

01/08/2026

By: C. Torres Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

JOEL GILBERT, Petitioner

) CASE NO. 26WVM00001 1

vs

) SUPPLEMENTAL BRIEF IN SUPPORT

SHIRLEY N. WEBER, in her
capacity as California Secretary
of State) OF PETITION FOR WRIT OF
MANDATE

Respondent

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This Supplemental Brief is submitted to address a single, discrete legal issue that is central to this Court's determination: whether the California Secretary of State possesses authority to disregard or decline to enforce an explicit qualification requirement contained in the California Constitution based solely on the Secretary's unilateral 'legal opinion.'

I. ISSUE PRESENTED

Whether the California Secretary of State may refuse to enforce Article V, section 2 of the California Constitution on the ground that the Secretary believes it to be unconstitutional, absent any judicial determination invalidating that provision, as applied in this case.

II. SHORT ANSWER

No. The Secretary of State is a ministerial officer with no authority to invalidate, suspend, or ignore a constitutional provision. Determinations of constitutionality are exclusively judicial functions. Until a court declares Article V, section 2 unconstitutional, the Secretary of State must enforce it as written.

III. THE SECRETARY OF STATE'S DUTIES ARE MINISTERIAL, NOT JUDICIAL

The Secretary of State's powers are derived from statute and are limited to administering and certifying elections, not adjudicating constitutional validity. California courts have consistently held that election officials perform ministerial duties (Elec. Code, § 10, Davis v. Brown (1997) 15

1 Cal.4th 1) and may not exercise independent constitutional judgment when applying candidate
2 qualification requirements. Where a qualification is stated in the Constitution itself, the Secretary's
3 role is limited to enforcement, not evaluation.

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5 Election officials must apply the law as enacted. Where disputes arise concerning constitutionality,
6 those disputes must be resolved by the judiciary—not by executive officers.

7 **IV. ONLY COURTS MAY DECLARE A CONSTITUTIONAL PROVISION INVALID**

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9 Under fundamental separation-of-powers principles, the power to interpret and invalidate
10 constitutional provisions rests solely with the courts (Cal. Const., art. III, § 3; Marbury v. Madison).
11 Neither the Secretary of State nor any other executive officer may unilaterally declare a provision of
12 the California Constitution 'unenforceable.'

13 Even where executive officials believe a state constitutional provision may conflict with the United
14 States Constitution, their remedy is to seek judicial guidance—not to disregard the provision
15 outright.

16 **V. THE SECRETARY OF STATE'S FOOTNOTE CANNOT OVERRIDE THE** 17 **CONSTITUTION**

18 The Secretary of State's published 'Summary of Qualifications and Requirements for Governor'
19 includes a footnote asserting that Article V's residency requirement is 'unenforceable.' That
20 footnote has no force of law. Administrative guidance documents cannot amend, suspend, or nullify
21 constitutional text.

22 Allowing an executive officer to nullify constitutional provisions by internal memorandum would
23 undermine the separation of powers and permit unilateral constitutional revision without judicial
24 review or voter approval.

25 26 **VI. CONSEQUENCES FOR THIS CASE**

27 Because no court has declared Article V, section 2 unconstitutional, the Secretary of State remains
28 legally obligated to enforce the five-year California residency requirement for candidates for

1 Governor. Certification of a candidate who fails to meet that requirement constitutes a failure to
2 perform a mandatory ministerial duty and is properly corrected through writ relief.

3
4 **VII. CONCLUSION**

5 This Court need not resolve the ultimate federal constitutionality of Article V, section 2 to grant
6 relief. The only question presented is whether the Secretary of State may disregard the California
7 Constitution absent a court order. The answer is unequivocally no.

8 Accordingly, the Court should grant the Petition for Writ of Mandate and compel Respondent to
9 enforce the constitutional qualifications for Governor as written.

10 Dated: January 6, 2026

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14 Joel Gilbert, Petitioner (Pro Se)