10<sup>th</sup> day of February, 2026, at Santa Rosa Valley, California.  
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7 Joel Gilbert, Petitioner (Pro Se)

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