

1 Morgan J.C. Scudi
2 Scudi & Ayers
3 5440 Morehouse Drive
4 Suite #4400
5 San Diego, CA 92121
6 Phone: 858.558.1001
7 Fax: 858.558.1122
8 mscudi@scudilaw.com

9 Paul A. Rossi
10 Law Office of Paul A. Rossi
11 316 Hill Street
12 Mountville, PA 17554
13 Phone: 717.681.8344
14 Paul-Rossi@comcast.net

15 *Counsel to Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

18 ROQUE ROCKY DE LA FUENTE,
19 Plaintiff,
20 vs.
21 ALEX PADILLA,
22 Defendant

Case No.: 3:19-cv-1433-JM-NLS
Judge Jeffrey T. Miller

PLAINTIFF'S BREF IN SUPPORT OF
PLAINTIFF'S MOTION FOR EMERGENCY
PRELIMINARY INJUNCTION

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1 **I. SUMMARY**

2 California SB 27, signed into on July 30, 2019, by Governor Newsom as the so called
3 “Presidential Tax Transparency and Accountability Act” (hereinafter the “Act”) requires, in
4 relevant part, presidential candidates in primary elections to file with Defendant their 5 most
5 recent federal income tax returns, including “any amendment or supplement thereto, including
6 supporting schedules, attachments, or lists that are supplemental to, or part of, the return so
7 filed.” The Act requires Defendant to publish the tax returns and any amendments, supplements,
8 schedules, attachments or lists that are supplemental to, or part of, the return so filed on
9 Defendant’s state internet website for public review and inspection. The Act was passed with
10 immediate effect so that all presidential candidates in the 2020 California primary elections must
11 file their last 5 federal income tax returns and supporting schedules, attachments or lists that are
12 supplemental to, or part of the return so filed, on or before November 26, 2019. Any presidential
13 candidate failing to comply with the Act are disqualified to appear as a presidential candidate in
14 California’s 2020 primary election.
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18 Plaintiff seeks emergency preliminary injunctive relief to establish the constitutional rules
19 that all 2020 presidential primary candidate must comply with so that Plaintiff may properly
20 prepare for their primary election campaigns in the State of California. With the deadline under
21 the Act for Plaintiff to file his federal income tax returns and supporting schedules, attachments,
22 or lists filed as part of Plaintiff’s federal income tax returns with Defendant set for November 26,
23 2019, immediate clarity must be established now so that the constitutionality can be properly
24 adjudicated without disruption to the 2020 presidential nomination and election process.
25

26 Plaintiff is entitled to the requested relief. Plaintiff can clearly establish a strong
27 likelihood of success on the merits. The Act violates federal law and is, therefore, invalid under
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1 the Supremacy Clause of the United States Constitution; the Act clearly imposes additional
2 qualifications on those who would hold the Office of President by forcing them to release their
3 most recent 5 years of federal income tax returns in violation of the Qualifications Clause of
4 Article II, section 1, clause 5 of the United States Constitution; and even if this Court accepts
5 Defendant's expected argument that the challenged Act merely imposes new ballot access
6 requirements, Defendant's primary expected argument must fail because the requirement to
7 release confidential federal income tax returns is not a valid exercise of the State's authority to
8 regulate the presidential ballot, especially in light of the Supreme Court's admonition in
9 *Anderson v. Celebrezze*, that the State's retain a minimal interest in regulating presidential
10 ballots as the election for President is the only national election which is decided outside the
11 boundaries of any one state. Accordingly, the Act is unconstitutional even under Defendant's
12 expected argument of the case. In addition, the Act violates the most basic principles of First
13 Amendment freedom, namely the right against forced speech by the State.

14
15
16 And, as this Court is well aware, with respect to requested injunctions of statutes
17 impairing constitutional rights, Plaintiff will suffer irreparable harm in the absence of
18 preliminary relief, the balance of equities tips in favor of Plaintiff and the requested injunction is
19 in the public interest to constrain public officials to exercise of their authority within
20 constitutional bounds.

21
22 Accordingly, Plaintiff is entitled to the requested emergency preliminary injunction.

23 **II. SUMMARY OF FACTS**

24
25 California Senate Bill 27, signed into law by Governor Newsom on July 30, 2019, as
26 Chapter 7 (commencing with Section 6880) added to Part 1 of Division 6 of the Election Code
27 and provides, in relevant part:

1 **Section 6881** “The Legislature finds and declares that the State of California
2 has a strong interest in ensuring that its voters make informed, educated
3 choices in the voting booth. To this end, the state has mandated that extensive
4 amounts of information be provided to voters, including county and state
5 voter information guides. The Legislature also finds and declares that a
6 Presidential candidate’s income tax returns provide voters with essential
7 information regarding the candidate’s potential conflicts of interest, business
8 dealings, financial status, and charitable donations. The information in tax
9 returns therefore helps voters to make a more informed decision. The
10 Legislature further finds and declares that as one of the largest centers of
11 economic activity in the world, the State of California has a special interest
12 in the President refraining from corrupt or self-enriching behaviors while in
13 office. The people of California can better estimate the risks of any given
14 Presidential candidate engaging in corruption or the appearance of corruption
15 if they have access to candidates’ tax returns. Finally, the State of California
16 has an interest in ensuring that any violations of the Foreign Emoluments
17 Clause of the United States Constitution or statutory prohibitions on behavior
18 such as insider trading are detected and punished. Mandated disclosure of
19 Presidential candidates’ tax returns will enable enforcement of the laws
20 against whichever candidate is elected President. The Legislature finds and
21 declares that compliance costs with this requirement will be trivial.”

22 **Section 6882** “For purposes of this chapter, “income tax return” means any
23 tax or information return, declaration of estimated tax, or claim for refund
24 required by, or provided for or permitted under, the provisions of the Internal
25 Revenue Code, and that is filed on behalf of, or with respect to any person,
26 and any amendment or supplement thereto, including supporting schedules,
27 attachments, or lists that are supplemental to, or part of, the return so filed.”

28 Sections 6883 and 6884 of the Act further provide that certain information shall be
redacted from the income tax returns filed with Defendant. The Act additionally provides that:

Section 6884(a)(2) “A written consent form, signed by the candidate,
granting the Secretary of State permission to publicly release a version of the
candidate’s tax return redacted pursuant to this section. The Secretary of
State shall prepare a standard consent form consistent with this paragraph.”

 **(c)(1)** “Within five days of receipt of the candidate’s tax return, the
Secretary of State shall make redacted versions of the tax returns available to
the public on the Secretary of State’s internet website. Except as provided in
paragraph (2), the Secretary of State shall make public the redacted versions
of the tax returns submitted by the candidate pursuant to subdivision (a).

1 (3) “The public versions of the tax returns shall be continuously posted
2 until the official canvass for the presidential election is completed. Upon
3 completion of the official canvass, the Secretary of State shall remove the
public versions of the tax return.

4 (4) “The Secretary of State shall retain the paper copies of the submitted tax
5 returns until the completion of the official canvass of the ensuing general
6 election. Thereafter, the paper copies of the submitted tax returns shall be
7 destroyed as soon as practicable, unless the Secretary of State has received a
court order, or a lawful written request from a state or federal governmental
agency, directing the Secretary of State to preserve the submitted tax returns.”

8 Plaintiff is a declared candidate for the 2020 Republican Party nomination for President
9 of the United States. Compl. at ¶37. Plaintiff filed his Federal Elections Commission
10 “Statement of Candidacy (FEC Form 2) on May 16, 2019 establishing that he is a candidate for
11 the 2020 Republican Party presidential nomination. Compl. at ¶¶ 41, 42. Plaintiff satisfies all
12 the requirements set forth under the Qualifications Clause of Article II, section 1, clause 5 of the
13 United States Constitution which provides that:
14

15 No person except a natural born Citizen, or a Citizen of the United States, at
16 the time of the Adoption of this Constitution, shall be eligible to the Office
17 of President; neither shall any person be eligible to that Office who shall not
18 have attained to the Age of thirty five Years, and been fourteen Years a
Resident within the United States.

19 Compl. at ¶¶ 10-11, 38-40. Plaintiff is not otherwise disqualified from holding the Office
20 of President. See, Compl. at ¶ 12. Plaintiff intends to contest the 2020 Republican Party
21 nomination in the State of California. Compl. at ¶ 43. Accordingly, Plaintiff is directly
22 impacted by the Act’s requirement that presidential candidates seeking access to California’s
23 2020 primary election ballot must file with Defendant his 5 most recent federal income tax
24 returns to Defendant and consent to Defendant’s publishing redacted copies of his tax returns on
25 Defendant’s state internet website.
26

1 Furthermore, Plaintiff refuses to engage speech compelled by the State of California.
2 Plaintiff refuses to forcibly release his confidential federal income tax return information as an
3 additional qualification to contest the Office of President of the United States in violation of the
4 exclusive qualifications to hold the Office of President set forth in the Qualifications Clause of
5 Article II, section 1, clause 5 of the United States Constitution and in violation of rights
6 guaranteed to him under federal law guaranteeing that his federal income tax returns are
7 confidential. Compl. at ¶¶ 51-52.
8

9 In passing the so called “Presidential Tax Transparency and Accountability Act” the
10 California Legislature makes clear in Section 6881, that the reasons cited for passage are
11 completely untethered to any legitimate state interest related to California’s regulation of the
12 ballot and procedures to guarantee an orderly election process. Nothing in the challenged statute
13 provide a legitimate basis or state interest sufficient to exclude a presidential candidate from
14 California’s primary election ballot.
15

16 The challenged statute is not designed to avoid ballot clutter or promote a more
17 manageable ballot, or to force candidates to demonstrate any threshold of public support to
18 secure access to the ballot, nor is the challenged statute designed to promote an orderly or well-
19 regulated election process. The challenged statute’s only purpose is to prevent otherwise eligible
20 citizens from being able to contest for the Office of President in their party’s primary election
21 because they refuse to conduct their campaign, or forcibly engage in protected core political
22 speech, in a manner that a certain segment of society thinks is best.
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24

25 26 U.S.C. § 6103(a) provides that “Returns and return information shall be confidential,
26 and except as authorized by this Title...no officer or employee of any State....shall disclose any
27 return or return information obtained by him in any manner in connection with his service as
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1 such an officer or an employee or otherwise or under the provisions of this section. For purpose
2 of this subsection, the term ‘officer or employee’ includes a former officer or employee.”
3 Compl. at ¶ 29. 26 U.S.C. § 6103 also details numerous, and comprehensive, details as to when
4 tax returns and return information may be disclosed to federal and state tax administrators,
5 executive branch departments and officials, judicial officials and/or federal and state prosecutors
6 and under what specific circumstances. No provision of 26 U.S.C. § 6103 provides any
7 authorization for the public disclosure of confidential tax return information by any official of
8 any state, and most certainly never contemplates any authorization to permit Defendant to post
9 confidential federal income tax returns on Defendant’s state internet website as required under
10 the challenged statute. Compl. at ¶ 31.

13 **III. STANDARD OF REVIEW**

14 A party is entitled to a preliminary injunction upon a showing that: (1) it is “likely to
15 succeed on the merits,” (2) it is “likely to suffer irreparable harm in the absence of preliminary
16 relief,” (3) “the balance of equities tips in [the party’s] favor,” and (4) “an injunction is in the
17 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

19 When a party requests preliminary injunctive relief on the basis of the potential violation
20 of the First Amendment, a showing of a reasonable probability of success on the merits often
21 will be the determinative factor in granting the requested preliminary injunction. *Elrod v. Burns*,
22 427 U.S. 347, 373 (1976). Likewise, the determination of where the public interest lies also is
23 dependent on a determination of the “reasonable probability of success” prong of the preliminary
24 injunction test because “it is always in the public interest to prevent the violation of a party’s
25 constitutional rights.” *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979). Furthermore,
26 upon a showing that Plaintiffs have a reasonable probability of success on the merits of their
27

1 First Amendment claims, Defendants, as the nonmoving parties cannot assert and/or prove any
2 interest that would be subject to greater injury than the loss of Plaintiffs' constitutional rights,
3 because the analysis of Defendants' interests are baked into the initial analysis of the merits of
4 Plaintiffs' claims as to whether the challenged provisions alleged to impair rights guaranteed
5 under the First and Fourteenth Amendments to the United States Constitution are narrowly
6 drawn to advance a compelling governmental interest sufficient to permit the impairment of
7 Plaintiffs' rights in the first instance.
8

9 **IV. ARGUMENT**

10
11 It seems worth noting at the outset of Plaintiff's argument two threshold issues. First,
12 California's attempt to commandeer individual federal income tax returns for its own purposes
13 and require their disclosure to non-tax administrators and to force consent from candidates for
14 Defendant to publish the returns to the public is simply beyond the jurisdiction of California.
15 Federal tax returns are documents controlled by the federal government and requiring any
16 individual to do anything with their federal income tax return not expressly provided for by
17 federal law is simply beyond the pay grade of the State of California. Individuals provide
18 personal financial information to the Internal Revenue Service upon the understanding that the
19 information is provided under the terms of confidentiality set forth in 26 U.S.C. § 6103.
20
21 California's latest political stunt, beyond the constitutional dangers explained below, threatens a
22 successful, comprehensive and important federal scheme of taxation whereby individuals
23 provide sensitive financial information to the federal government secure in the knowledge that
24 the information will not be used for any public purpose. California places that important trust in
25 considerable danger.
26
27

1 Second, and perhaps most importantly, California's alleged interest in making sure
2 prospective voters have access to the confidential financial information contained in a
3 candidate's federal tax returns, is more properly governed by the voters. If a candidate refuses to
4 release his or her tax returns and voters believe they are wrong in not doing so, the remedy in a
5 democracy is that the voters can refuse to vote for the offending candidate. While California is
6 free to publish any voter guide that it deems a beneficial use of their tax dollars, candidates
7 themselves – especially presidential candidates, must be allowed to retain the right to speak
8 freely (it may be just as important to voters to know that tax return information is freely released
9 by a candidate, a data point which is permanently lost under the Act, where all candidates are
10 forced to release 5 years' worth of returns) or refrain from speech in the form of tax return
11 release permitting them to focus voter attention on the issues they believe most important to their
12 campaigns and not engage in the distraction of speaking in the form of sometimes complicated
13 financial information contained in federal tax returns. Further, recent history seems to
14 demonstrate that voters are not, in fact, demanding tax return releases and are more focused on
15 other issues of national importance – determinations that voters and candidates are free to make
16 during the course of a presidential campaign.

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20 **A. Plaintiff is Likely to Succeed on the Merits.**

21 **1. The Act Imposes Additional Qualifications for Those Seeking to Hold**
22 **the Office of President, in Violation of the Qualifications Clause of the**
23 **United States Constitution.**

24 The United States Supreme Court has established that States may not add to the
25 qualifications established for federal office under the United States Constitution in *U.S. Term*
26 *Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). In *U.S. Term Limits*, the Supreme Court struck
27 down an Arkansas law that imposed term limits on Congressional candidates as a violation of the
28
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1 Qualifications Clause of Article I, section 2, clause 2 of the United States Constitution , which
2 enumerates the exclusive list of qualifications for members of Congress. There seems to be little
3 or no doubt that the Supreme Court’s decision in *U.S. Term Limits* applies with equal force in
4 prohibiting the States from imposing additional qualifications on candidates seeking the Office
5 of President beyond those set forth in the Qualifications Clause of Article II, section 1, clause 5
6 of the United States Constitution. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 798-805
7 (1995). Plaintiff does not believe that Defendant will argue to the contrary.

8
9 In addition, the United States Supreme Court has also established that the Qualifications
10 Clauses of Article I is equally applicable to primary elections in precisely the same fashion that
11 they apply to general congressional elections. *Tashjian v. Republican Party of Connecticut*, 749
12 U.S. 208, 227 (1986). There is no authority to suggest that the rationale of *Tashjian* extending the
13 congressional qualifications clause to primary elections does not extend with equal force the
14 presidential Qualifications Clause of Article II of the constitution to the conduct of California’s
15 primary elections.
16
17

18 Therefore, with respect to Plaintiff’s claim that the challenged Act imposes additional
19 qualifications in violation the Qualifications Clause of Article II, section 1, clause 5 (hereinafter
20 the “Qualifications Clause”) of the federal constitution, the only question that needs to be
21 answered in this litigation is the line between an additional qualification in violation of the
22 Qualifications Clause and a valid ballot access requirement (and, eventually, if the challenged
23 Act is even a valid ballot access requirement). The Ninth Circuit Court of Appeals has already
24 addressed this issue and established the test to determine the dividing line between an
25 impermissible additional qualification for federal office and a mere ballot access requirement. In
26 *Schaefer v. Townsend*, 215 F.3d 1031 (9th Cir. 2000), the 9th Circuit addressed California’s
27

1 requirement that candidates for federal office be registered voters, and therefore residents of the
2 State of California, at the time they become candidates for the federal office for which they seek
3 election. In *Schaefer*, California argued that the registration requirement was a mere ballot
4 access restriction within its authority under the Elections Clause of Article I, section 4, clause 1
5 of the United States Constitution to regulate the times, places and manner of the holding of
6 federal elections and that California had the power to adopt “generally-applicable and
7 evenhanded restrictions that protect the integrity and reliability of the electoral process itself.”
8 *Schaefer*, 215 F.3d at 1037, quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). The 9th
9 Circuit explained in *Schaefer* that:
10
11

12 Prior to *Term Limits*, when faced with a viable Elections Clause argument,
13 the Supreme Court commonly employed a balancing test, weighing the
14 state’s interests against the rights of candidates and voters, to measure the
15 constitutionality of a challenged ballot access provision. *Anderson*, 460 U.S.
16 at 789 (outlining the balancing test); *see also Burdick v. Takushi*, 504 U.S.
17 428, 433-34 (1992) (reaffirming *Anderson* and recognizing that severe
18 restrictions on the rights of candidates and voters are subject to strict
19 scrutiny); *Bates v. Jones*, 131 F.3d 843, 846 (9th Cir. 1997) (employing the
20 *Anderson* test in upholding term limits for California state legislators).
21 Accordingly, California invites us to balance its interests in maintaining the
22 integrity of its ballot against the burden that its election laws place on
23 nonresident candidates.

24 The *Term Limits* Court rejected such a broad reading of the Elections Clause
25 and held the balancing test inapplicable where the challenged provision
26 supplemented the Qualifications Clause and did not regulate a procedural
27 aspect of an election or require a candidate to show a minimum level of
28 support before running. The Court noted that: “The provisions at issue in . . .
our . . . Elections Clause cases were thus constitutional because they regulated
election procedures and did not even arguably impose any substantive
qualification rendering a class of potential candidates ineligible for [a] ballot
position.” *U.S. Term Limits* 514 U.S. at 835. The Court distinguished other
Election Clause cases on the ground that “they did not involve measures that
exclude candidates from the ballot without reference to the candidates’
support in the electoral process.” *Id.*

1 Likewise, California's residency requirement falls outside the scope of
2 Elections Clause cases because it neither regulates the procedural aspects of
the election nor requires some initial showing of support.

3 *Schaefer*, 215 F.3d at 1037-1038. Accordingly, both the Supreme Court and the Ninth Circuit
4 Court of Appeals have articulated that any state imposed restriction that would prevent a
5 candidate from appearing on a ballot which is not related to a State's interest in regulating the
6 mechanics of an election or requiring that a candidate make some showing that they enjoy some
7 threshold level of public support, constitutes an additional qualification in violation of the
8 Qualifications Clause and is unconstitutional.
9

10 Under this formulation, California's anticipated argument that because anyone who meets
11 the qualifications set forth in the Qualifications Clause can, if they want, release their federal
12 income tax returns and appear on the 2020 primary ballot, that the challenged Act is not an
13 additional qualification in violation of the Qualification Clause, is not the proper inquiry.
14 Certainly, the candidate/litigants in *Schaefer* could have, at any time, capitulated to California's
15 requirement and moved to California and registered to vote in California before they filed their
16 candidacy. California's argument that any additional qualification that an otherwise qualified
17 candidate under the Qualifications Clause can comply with is just another run-of-the-mill ballot
18 access requirement which does not violate the Qualifications Clause is simply not supported by
19 the precedents. California's further anticipated argument that any state-imposed restriction
20 which is not in direct conflict with the Qualifications Clause is not an additional qualification, is
21 equally off the mark based of the test established by the United States Supreme Court in *U.S.*
22 *Term Limits* and the Ninth Circuit's adoption of the *U.S. Term Limits* test in *Schaefer*. At
23 bottom, California argues that any additional qualification is constitutional so long as a candidate
24 can comply and that it does not directly impair an enumerated federal qualification. Simply
25

1 stated, Defendant's anticipated arguments seek to have this Court ignore the definition of the
2 word "additional" as applied to federal qualifications to hold office.

3 The proper test under the Qualifications Clause is any that restriction which prevents
4 candidates from appearing on the ballot which are not directly related to the State's ability to run
5 the election or the ability of the candidate to demonstrate a minimum level of public support
6 within the community is an additional qualification in violation of the Qualifications Clause.
7 Additional qualifications, even if they do not directly conflict with the exclusive list of
8 qualifications established in the Qualifications Clause under the *U.S. Term Limits* and *Schaefer*
9 test is unconstitutional and must be rejected by this Court.
10

11 The challenged Act is very similar in nature and kind to candidate loyalty oaths which
12 have been held to be an unconstitutional additional requirement in violation of the relevant
13 federal qualification clause of the United States Constitution. The requirement to take a loyalty
14 oath is not in direct contradiction of an enumerated federal qualification – the otherwise qualified
15 candidate was, at all times, free to decide to comply with the state requirement, sign the loyalty
16 oath and secure ballot access. However, the additional nature of the requirement to sign a loyalty
17 oath which did nothing to regulate of the election or require the showing of public support but
18 prevented ballot access have been ruled an unconstitutional additional qualification in violation
19 of the federal constitution. In *Shub v. Simpson*, 76 A.2d 332 (1950) the Maryland Court of
20 Appeals made a distinction between a state candidate and a federal candidate who refused to sign
21 a loyalty oath as a necessary predicate to secure ballot access, ruling that the loyalty oath
22 requirement was unconstitutional as to the federal candidate for Congress because the exclusive
23 qualifications of Members of Congress are enumerated in the federal constitution. The *Shub*
24 Court explained that:
25

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1 The qualifications of a representative in Congress are set out in Section 2 of
2 Article I of the Constitution of the United States. A representative must have
3 attained the age of 25 years, must have been seven years a citizen of the
4 United States, and must, when elected, be an inhabitant of the State in which
5 he shall be chosen. No other qualifications are prescribed Candidates for
6 Federal offices must comply with state election laws before their names can
7 be placed upon the ballot....but this does not authorize the State to include in
8 the election or other laws of the State any requirement which would add
9 additional qualifications to the office. There is nothing in the United States
10 Constitution which in terms prevents a member of Congress from being a
11 subversive person who seeks to overthrow the government of the United
12 States by force or violence. If that is a disqualification, it must be determined
13 by Congress itself and not by a state legislature or by a state court.

14 *Shub v. Simpson*, 196 Md. 177, 195-96 (MD 1950). The decision in *Shub*, while not binding on
15 this Court is, nevertheless, consistent with the Supreme Court's test for additional qualifications
16 under *U.S. Term Limits* and the cognate test announced by the Ninth Circuit in *Schafer*. Neither
17 the loyalty oath nor the requirements of the challenged Act directly conflict with an existing
18 qualification to hold federal office, both the loyalty oath and the requirements of the challenged
19 Act require a candidate to concede to an additional qualification that is not in support of a State's
20 legitimate interest in regulating an election free from chaos nor require a candidate to make some
21 showing of voter support in order to gain access to the ballot. Accordingly, the requirements of
22 the challenged Act are unconstitutional as an additional qualification to hold federal office in
23 violation of the federal constitution in the same manner as loyalty oaths are unconstitutional as
24 an additional qualification to hold federal office.

25 As applied to the instant action, there can be no argument that California's new and novel
26 requirement that presidential candidates must release 5 years of their confidential federal income
27 tax returns as well as supporting schedules, attachments, or lists that are supplemental to, or part
28 of, the returns so filed, to the Defendant for public release is in support of California's ability to
regulate the mechanics of an order election or for the purpose of requiring candidates to

1 demonstrate a modicum of support in the community. It is simply a naked, politically motivated,
2 additional restriction untethered to any state interest related to legitimate ballot access
3 requirements. The challenged Act specifically targets that class of candidates who refuse to
4 voluntarily release their federal income tax returns to the voters. The challenged Act seeks to bar
5 a specific class of presidential candidate from the primary election ballot – a class of candidate
6 who refuse to conform with a fairly recent historic “tradition” of presidential candidates releasing
7 their federal tax returns. Accordingly, the challenged Act is an additional qualification in violation
8 of the Qualifications Clause and is unconstitutional.
9

10
11 This Court should also take into account that California’s selective enforcement of the
12 requirement that only presidential and gubernatorial candidates seeking to contest primary
13 elections must release their federal income tax returns to Defendant calls into serious question
14 that the challenged Act is necessary or even designed to provide transparency in the electoral
15 process or an informed electorate. First, while an informed electorate is a state interest, it is not
16 an interest tethered to the ballot access arena, especially with respect to federal elections
17 precisely because the federal qualifications clauses of Article I and Article II of the constitution
18 do not provide for public disclosures of personal matters of any kind to hold federal office.
19 While many states impose financial and ethics disclosure requirements for state office holders
20 (the constitutionality of which has never been tested under the First Amendment), none have
21 been extended to federal candidates for political office. Additionally, California’s interest in an
22 informed electorate does not mean an omniscient electorate. In a democratic republic, some
23 personal information, even about presidential candidates, must be left to the sound discretion of
24 each candidate to voluntarily release. The foregoing clearly informed Governor Brown’s veto
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1 message of a nearly identical bill as that challenged in this action on October 15, 2017.

2 Governor Brown explained in his veto message that:

3 While I recognize the political attractiveness – even the merits – of getting
4 President Trump’s tax returns, I worry about the political perils of individual
5 states seeking to regulate presidential elections in this manner. . . . First, it
6 may not be constitutional. Second, it sets a ‘slippery slope’ precedent. Today
7 we require tax returns, but what would be next? Five years of health records?
8 A certified birth certificate? High school report cards? And will these
9 requirements vary depending on which political party is in power?

10 Compl. at ¶24. Let’s expand on Brown’s slippery slope. Does the State of California, or any
11 other State have the right to require the release of confidential mental-health records? If the
12 challenged Act is sustained, should not an informed electorate have the right to know if a
13 presidential candidate has suffered from a mental illness in the past or present that might call into
14 question his or her ability to manage America’s nuclear missile fields? In 2012, did States
15 possess the authority to require President Obama to release his sealed Harvard college records
16 before allowing him to appear on their primary or general election ballots to determine if he ever
17 categorized himself as a citizen of another country to secure preferential treatment or access to
18 additional financial aid? In 2016, did the States have the right to demand the release of Hillary
19 Clinton’s medical records to determine if she was physically fit to serve as president after her
20 odd collapse at a public appearance and her subsequent stuffing into an SUV by campaign staff
21 like a sack of potatoes in order to appear on some state general election ballots? The answer
22 must be no, and under the *U.S. Term Limits* and *Schaefer* tests the answer is no. While the state
23 may have an interest in an informed electorate, that interest does not extend into any sphere of
24 the private life of presidential candidates and is not properly exercised through denial of ballot
25 access as a cudgel against candidates who do not disclose any and all information that their
26 political opponents demand under the pretext of an informed electorate.

1 Second, the State's interest in an informed electorate is satisfied through non-ballot
2 access mechanisms. Public education, a free press, the internet, campaign advertisements, phone
3 calls, town hall meetings, direct contact with the candidate or the candidate's campaign,
4 opposition research by opposing campaigns, and, in the case of California, a voter's guide
5 provided to voters before the election serve to make sure California's electorate is properly
6 informed on Election Day. Governor Brown refused to release his federal income tax returns
7 when he ran for California Governor in 2010 and 2014 – does Defendant really contend that a
8 single missing data point of owing to Brown's refusal to publicly released his federal income tax
9 returns in 2010 and 2014 rendered the electorate uninformed when they elected and re-elected
10 Brown as their Governor? And with respect to financial information about a candidate, there is
11 an endless array of publicly available information on any presidential candidate who has been
12 involved in the highly regulated financial, banking, stock and real estate markets, such as Donald
13 Trump was prior to his election as President in 2016. Further, the challenged Act goes far
14 beyond the required release of federal income tax returns, it requires the release of all schedules,
15 attachments and lists filed with the tax returns – a vexatious mountain of additional financial
16 documents that virtually no voter would ever want to wade through prior to casting their ballot –
17 information of interest only to an auditor or enemies of the candidate, but not a voter. An
18 educated and informed electorate has the right to deny their vote from any candidate for any
19 reason and each candidate must solve, for themselves, the calculus of what information they will
20 provide to voters to both earn their trust and votes. As evidenced by the elections of both Brown
21 and Trump, a majority of voters simply do not consider the release of federal income tax returns
22 a necessary additional component in casting an educated and informed vote for their candidacies
23 – and neither should, nor can, the State of California.

1 In fact, the State of California, by limiting the requirements of the challenged Act to just
2 presidential and gubernatorial primary candidates clearly evince that Defendant cannot justify
3 the required release of federal income tax returns as necessary to an informed electorate.
4 California does not extend the requirement to independent presidential candidates who do not
5 contest primary elections, nor has California extended the requirement to any other federal
6 candidates or candidates for state office below the office of Governor, including the State
7 Treasurer and the State Controller - positions infused with financial responsibility for California
8 tax dollars. Does Defendant contend that California is content to maintain an ill-informed
9 electorate for the election of all other federal and state office holders save the Offices of
10 President and Governor? Plaintiff believes the answer to the foregoing should be obvious to the
11 Court and exposes that the real rational for the challenged Act is far less elevated than the
12 rational that will be provided to the Court by Defendant in Defendant's legal briefs. The real
13 reason for the challenged Act is hatred for the current sitting president and any candidate that
14 refuses to comply with Liberal orthodoxy.
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17

18 **2. The Act is Invalid in Violation of Federal Statutory Law Protecting**
19 **the Confidentiality of Federal Income Tax Returns.**

20 26 U.S.C. § 6103(a) provides that "Returns and return information shall be confidential,
21 and except as authorized by this Title...no officer or employee of any State....shall disclose any
22 return or return information obtained by him in any manner in connection with his service as
23 such an officer or an employee or otherwise or under the provisions of this section. For purpose
24 of this subsection, the term 'officer or employee' includes a former officer or employee." 26
25 U.S.C. § 6103 also details numerous, and comprehensive, details as to when tax returns and
26 return information may be disclosed to federal and state tax administrators, executive branch
27

1 departments and officials, judicial officials and/or federal and state prosecutors and under what
2 specific circumstances. No provision of 26 U.S.C. § 6103 provides any authorization for the
3 public disclosure of confidential tax return information by any official of any state, and most
4 certainly never contemplates any authorization to permit Defendant to post confidential federal
5 income tax returns on Defendant's state internet website as required under the challenged statute.
6

7 Under the Supremacy Clause of the United States Constitution, state laws which conflict
8 with federal are invalid under the federal doctrine of preemption. U.S. CONST. Art. VI, cl. 2.
9 When Congress legislates pursuant to its delegated powers, conflicting state law and policy must
10 yield to federal law. *Gibbons v. Ogden*, 22 U.S. (9 Wheat) 1, 210-11 (1824); *see also Cipollone*
11 *v. Liggett Group, Inc.*, 505 U.S. 504 (1992); *Morales v. TWA*, 504 U.S. 374 (1992); *Maryland v.*
12 *Louisiana*, 451 U.S. 725, 746 (1981); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). The
13 Supremacy Clause operates whether the authority of Congress is express or implied. However,
14 in the instant case, federal law makes it clear that Congress expressly made federal income tax
15 returns confidential and established elaborate and detailed provisions under what circumstances
16 that federal and state officials are permitted to gain access to an individual's federal returns and
17 in not one instance has the federal government provided that state officials are authorized to
18 command, outside of federal law, to require that an individual make his or her tax return
19 available to an unauthorized state official. No provision of federal law authorizes any State to
20 commandeer federal income tax returns to advance their own policy agenda. And more
21 importantly, no provision of federal law authorizes any State to require that an individual release
22 his or her federal income tax return on pain of loss of some state controlled right. More
23 specifically, no federal law does not authorize Defendant to coerce individuals to sign a consent
24
25
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1 form, produced by Defendant, to permit Defendant to publicly release their federal income tax
2 returns.

3 Statutory confidentiality of federal income tax returns serves a vital federal interest in
4 allowing individuals to voluntarily provide detailed and accurate financial information for the
5 calculation and collection of federal tax revenue free from the fear that their tax return
6 information will be made public for open inspection and commentary. The challenged Act,
7 imperils the comprehensive federal statutory scheme that American's have bought into
8 producing one of the most successful taxation schemes on the planet. If presidential candidates
9 can now be forced to sign "consent" forms to have their confidential federal income tax returns
10 release to the public in order to gain some state benefit, at what point will the average American
11 begin to question the confidentiality of their own tax return information?
12

13 Under the Supremacy Clause California lacks the authority to meddle with federal
14 income tax provisions and the challenged law is in violation of the clear provisions of 26 U.S.C.
15 § 6103. Accordingly, Plaintiff is likely to prevail on his claim that the challenged Act violates
16 federal law and is, therefore, unconstitutional.
17

18
19 **3. The Act is Invalid in Violation of Rights Guaranteed by the First and**
20 **Fourteenth Amendments Prohibiting State Imposed Forced Speech.**

21 The Act is unconstitutional in violation of rights guaranteed to Plaintiff under the First
22 and Fourteenth Amendments to the United States Constitution protecting individuals, including
23 political candidates, from state imposed forced or compelled speech. It is well established that
24 the First Amendment prohibits not only state action which restricts free expression, but also state
25 action which compels individuals to speak or express a certain point of view. *See Wooley v.*
26 *Maynard*, 430 U.S. 705, 714 (1977); *West Virginia State Board of Education v. Barnette*, 319
27

1 U.S. 624, 642 (1943); *see also Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

2 Moreover, “[t]he burden upon freedom of expression is particularly great where, as here, the
3 compelled speech is in the public context.” *Lehnert v. Ferris Faculty Ass’n*, 500 U.S. 507, 522
4 (1991).

5
6 In *Wooley*, the Supreme Court reversed the conviction of a New Hampshire married
7 couple who intentionally concealed the state motto “Live Free or Die” on their state license plate.
8 The Court concluded in *Wooley* that the “right of freedom of thought protected by the First
9 Amendment against state action includes both the right to speak freely and the right to refrain
10 from speaking at all.” *Wooley*, 430 U.S. at 714; *see also West Virginia State Board of Education*
11 *v. Barnette*, 319 U.S. at 642 (“If there is any fixed star in our constitutional constellation, it is
12 that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism,
13 religion, or other matters of opinion or force citizens to confess by word or act their faith
14 therein.”). Since *Wooley*, the Supreme Court has reaffirmed the prohibition on compelled speech
15 and refined it to apply to cases in which the government orders certain types of speech or speech
16 about certain topics. For example, in *Riley v. Nat’l Fed. Of the Blind of North Carolina, Inc.*,
17 487 U.S. 781, 786 (1988), the Court held a North Carolina law unconstitutional under the First
18 Amendment which required professional fundraisers, before soliciting donations, to disclose
19 what portion of donations they turned over to the charities for which they solicited in the
20 preceding twelve months. The Court concluded that the state law violated the First Amendment
21 prohibition on state-compelled speech because “[t]he First Amendment mandates that we
22 presume that speakers, not the government, know best both what they want to say and how to say
23 it. . . . To this end, the government. . . may not substitute its judgment as to how best to speak for
24 that of speakers and listeners. . . .” *Id.* at 790-91; *see also Pacific Gas & Electric Co. v. Public*

1 *Utilities Comm’n of California*, 475 U.S. 1, 14-16 (1986) (“the State is not free either to restrict
2 appellant’s speech to certain topics or views or to force appellant to respond to views that others
3 may hold. . . . [T]he choice to speak includes within it the choice of what not to say...”)

4
5 The compelled speech doctrine applies with equal force to protect political candidates
6 from forced speech by state actors. A “political candidate does not lose the protection of the
7 First Amendment when he declares himself for public office.” *Brown v. Hartlage*, 456 U.S. 45,
8 53 (1982). “An individual’s choice to serve the public by seeking congressional office does not
9 grant the state license to restrict or compel his or her speech.” *Gralike v. Cook*, 191 F.3d 911,
10 919 (8th Cir. 1999) *affirmed Cook v. Gralike*, 531 U.S. 510 (2001).

11
12 The Act imposes compelled speech upon Plaintiff, and all other presidential candidates
13 seeking to contest a 2020 presidential election ballot in California, in the form of public
14 disclosure of confidential federal income tax returns. This is precisely the kind of speech where
15 California is prohibited from substituting its own judgment for the judgment of political
16 candidates “as to how best to speak” for themselves. California is not allowed under the First
17 Amendment to impose on candidates to engage in forced, rather than voluntary, disclosure of
18 personal financial information such as their federal income tax returns.

19
20 Further, the utility of the compelled speech doctrine is most apparent in the instant case in
21 preventing a state-imposed distortion of the market place of ideas. Forced release of federal
22 income tax returns as an additional qualification to contest the 2020 presidential primary ballot,
23 deprives voters of valuable information as to which candidates have decided to provide a
24 voluntary release of his or her federal income tax return. The Act deprives valuable information
25 for those voters who place voluntary release as a premium data point as to the underlying
26 character and openness of candidates that they may want to support. In the age of modern
27

1 communications, instant 24-hour news cycles, the internet and sophisticated opposition research
2 of opposing presidential campaigns, there are a myriad of data points through which voters can
3 determine the ethical make-up of presidential candidates. After the 2016 presidential election,
4 and the billions of dollars spent on political advertising and media attention, it is unlikely that
5 there were very many voters who yearned for even more information on the candidates
6 contesting the 2016 presidential election. In 2016, the voters were treated to the fairly
7 comprehensive tutorial on the respective ethical character of both Hillary Clinton and Donald
8 Trump. Trump's refusal to release his own federal income tax returns added and/or detracted
9 little from the ability of the voters to make an informed decision on his fitness to hold public
10 office. Likewise, does Defendant really contend that Governor Jerry Brown's refusal to release
11 his own federal income tax returns in his 2010 and 2014 gubernatorial campaigns deprived the
12 voters of sufficient information to make an informed choice when they elected him to occupy
13 California's Governor's mansion for 8 years?
14

15
16 Accordingly, the Act's imposition of compelled speech on presidential candidates
17 violates clearly established rights guaranteed to Plaintiff under the First and Fourteenth
18 Amendments to the United States Constitution and Plaintiff is likely to success on the merits of
19 this claim at trial.
20

21 **B. Irreparable Harm.**
22

23 "The loss of First Amendment rights, for even minimal periods of time, unquestionably
24 constitutes irreparable injury." *Elron v. Burns*, 427 U.S. 347, 353 (1976). Thus, in the context
25 of an alleged violation of First Amendment rights, a Plaintiff's claimed irreparable harm is
26 'inseparably linked' to the likelihood of success on the merits of Plaintiff's First Amendment
27 claim. *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7 (2008). Furthermore, Plaintiff's
28

1 failure to comply with the challenged Act on November 26, 2020, will deprive him of his right to
2 contest for the 2020 Republican Party presidential nomination, for which Plaintiff has already
3 expended considerable personal funds. Plaintiff will also suffer irreparable harm as he needs to
4 continue to plan and finance his 2020 campaign for the Republican presidential nomination,
5 which he cannot properly accomplish with the threat that Defendants will enforce the challenged
6 Act preventing Plaintiff from securing access to California's 2020 primary election ballot unless
7 he releases not only his 5 most recent federal income tax returns, but also all schedules,
8 attachments and lists filed with his returns.
9

10
11 Absent an emergency preliminary injunction, Plaintiff will suffer irreparable deprivation
12 of his constitutional rights under the Qualifications Clause and the First and Fourteenth
13 Amendments to the United States Constitution and federal statutory law under 26 U.S.C. § 6103.

14 **C. The Balance of Equities.**

15 As discussed above, the Plaintiff will suffer irreparable harm if Defendant is permitted to
16 enforce the challenged Act. On the other hand, Defendant can claim no harm resulting from the
17 issuance of the requested emergency preliminary injunction. Accordingly, the balance of
18 equities favors Plaintiff.
19

20 **D. The Public Interest.**

21 The health and well-being of a democracy depends upon choice at the ballot box.
22 Enjoining Defendant's enforcement of the challenged Act will result in greater citizen
23 participation in the control of their government via the ballot. Furthermore, the public interest is
24 served by Defendants acting within the limits and protections afforded by the Qualifications and
25 Supremacy Clauses and the First and Fourteenth Amendments to the United States Constitution.
26
27

1 Accordingly, the public interest will be strongly served by this Court issuing the
2 requested injunction.

3 **V. CONCLUSION**

4 For all the foregoing stated reasons the requested preliminary injunction should be
5 granted. Plaintiff is likely to succeed on the merits of his claims as the challenged Act violates
6 the Qualifications Clause of Article II of the United States Constitution, federal statutory law and
7 rights guaranteed to Plaintiff under the First and Fourteenth Amendments to the United States
8 Constitution.
9

10
11 Respectfully submitted,

12
13 Dated: August 6, 2019

/s/ Paul A. Rossi

Paul A. Rossi, Esq.
Counsel for Plaintiff
Admission Pro Hac Vice
Law Office of Paul A. Rossi
316 Hill Street
Mountville, PA 17554
717.681.8344
Paul-Rossi@comcast.net

1 Morgan J.C. Scudi
2 Scudi & Ayers
3 5440 Morehouse Drive
4 Suite #4400
5 San Diego, CA 92121
6 Phone: 858.558.1001
7 Fax: 858.558.1122
8 mscudi@scudilaw.com

9 Paul A. Rossi
10 Law Office of Paul A. Rossi
11 316 Hill Street
12 Mountville, PA 17554
13 Phone: 717.681.8344
14 Paul-Rossi@comcast.net

15 *Counsel to Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

18 ROQUE ROCKY DE LA FUENTE,
19 Plaintiff,
20 vs.
21 ALEX PADILLA,
22 Defendant

Case No.: 3:19-cv-1433-JM-NLS
Judge Jeffrey T. Miller

PLAINTIFF'S BREF IN SUPPORT OF
PLAINTIFF'S MOTION FOR EMERGENCY
PRELIMINARY INJUNCTION

23 **CERTIFICATE OF SERVICE**

24 Plaintiff, by and through his undersigned legal counsel, hereby certifies that on this date a
25 true and correct copy of the foregoing document has been physically served upon Defendant at
26 his office at:

27 Alex Padilla
28 California Secretary of State
1500 11th Street

PLAINTIFF'S BREF IN SUPPORT OF PLAINTIFF'S MOTION FOR EMERGENCY PRELIMINARY
INJUNCTION - 29

1 Sacramento, CA 95814

2 Dated: August 6, 2019

/s/ Paul A. Rossi

3 Paul A. Rossi