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9 PAUL MERRITT

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

12 PAUL MERRITT,  
13 *Plaintiff,*  
14 vs.  
15 HON. ALEX PADILLA,  
16 *Defendant.*

CASE NO. 8:16-CV-00606-DOC-JCG

**PLAINTIFF PAUL MERRITT'S  
THIRD AMENDED  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

FEDERAL JURISDICTION INVOKED  
PURSUANT TO 28 U.S.C. §1331 AND  
§1983

JUDGE: Hon. David O. Carter

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20 **I. Introduction**

21 1. Last summer, former U.S. Senate candidate Paul Merritt's  
22 constitutional rights were irreparably harmed. Instead of publishing his candidate  
23 statement verbatim, the Secretary of State unlawfully censored the heading of Mr.  
24 Merritt's statement in the June 2016 Voter Information Guide (*attached* as Exhibit  
25 1). Consequently, instead of stating that he was a "Registered Independent voter",  
26 the Voter Guide stated that Mr. Merritt had "NO PARTY PREFERENCE" [sic].  
27 As a result, the Secretary of State not only violated Mr. Merritt's constitutional  
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1 rights under Due Process Clause,<sup>1</sup> but deprived California’s voters of critical  
2 information necessary to evaluate a candidate for U.S. Senate.

3 **II. Introduction to the Parties**

4 2. Plaintiff **Paul Merritt** was a candidate for U.S. Senate in California’s  
5 June 7, 2016 Primary Election. Mr. Merritt is independent of, and not affiliated  
6 with, any of the six “ballot qualified” parties whose names are allowed to appear on  
7 the California ballot.<sup>2</sup>

8 3. Defendant **Alex Padilla**, California’s Secretary of State, administers  
9 and enforces state law regarding, *inter alia*, statewide elections.<sup>3</sup>

10 **III. Statement of Facts**

11 A. The Secretary of State’s Voter Information Guide

12 4. The California Voter Information Guide (the “State Voter Guide”) is  
13 published by the Secretary of State and distributed to all registered voters in  
14 California. Under Cal. Elections Code §9084(i), candidates for U.S. Senate have  
15 the right to have their candidate statements published in the State Voter Guide,  
16 provided that they (1) pay the required fee, (2) limit their statement to 250 words,  
17 and (3) do not “make any reference” to any of their opponents.

18 5. Under state law, no part of the unofficial State Voter Guide may be  
19 amended unless a voter or the Secretary of State has filed a lawsuit for that purpose  
20 during the “public examination” period, when the public may review the unofficial  
21 State Voter Guide (i.e., before the final copy of the *official* State Voter Guide is  
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23  
24 <sup>1</sup> Mr. Merritt’s Second Amended Complaint had also alleged that the Secretary  
25 of State had also violated Mr. Merritt’s rights under the First Amendment and the  
26 Equal Protection Clause. The Court dismissed those claims in its Feb. 1, 2017  
27 Order (Dkt. 41), which granted leave to amend Mr. Merritt’s Due Process claim.

28 <sup>2</sup> Because Mr. Merritt did not place first or second in the Primary Election, he  
did not advance to the Nov. 8, 2016 General Election under the rules of California’s  
Top Two Primary. *See* CAL. CONST. art. ii §5(a).

<sup>3</sup> Cal. Gov’t Code §12172.5.

1 sent to the printers).<sup>4</sup> For the June 2016 Primary Election, the “public examination”  
2 ran from Feb. 23 through Mar. 14, 2016.

3 B. Mr. Merritt’s Candidate Statement

4 6. Mr. Merritt filed his timely candidate statement in Feb. 2016. The top  
5 of his candidate statement contained the following phrase: “Paul Merritt  
6 Independent Registered voter”. Mr. Merritt paid \$2,725 to have his candidate  
7 statement published in the State Voter Guide.

8 7. On Feb. 12, 2016, the Secretary of State’s Office confirmed that it had  
9 received Mr. Merritt’s candidate statement. Subsequently, no one filed any lawsuit  
10 challenging any part of Mr. Merritt’s candidate statement during the “public  
11 examination” period.

12 C. The Secretary of State’s Censorship of Mr. Merritt’s Candidate  
13 Statement

14 8. In early March 2016, Mr. Merritt was apprised by the Orange County  
15 Registrar’s Office that the Secretary of State had censored his candidate statement.  
16 Specifically, instead of stating that he was a “Registered Independent voter”, the  
17 State Voter Guide was altered to state that Mr. Merritt had “NO PARTY  
18 PREFERENCE”. In response, Mr. Merritt repeatedly tried to contact the Secretary  
19 of State’s Office – leaving a number of messages with the Secretary of State’s  
20 Office over a three-week period. After receiving no response, Mr. Merritt formally  
21 protested the unauthorized change to his candidate statement, in a letter sent to the  
22 Secretary of State’s Office on Mar. 23, 2016. Mr. Merritt received no response  
23 from the Secretary of State.

24 9. Subsequently, the Secretary of State published the official June 7,  
25 2016 State Voter Guide, which altered the first line of Mr. Merritt’s candidate  
26 statement. Instead of identifying him as a “Registered Independent voter”, the State  
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28 <sup>4</sup> Cal. Elections Code §9092 & Cal. Gov’t Code §88006.

1 Voter Guide identified Mr. Merritt as having “NO PARTY PREFERENCE”.

2 D. The Secretary of State’s Treatment of Other Candidate Statements

3 10. In contrast, the Secretary of State allowed other U.S. Senate candidates  
4 to express their political beliefs, without censoring their candidate statements.<sup>5</sup> The  
5 State Voter Guide’s candidate statements identified the following candidates by  
6 their “REPUBLICAN” party affiliation: Jerry J. Laws (p.1), Duf Sundheim (p.2),  
7 Tom Palzer (p.5), Greg Conlon (p.6), Karen Rosenberry (p.6), and Von Hougo  
8 (p.7). In addition, the candidate statements of Mr. Sundheim and Mr. Conlon  
9 expressly refer to their party affiliation and activity in partisan political  
10 organizations. According to their candidate statements, Mr. Sundheim “was  
11 Chairman of the California Republican Party”, and (2) Mr. Conlon “was the  
12 Republican nominee for State Treasurer in 2014”.

13 11. Similarly, the State Voter Guide’s candidate statements identified the  
14 following candidates by their “DEMOCRATIC” party affiliation: Loretta Sanchez  
15 (p.2), Massie Monroe (p.3), President (sic) Cristina Grappo (p.4), Herbert G. Peters  
16 (p.5), and Kamala D. Harris (p.8). In addition, the candidate statements of Ms.  
17 Grappo and Mr. Peters expressly refer to their party affiliation and activity in  
18 partisan political organizations. According to their candidate statements, Ms.  
19 Grappo “hold[s] a Democratic Party platform”, and Mr. Peters is an “Andrew  
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21 <sup>5</sup> Curiously, the Secretary of State also provided voters with misleading  
22 information with respect to Akinyemi Olabode Agbede, who was listed in the June  
23 7, 2016 State Voter Guide as a candidate for U.S. Senate. However, Mr. Agbede’s  
24 name *did not appear on the June 7, 2016 U.S. Senate ballot*. Compare Secretary of  
25 State’s June 7, 2016 State Voter Guide, attached as Exhibit 1 and also available at  
26 <http://vig.cdn.sos.ca.gov/2016/primary/en/pdf/candidate-statements.pdf> (last visited  
27 July 13, 2017) (Mr. Agbede’s candidate statement is printed on page 1 of the State  
28 Voter Guide); with “Can You Understand Your Ballot?”, KCRW, June 6, 2016,  
available at <http://blogs.kcrw.com/dna/can-you-understand-your-ballot> (last visited  
July 13, 2017) (reprinting copy of the June 7, 2016 U.S. Senate ballot, on which  
Mr. Agbede’s name is not listed).

1 Jackson Democrat.”

2 **IV. Jurisdiction and Venue**

3 12. The Court has original jurisdiction to hear Mr. Merritt’s claims  
4 pursuant to 28 U.S.C. §1331 (federal-question jurisdiction) and 28 U.S.C. §1983  
5 (jurisdiction for federal civil-rights violations). This Court is a proper venue for  
6 this action, for Defendant Secretary of State Alex Padilla performs the duties of his  
7 office within the Central District of California.

8 **FIRST CLAIM FOR RELIEF**

9 *Violation of the United States Constitution and 42 U.S.C. §1983*

10 (Due Process Clause, Amendment XIV, and 42 U.S.C. § 1983)

11 By Plaintiff Paul Merritt Against Defendant Secretary of State Alex Padilla

12 13. The foregoing allegations are hereby incorporated by reference.

13 14. The conduct of the Secretary of State violated Mr. Merritt’s  
14 constitutional rights protected under the United States Constitution’s Due Process  
15 Clause (Amendment XIV) and 42 U.S.C. §1983, when he deleted and censored a  
16 critical phrase from Mr. Merritt’s candidate statement without filing a lawsuit for  
17 that purpose during the “public examination” period.

18 15. Mr. Merritt suffered irreparable harm, for the Secretary of State  
19 unlawfully deleted and censored a critical phrase from Mr. Merritt’s candidate  
20 statement. At the same time, the Secretary of State illegally spent public funds to  
21 delete and censor Mr. Merritt’s candidate statement. Consequently, Mr. Merritt is  
22 entitled to declaratory and permanent injunctive relief to restrain the Secretary of  
23 State from further violating the United States Constitution’s Due Process Clause  
24 (Amendment XIV) and 42 U.S.C. §1983 with respect to his candidate statement  
25 and any and all future candidate statements of Mr. Merritt and other candidates.

26 16. An actual controversy now exists between Mr. Merritt and the  
27 Secretary of State as to whether the Secretary of State violated Mr. Merritt’s rights  
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1 under the United States Constitution’s Due Process Clause (Amendment XIV) and  
2 42 U.S.C. §1983. The parties therefore need a declaration from the Court regarding  
3 whether the Secretary of State’s actions, as alleged in this Complaint, violated the  
4 United States Constitution’s Due Process Clause (Amendment XIV) and 42 U.S.C.  
5 §1983.

6 **REQUEST FOR RELIEF**

7 Plaintiff Paul Merritt requests the following relief from the Court:

8 A. That the Court declare that the Secretary of State violated Mr.  
9 Merritt’s rights under the United States Constitution (Amendments I & XIV & Due  
10 Process Clause) and 42 U.S.C. §1983, when the Secretary of State deleted and  
11 censored a critical phrase from Mr. Merritt’s candidate statement without filing a  
12 lawsuit for that purpose during the “public examination” period.

13 B. That the Court issue a permanent injunction prohibiting the Secretary  
14 of State and all persons acting under his direction and control from deleting and  
15 censoring any part of a candidate statement that complies with Cal. Elections Code  
16 §9084(i), without filing a lawsuit for that purpose during the “public examination”  
17 period.

18 C. That the Court award Mr. Merritt all reasonable expenses and costs,  
19 including attorney’s fees, pursuant to 42 U.S.C. §1988(b) and California Code of  
20 Civil Procedure §1021.5.

21 D. That the Court award Mr. Merritt all other relief that it deems just and  
22 equitable.

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DATED: July 13, 2017

BUSINESS, ENERGY, AND  
ELECTION LAW, PC

By: /s/ Gautam Dutta

GAUTAM DUTTA, ESQ.

Attorneys for Plaintiff

PAUL MERRITT