

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

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4 JOEL GILBERT, Petitioner) CASE NO. 26WM000011
5)
6 vs) PETITIONER’S REPLY BRIEF IN SUPPORT
7 SHIRLEY N. WEBER, in her) OF PETITION FOR WRIT OF MANDATE
8 capacity as California Secretary)
9 of State)
10 Respondent)
11 and)
12 Eric Michael Swalwell)
13 Real Party in Interest)
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I. INTRODUCTION

Respondent and Real Party in Interest do not dispute the central legal fact underlying this action: Article V, section 2 of the California Constitution requires five years of California residency immediately preceding election.

They do not cite any case invalidating it.
They do not identify any statute repealing it.
They do not claim that a court has declared it unenforceable.

Instead, both Answers rely on procedural defenses, generalized denials, and the assertion that documents “speak for themselves.”

What neither party identifies is any lawful authority permitting the Secretary of State to disregard an explicit constitutional qualification. The core issue remains unchanged:

May the Secretary of State decline to enforce an operative constitutional eligibility requirement absent judicial invalidation? She may not.

1 This case presents a pure question of law: whether an executive officer may declare a constitutional
2 provision unenforceable without judicial authorization.

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4 **II. THE CONSTITUTIONAL DUTY IS NOT DISCRETIONARY**

5 Respondent asserts she has not failed to perform any ministerial duty and characterizes her role as
6 discretionary.

7 But Article V, section 2 is not optional language. It is mandatory constitutional text. Under Code of
8 Civil Procedure §1085 and longstanding California precedent, a writ lies where:

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85 1. A public official has a clear present duty; and
11 2. The petitioner has a beneficial right to its performance.

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

14
15 No party disputes that Article V, section 2 exists.

16 No party disputes that it has not been invalidated.

17 The Secretary's role is to administer elections consistent with the Constitution, not to determine
18 which constitutional provisions she will enforce. Election officials may not disregard express
19 statutory or constitutional requirements. (See Assembly v. Deukmejian (1982) 30 Cal.3d 638, 652.)

20
21 Permitting executive officers to suspend constitutional provisions based on their own interpretation
22 would undermine separation-of-powers principles.

23
24 The Secretary's obligation is to enforce the Constitution as written, not to revise it through
25 administrative interpretation.

26 **III. RESPONDENT'S "SPEAKS FOR ITSELF" DEFENSE DOES NOT CREATE A**
27 **FACTUAL DISPUTE**

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1 Both Answers repeatedly assert that Real Party’s Deed of Trust, financial disclosures, and Form 501
2 “speak for themselves.”

3
4 The repeated assertion that documents “speak for themselves” does not create a triable factual issue
5 nor identify any contrary evidence. Neither Answer identifies any California residence satisfying
6 the constitutional requirement. Nor does either Answer contend that the Secretary conducted any
7 independent eligibility review.

8 Real Party’s recorded Deed of Trust identifies a Washington, D.C. property as the borrower’s
9 principal residence. No California residence is identified in sworn filings. The Form 501 lists a
85 Sacramento attorney office address rather than a residential address. These are objective
11 documentary facts.

12
13 If Real Party contends domicile exists elsewhere, that is an evidentiary issue — not a legal
14 justification for the Secretary to decline enforcement of the constitutional residency requirement
15 altogether.

16 This Court need not resolve ultimate domicile today to determine whether the Secretary has a duty
17 to enforce Article V, section 2.

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19 **IV. AFFIRMATIVE DEFENSES DO NOT BAR RELIEF**

20 **A. Standing**

21 Both Answers raise lack of standing.

22 California courts have repeatedly recognized that voters possess a beneficial interest sufficient to
23 seek pre-election writ relief to enforce ballot qualifications. (See e.g., Green v. Obledo (1981) 29
24 Cal.3d 126, 144 [beneficial interest broadly construed in mandamus].)

25
26 Petitioner is a registered California voter eligible to vote in the 2026 gubernatorial election. That
27 confers a beneficial interest sufficient for writ relief.

28

1 **B. Ripeness**

2 Respondent asserts ripeness concerns. The matter is ripe precisely because certification deadlines
3 are approaching. Courts consistently recognize that election qualification challenges must be
4 resolved pre-election or they become meaningless. Post-election remedies cannot cure placement of
5 an ineligible candidate on the ballot.

6
7 **C. Laches**

8 Real Party asserts laches. The Petition was filed promptly after candidacy filings and prior to
9 certification. There has been no unreasonable delay and no prejudice demonstrated.

85
11 **D. Exhaustion**

12 Real Party asserts failure to exhaust administrative remedies. There is no administrative
13 adjudication mechanism for challenging the Secretary’s refusal to enforce a constitutional
14 qualification. Writ relief is the appropriate and exclusive remedy.

15 **V. THIS CASE DOES NOT REQUIRE THE COURT TO RESOLVE ALL FACTUAL**
16 **QUESTIONS**

17 Respondent attempts to frame the issue as one of disputed eligibility facts. But the threshold issue is
18 narrower:

19 Does the Secretary of State have authority to deem Article V, section 2 “unenforceable” absent
20 judicial invalidation? If not, the Court may:

- 21
- 22 • Issue an alternative writ;
 - 23 • Require enforcement consistent with the Constitution; or
 - 24 • Direct that certification decisions reflect constitutional compliance.

25 The Court need not make final factual findings regarding domicile to grant relief on the legal
26 question of enforceability.

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1 **VI. SEPARATION OF POWERS CONTROLS**

2 An executive officer may not suspend or nullify constitutional text. Neither Respondent nor Real
3 Party identifies:

- 4 • A judicial decision invalidating Article V, section 2;
- 5 • A federal preemption ruling;
- 6 • Or any statutory repeal.

7
8 Unless and until invalidated by a court of competent jurisdiction, constitutional provisions remain
9 binding. Administrative summaries or footnotes cannot override constitutional text.

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11 Neither Respondent nor Real Party asserts that Article V, section 2 has been preempted by federal
12 law. No federal court has invalidated the provision. In the absence of controlling federal authority,
13 the Secretary remains bound by the California Constitution.

14 **VII. IRREPARABLE HARM REMAINS**

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16 Courts routinely recognize that election qualification disputes become moot once ballots are printed,
17 making pre-election relief essential. The compressed election calendar itself establishes the need for
18 prompt judicial review. Pre-election writ review is therefore the only effective mechanism to
19 preserve:

- 20 • Voters’ right to a lawful ballot
- 21 • Ballot integrity
- 22 • Public confidence in constitutional governance

23
24 The threshold enforceability question is logically antecedent to any factual inquiry regarding
25 domicile.

26
27 **VIII. CONCLUSION**

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1 The Answers do not identify any judicial decision invalidating Article V, section 2, nor any
2 statutory authority permitting Respondent to decline enforcement.


3
4 The Answers do not resolve the threshold legal question presented nor the core constitutional issue.
5 Accordingly, Petitioner respectfully requests that this Court:

- 6 1. Issue a writ of mandate compelling Respondent to enforce Article V, section 2 of the
7 California Constitution and not certify Real Party;
- 8 2. Direct that certification of candidates for Governor comply with the five-year residency
9 requirement; and
- 85 3. Grant such further relief as is just and proper.

11
12 **IX. 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.

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16 Executed this 26 day of February, 2026, at Santa Rosa Valley, California.

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19 Joel Gilbert, Petitioner (Pro Se)

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