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6 SUPERIOR COURT OF CALIFORNIA
7 FOR THE COUNTY OF SACRAMENTO

9 Roque "Rocky" De La Fuente,
10
11 Petitioner,
12 v.
13 Alex Padilla, California Secretary of State,
14 Respondent.

EMERGENCY

EX PARTE PETITION FOR WRIT OF
MANDAMUS and APPLICATION FOR
CALENDAR PREFERENCE

IMMEDIATE ACTION REQUIRED:
ELECTION MATTER ENTITLED TO
CALENDAR PREFERENCE (CCP § 35) IN
ORDER TO COMPLY WITH THE
NOVEMBER 8, 2016 ELECTION

Date: November 4, 2016

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21 **ELECTION MATTER: PRIORITY REQUESTED**
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QUESTIONS PRESENTED

1. Did Alex Padilla, Secretary of State for the State of California, exceed his statutorily prescribed authority, when he created and enforced additional certification requirements for presidential electors, not prescribed by California state legislature?
2. Did Alex Padilla, Secretary of State for the State of California, violate Petitioner’s Fourteenth Amendment Equal Protection rights when he afforded certain elector requirement exceptions to one presidential candidate in the November 8, 2016 election and denied them to Petitioner in the November 8, 2016 election?

PARTIES TO THE PROCEEDING

1. Petitioner Roque “Rocky” De La Fuente (“De La Fuente”) is a candidate for President of the United States desiring to have his name available for “Write-In Candidacy” in the November 8, 2016 election.

2. Respondent, Alex Padilla is the Secretary of State of California and serves as the Chief Elections Officer in California.

STATEMENT OF JURISDICTION

This court has jurisdiction pursuant to California Code of Civil Procedure § 1085(a). “A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.”

1 Furthermore, "[t]he law is well settled that a trial court is under a duty to hear and
2 determine the merits of all matters properly before it which are within its jurisdiction and that
3 mandate may be used to compel the performance of this duty." City of King City v. Community
4 Bank of Central Calif., 131 Cal. App. 4th 913 (2005).

5
6 Venue is proper as Respondent's primary operation is headquartered in Sacramento
7 County, California.

8 This is an election matter and is entitled to calendar priority under California Civil
9 Procedure. § 35.

10 11 RELEVANT STATE STATUTES

- 12
13 1. California Elections Code ("CEC") § 201 requires that anyone appointed or elected to
14 an elective office must be a registered voter:

15 Unless otherwise specifically provided, no person is eligible to be elected
16 or appointed to an elective office unless that person is a registered voter
17 and otherwise qualified to vote for that office at the time that nomination
18 papers are issued to the person or at the time of the person's appointment.

- 19 2. California Elections Code § 8650 identifies the requisite number of electors required
20 to qualify as a write-in candidate for President:

21 Any group of individuals, equal in number to the number of presidential
22 electors to which this state is entitled (55), who desire to be write-in
23 candidates for presidential electors pledged to a particular candidate for
24 President and Vice President of the United States shall file a declaration of
25 write-in candidacy.

- 26 3. California Elections Code § 8651 identifies the elector form requirements as properly
27 dictated by the California legislature:

28 The declaration of write-in candidacy for presidential elector shall contain
the following information: (a) Candidate's name. (b) Residence address.
(c) A declaration stating that he or she is a write-in candidate for the office

1 of presidential elector. (d) Oath or affirmation as set forth in Section 3 of
2 Article XX of the California Constitution. (e) The date of the general
3 election. (f) The names of the candidates for President and Vice President
4 of the United States for which the group of presidential electors are
pledged.

- 5 4. California Elections Code § 8652 denotes the deadline for submitting the required
6 number of electors:

7 The declaration of write-in candidacy shall be filed with the Secretary of
8 State no later than the 14th day prior to the general election.

9
10 **RELEVANT FEDERAL STATUTES**

- 11 5. Article II, Section 1, Clause 2 of the United States Constitution provides:

12 Each state shall appoint, in such manner as the Legislature thereof may
13 direct, a number of electors, equal to the whole number of Senators and
14 Representatives to which the State may be entitled in the Congress; but no
15 Senator or Representative, or person holding an office of trust or profit
under the United States, shall be appointed an elector.

- 16 6. The Fourteenth Amendment of the United States Constitution provides, in relevant
17 part:

18 All persons born or naturalized in the United States, and subject to the
19 jurisdiction thereof, are citizens of the United States and of the State
20 wherein they reside. No state shall make or enforce any law which shall
21 abridge the privileges and immunities of citizens of the United States; nor
22 shall any State deprive any person of life, liberty, or property, without due
process of law; nor deny to any person within its jurisdiction the equal
protection of the laws.

- 23 7. Title 42, Chapter 21, Section 1983 of the United States Code prevents federal and state
24 actors from depriving citizens of any and all rights and immunities secured by the United
25 States Constitution, and provides for liability in cases of said deprivation:

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27 Every person who, under color of any statute, ordinance, regulation,
28 custom, or usage, of any State or Territory or the District of Columbia,

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subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

INTRODUCTION

Respondent, Secretary of State, has exceeded his authority by adding additional requirements for elector qualification. The power to *create* restrictions and regulations that qualify an elector is strictly limited to the state legislature. The Secretary of State's abuse of power has caused Mr. De La Fuente to be omitted as a Write-in candidate, despite satisfying the legislative statutory requirements. Petitioner seeks declaratory relief from this court ordering Respondent to cease and desist all rejection of electors based on his additional imposed restriction that the electors declared residence match that of the electors registered voting address.

Additionally, Respondent has selectively allowed the current Republican presidential candidate to evade federal regulations regarding the prohibition of certain individuals acting as electors. Respondent has intentionally enforced manufactured electoral regulations against one party while allowing others to evade the most fundamental and legally founded scrutiny. This discretionary violation is indisputable, published, and an egregious violation of Mr. De La Fuente's equal protection rights.

STATEMENT OF THE CASE

Federal law grants *state legislature* the power to select presidential electors to the Electoral College with the exception that certain individuals are prohibited under Article II, Section 1, Clause 2. As noted above, California legislature, under its rightful discretion, has created a number of requirements to qualify as an elector. An elector must be a registered voter,

1 complete the "Declaration of Write-In Candidacy Presidential Elector" form, which must be
2 notarized, and submitted to the Secretary of State no later than the 14th day prior to the general
3 election.

4 Mr. De La Fuente submitted 57 completed, notarized elector forms to the Secretary of
5 State 15 days before the October 25, 2016 deadline. Mr. De La Fuente submitted his slate of
6 electors with two weeks to spare with the specific intent to provide him with time to cure any
7 defective forms prior to the October 25 deadline. Mr. De La Fuente never received notice of any
8 defect.
9

10 On or about October 28, the Secretary of State published the "Certified List of Write-in
11 Candidates for President and Vice President for the General Election". Without notice Mr. De La
12 Fuente's name was omitted from this list. Upon notice of this omission, Mr. De La Fuente
13 contacted the Secretary of State to inquire. Only then, post-deadline and 19 days after he hand-
14 delivered his 57 elector forms, was he notified that seven elector forms were rejected. These
15 seven rejected electors caused Mr. De La Fuente to fall five electors short of the 55 required to
16 qualify.
17

18 There is no legislative requirement that the residential address listed on the elector form
19 match the elector's voting address. There is no notice on the elector form indicating this arbitrary
20 requirement, nor does it alert an elector, candidate, or notary that a mismatched residential
21 address is grounds for rejection. Respondent Secretary of State is not authorized to
22 discretionarily add additional requirements to elector requirements. The United States
23 Constitution strictly delegates this power to the California State Legislature. This Court must
24 restrain the Respondent from his egregious abuse of power.
25

26 Furthermore, this Court should note that Respondent has selectively enforced elector
27 qualifications, a clear violation of Petitioner's Constitutional right to equal protection.
28

1 Respondent permitted Republican presidential candidate Donald J. Trump and Michael R. Pence
2 to qualify for candidacy using an elector strictly prohibited by Article II, Section 1, Clause 2.¹
3 Arun Bhumitra was accepted by Respondent as an elector for the Trump/Pence candidacy AND is
4 a federal employee “holding an office of trust or profit under the United States”; an indisputable,
5 explicit, and bold violation of the Constitution.² Not only has Respondent abused his authority in
6 the discretionary enforcement of Constitutional restrictions, but he has exceeded what authority is
7 divested to him by adding additional requirements to electors submitted by Petitioner.
8

9
10 Petitioner seeks declaratory relief ordering the following:

- 11 ➤ Respondent to immediately re-evaluate the certification of the 7 impermissibly
12 rejected electors on behalf of Petitioner.
- 13
14 ➤ Upon prompt certification of at least 5 of the 7 rejected electors (giving Petitioner
15 the required 55 electors for “write-in” candidacy), under proper scrutiny as ordered
16 by this court, Respondent immediately add Mr. De La Fuente’s name and Michael
17 Steinberg’s name (respective Vice Presidential candidate) to the “Certified List of
18 Write-in Candidates for President and Vice President for the General Election”
19 published on Respondent’s website.³
- 20
21 ➤ Concurrently to the addition of aforementioned names, Mr. De La Fuente
22 respectfully requests Respondent publish a publicly visible apology and admit the
23 wrongful rejection of his submitted electors.
- 24
- 25

26 ¹ <http://elections.cdn.sos.ca.gov//statewide-elections/2016-general/pres-electors-list.pdf>, last visited November 3,
27 2016.

² *Id.* See also U.S. Const. art. II, § 1, cl. 2.

28 ³ <http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and-advisories/write-candidates-president-and-vice-president-certified/>, last visited November 3, 2016.

1 The pertinent time-line is as follows:

- 2 1. **October 10, 2016:** Mr. De La Fuente's attorney hand-delivered 57 completed and
3 notarized elector forms to the San Diego Elections Office on October 10, 2016, 15 days
4 before the October 25, 2016 deadline.⁴ Mr. De La Fuente's attorney stayed present in the
5 office for over two hours while the electors were "checked" by the office staff so that he
6 can be made immediately aware of any problems. Mr. De La Fuente's attorney is
7 eventually advised that the processing is complete and left his contact info for email
8 confirmation that each form was individually "signed by their office". See Exhibit 1.
9
- 10 2. **October 11, 2016:** Mr. De La Fuente received an email from the San Diego Elections
11 Office confirming that the elector forms had been "signed by their office" and "are being
12 sent to the Secretary of State's Office". See Exhibit 1.
13
- 14 3. **October 11-28, 2016:** No contact or correspondence from anyone at the Secretary of
15 State's office notifying Petitioner of any deficiency; denying Petitioner time to cure.
16
- 17 4. **October 28, 2016** (on or about): Respondent published the "Certified List of Write-in
18 Candidates for President and Vice President for the General Election" on Respondent's
19 website. Mr. De La Fuente's name was absent from that list. See Exhibit 2.
20
- 21 5. **October 31** (Monday): Upon notice that his name had been omitted from the "Certified
22 List of Write-in Candidates for President and Vice President for the General Election",
23 Petitioner called Respondent's office for an explanation. A Ms. Evelyn Mendez from
24 Respondent's office explained that "they are investigating" and cannot yet provide an
25 explanation. Ms. Evelyn Mendez from Respondent's office advised that they will call
26 Petitioner back.
27

28 ⁴ Cal. Elec. Code § 8652.

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6. **November 1, 2016:** Petitioner called Respondent’s office several times and eventually made contact with Ms. Evelyn Mendez who advises that “they are still trying to coordinate with the San Diego office”. Attorney Paul Rossi, on behalf of Petitioner submitted a formal letter to Respondent via United States Post Service (USPS) Express Mail, fax, and electronic mail (email). See Exhibit 3. Mr. Rossi addresses Petitioner’s concerns, and explains why Respondent has erred in his rejection of Petitioner’s electors/failure to certify Petitioner as a write-in candidate.
7. **October 2, 2016 (am):** Attorney Paul Rossi submitted a supplemental letter to Respondent via USPS, fax, and email. Mr. Rossi suggests non-litigious remedies such as substitution of five of the 70 previously submitted electors from the primary election, or a short amount of time to cure before the November 8, 2016 election. See Exhibit 4.
8. **October 2, 2016 (pm):** Mr. Steven Reyes, Chief Counsel for the California Office of the Secretary of State, submitted a response letter to Mr. Rossi’s two previous letters. Mr. Reyes’ letter identifies the seven electors that were rejected. Six were allegedly rejected for “[n]o registration record found with address provided on declaration”. One was allegedly rejected for “[n]o registration record found”. Mr. Reyes’ letter fails to address the illegitimacy of Respondent’s elector rejection, denies Mr. De La Fuente time to cure the alleged elector deficiency without explanation, and refuses to certify Mr. De La Fuente as a write-in candidate for president, citing that the October 25, 2016 deadline had passed. See Exhibit 5.

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**FIRST CAUSE OF ACTION
(Writ of Mandamus; Abuse of Discretion)**

I. WRIT OF MANDAMUS IS THE PROPER RELIEF FOR PETITIONER'S INJURY

“Mandamus is clearly the proper remedy for compelling an officer to conduct an election according to law. Mandamus is also appropriate for challenging the constitutionality or validity of statutes or official acts.” Wenke v. Hitchcock, 6 Cal. 3d 746, 751 (1972). “The writ [of mandamus] must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.” Cal. Civ. Proc. § 1086. Specifically, three requirements must be met to substantiate a mandate⁵:

- (1) No adequate remedy and irreparable injury. Anderson v. Superior Court of San Diego County, 213 Cal. App. 3d 1321, 1328 (1989);
- (2) “Abuse of discretion” or “failure to perform a nondiscretionary duty”. State Farm Mut. Auto. Ins. Co. v. Superior Court of San Francisco, 47 Cal. 2d 428, 432 (1956), See also Arnold v. Williams, 222 Cal. App. 2d 193, 196-197 (1963);
- (3) A “beneficially interested person” (standing). McGee v. Superior Court, 176 Cal. App. 3d 221, 228 (1985).

A. Mr. De La Fuente Will Suffer Irreparable Harm in the Absence of a Writ of Mandamus

The Supreme Court has routinely identified “two different, although overlapping kinds of rights - the rights of individuals to associate for the advancement of political beliefs, and the right

⁵ Eisenberg, Horvitz, & Wiener, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2015) ¶ 15:35-39.

1 of qualified voters regardless of their political persuasion, to cast their votes effectively. Both of
2 these rights, of course, rank among our most precious freedoms.” Williams v. Rhodes, 393 U.S.
3 23, 30-31 (1968).

4 Mr. De La Fuente, and the elector forms he submitted in support of his write-in candidacy,
5 have complied with all California statutory requirements. The omission of his name from the
6 “Certified List of Write-in Candidates for President and Vice President for the General Election”
7 would unjustifiably diminish write-in votes cast for him in Tuesday’s election. If voters are not
8 on notice that his name is available as a certified write-in candidate, far less voters will be
9 inclined to cast their vote for a candidate whose votes will not be counted. This injury is
10 irreparable as the elections cannot and will not be conducted a second time. A writ of mandamus
11 must be immediately issued or Mr. De La Fuente will be without remedy for his injury at the
12 hands of Respondent. Moreover, California voters will be denied of “one of their most precious
13 freedoms”... “to cast their vote effectively”. Id. No other remedy will suffice.

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17 **B. As Secretary of State, Respondent Abused His Discretion When He Refused to**
18 **Certify All Qualifying Elector Forms Submitted by Mr. De La Fuente**

19 The California Secretary of State has the duty to serve as the Chief Elections Officer.⁶ As
20 Chief Elections Officer, Respondent:

21
22 “ensures election laws and campaign disclosure requirements are enforced,
23 maintains a statewide database of all registered voters, **certifies the official lists of**
24 **candidates for elections**, tracks and certifies ballot initiatives, compiles election
returns and certifies election results, educates California citizens about their voting
rights, and promotes voter registration and participation.”⁷

25 It follows that, if there is a failure to properly certify the official list of candidates, Respondent
26 has failed in his certification discretion.

27
28 ⁶ <http://www.sos.ca.gov/administration/about-agency/>, last visited November 3, 2016.

⁷ Id.

1 In California, 55 electors are required to qualify as a write in candidate. Cal. Elec. Code §
2 8650. Article II, Section 1, Clause 2 of the United States Constitution vests the plenary authority
3 to create restrictions/requirements to qualify as an elector solely in the **state legislature**. U.S.
4 Const. art. II, § 1, cl. 2. In California, the state legislature, empowered by the United States
5 Constitution, has declared that an elector will be certified upon the submission of a notarized
6 Declaration of Write-in Candidacy containing the following:
7

- 8 (1) Candidate's name.
- 9 (2) **Residence address.**
- 10 (3) A declaration stating that he or she is a write-in candidate for the office of presidential
11 elector.
- 12 (4) Oath or affirmation as set forth in Section 3 of Article XX of the California
13 Constitution.
- 14 (5) The date of the general election.
- 15 (6) The names of the candidates for President and Vice President of the United States for
16 which the group of presidential electors are pledged.
- 17 **California Election Code § 201 adds the additional requirement that the elector be a
18 registered voter.

19 Respondent is not authorized to add any additional requirements in his discretionary
20 enforcement of said requirements. Respondent is not authorized to use his discretionary power to
21 'interpret' the statutory requirements to his whim. Respondent is solely responsible for ensuring
22 compliance with the statutorily prescribed requirements set forth by the California State
23 Legislature.

24 In the letter from Respondent's office dated November 2, 2016, he notes that 6 electors
25 were rejected because "[n]o registration record found with address provided". See Exhibit 5.
26 Note that these signatures were notarized. These people exist and their identification has been
27 personally confirmed by a licensed notary. The determining factor then is whether they are
28 registered voters. Legislation does not require that the elector be registered to vote in a specific
state; only that they be registered to vote.

1 To support this contention, consider the language of California Election Code § 201:

2 Unless otherwise specifically provided, no person is eligible to be elected or
3 appointed to an elective office **unless that person is a registered voter and**
4 **otherwise qualified to vote for that office** at the time that nomination papers are
issued to the person or at the time of the person's appointment.

5 Furthermore, legislation does not require that the address listed in the elector's
6 Declaration of Write-in Candidacy match that of the elector's voting address.

7 Here, five of the seven electors rejected by Respondent are genuinely registered to vote in
8 California. See Exhibit 7. Even if this Court finds that electors must be registered in the state of
9 California, Respondent abused his discretion in rejecting five of the seven electors, as they are in
10 fact registered to vote in California.

11 California Election Code § 349 attempts to dictate that a residence is a domicile for voting
12 purposes, and that a person may have only one domicile at a time. Cal. Elec Code 349(a).
13 However, the same statute goes on to say that a person may have **more** than one residence at a
14 time. Cal. Elec Code 349(a). To compound the confusion of these terms, the Declaration of
15 Write-in Candidacy requests the elector's "residence address". See Exhibit 6. There is no notice
16 to the elector that Respondent requires their actual voting address, nor that he will abuse his
17 discretion and reject their declaration if they do not comply. Absent a sophisticated reading of the
18 minutia of the California Elections Code, a layperson must not be expected to anticipate the
19 discretionary requirements expected of them by the Respondent. Simply put, a layperson elector
20 who fills out a form requesting their "residence address", cannot be reasonably expected to enter
21 anything other than the address where they currently reside.

22 Respondent further abused his discretion when he exercised inexcusable delay in notifying
23 Petitioner of the alleged deficiency in certified electors. Akin to a laches defense, Respondent
24 directly caused injury to Petitioner by sitting on his right to reject electors, leaving Petitioner with
25 no opportunity to cure. Petitioner hand delivered 57 elector forms to the San Diego Election
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1 Office on October 10, 2016. See Exhibit 1. Respondent's staff notified Petitioner that his forms
2 were "on there way to Sacramento" on October 11, 2016, leaving an unexplainable gap of 15
3 days. Id. Respondent excessive time and opportunity to review Petitioner's electors and notify
4 him of any perceived deficiency. He chose not to, leaving Petitioner unable to cure as the
5 deadline for submission had passed. A simple internet inquiry verifying a registered voter's
6 address can be conducted on Respondent's very own website.⁸ A single inquiry takes less than 30
7 seconds, upon submission of name, driver's license number, birthdate and the last four digits of
8 the voter's social security number.⁹ Mr. De La Fuente's 57 electors could have been certified (or
9 rejected) in less than 30 minutes.¹⁰ Instead, Respondent took 15 days and provided no notice.
10 Mr. De La Fuente specifically and proactively submitted his electors with 15 days to spare to
11 afford himself time to cure in the event of a problem. Mr. De La Fuente's diligence was in vain
12 as Respondent sat on his rights to reject until after the deadline had passed. Because this delay is
13 unexplainable, inexcusable, and unreasonable and directly resulted in Respondent preventing Mr.
14 De La Fuente from write-in candidacy, a writ of mandamus requiring Respondent to re-evaluate
15 Mr. De La Fuente's rejected petitioners and certify him as a write-in candidate is absolutely
16 compulsory.

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18
19 In summary, California legislation does not explicitly require that (1) the elector be
20 registered to vote in California at the time the Declaration of Write-in Candidacy is filled out, nor
21 (2) that the address listed on the Declaration of Write-in Candidacy match that of the elector's
22 voting address. To enforce requirements not created or approved by the legislature by rejecting
23 the elector's Declaration of Write-in Candidacy based on restrictions not prescribed by statute, is
24 an egregious abuse of power. Furthermore, Respondent unreasonably and unexplainably failed to
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27 ⁸ <http://www.sos.ca.gov/elections/registration-status/>, last visited November 3, 2016.

28 ⁹ Submission personally tested by Petitioner's attorney via <http://www.sos.ca.gov/elections/registration-status/> on November 3, 2016.

¹⁰ 30 seconds per inquiry x 57 inquiries = 28.5 minutes.

1 notify Mr. De La Fuente of any alleged elector rejections. Respondent has committed the
2 aforementioned abuses, in his capacity as Secretary of State, and he must be ordered via mandate
3 to cease and desist said abuses and review Mr. De La Fuente's rejected elector forms under the
4 proper requirements established by the legislature.
5

6
7 **C. Mr. De La Fuente Qualifies as a Beneficially Interested Person Because He is the**
8 **Presidential Candidate Harmed by Respondent**

9 "It is fundamental that a writ of mandate will issue only at the behest of a beneficially
10 interested person." McGee v. Superior Court, 176 Cal. App. 3d 221, 228, 221 Cal. Rptr. 421, 424
11 (1985). "The petitioner must also have a personal right to [the mandate]... rather than simply a
12 general interest in the particular relief shared with the public at large."¹¹
13

14 Here, it is evident and undisputable that the primary party of interest is Mr. De La Fuente.
15 Not only is he the presidential candidate seeking write-in candidacy, but he is a major financier of
16 his nationwide campaign. Furthermore, Mr. De La Fuente has spent countless hours advocating
17 his platform via presidential debates, interviews, and public appearances. If he were unjustly
18 barred by Respondent from qualifying as a write-in candidate, despite the full compliance of his
19 elector submission, he and his campaign would be irreparably injured.
20

21 270 electoral votes are required to win the presidential election.¹² California contributes
22 55 electoral votes, or just over 20% of the electoral votes required to win.¹³ California holds over
23 10% of all electoral votes available nationwide.¹⁴ Denying Mr. De La Fuente the (humble)
24 opportunity to have his write-in votes tallied would be a devastating and unconstitutional blow to
25

26 ¹¹ Eisenberg, Horvitz, & Wiener, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2015) ¶ 15:39.

27 ¹² <https://www.archives.gov/federal-register/electoral-college/allocation.html>. Last
28 visited on September 27, 2016.

¹³ Id.

¹⁴ Id.

1 Mr. De La Fuente's nationwide campaign efforts. Mr. De La Fuente is unquestionably the
2 "beneficially interested person" in the matter at hand and therefore the proper party to seek a writ
3 of mandamus against Respondent for his abuse of discretion.
4

5 6 **SECOND CAUSE OF ACTION**

7 **(Section 1983 Civil Rights Claim - Deprivation of Petitioner's Equal Protection Rights**

8 **Under the Fourteenth Amendment of the United States Constitution)**

9 "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of
10 any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen
11 of the United States or other person within the jurisdiction thereof to the deprivation of any rights,
12 privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured
13 in an action at law, suit in equity, or other proper proceeding for redress...". 42 U.S. Code §
14 1983.
15

16 As discussed at length above, Respondent has abused his discretion by enforcing
17 manufactured and heightened restrictions on elector certification. In stark contrast, Respondent
18 selectively permitted the Republican presidential ticket (Trump/Pence) to evade the only federally
19 mandated restriction.
20

21 Also noted earlier, the federal government has vested all authority to the state legislature
22 to create elector restrictions and regulations... with one caveat. It reserved the one, specific,
23 intentional, and meaningful restriction: Article II, Section 1, Clause 2 of the United States
24 Constitution provides:

25 Each state shall appoint, in such manner as the Legislature thereof may
26 direct, a number of electors, equal to the whole number of Senators and
27 Representatives to which the State may be entitled in the Congress: but no
28 Senator or Representative, or person holding an office of trust or profit
under the United States, shall be appointed an elector.

1 **WHEREFORE**, Petitioner ask that the Court enter judgment:

- 2 A. Ordering respondent to immediately re-evaluate the certification of the seven
3 impermissibly rejected electors on behalf of Petitioner.
- 4 B. Ordering prompt re-certification of at least 5 of the 7 rejected electors under proper
5 scrutiny as ordered by this court;
- 6 C. Ordering Respondent to immediately afford Mr. De La Fuente all of the rights and
7 privileges afforded to certified write-in candidates including, but not limited to: adding
8 Mr. De La Fuente's name and Michael Steinberg's name (respective Vice Presidential
9 candidate) to the "Certified List of Write-in Candidates for President and Vice President
10 for the General Election" published on Respondent's website and instructing all California
11 counties to record and report all write-in votes for the De La Fuente/Steinberg ticket;
- 12 D. Ordering Respondent to publish a publicly visible apology and admit the wrongful
13 rejection of his submitted electors;
- 14 E. Granting De La Fuente such other and further relief as to which he may be entitled and
15 which the Court may deem equitable and just;
- 16 F. Awarding attorney fees and costs.
- 17 G. If the Court sees fit, ordering a hearing prior to the November 8, 2016 requiring
18 Respondent to show good cause as to why this Court should not issue the requested
19 mandate.
20
21
22

23 Respectfully Submitted,

24
25
26 

27 Lucas Mundell

28 Attorney for Petitioner