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Attorneys for Petitioner Gavin Newsom

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

(UNLIMITED JURISDICTION)

GAVIN NEWSOM,
 	
        Petitioner,
 	
vs.
 	
DR. SHIRLEY N. WEBER, in her official capacity as Secretary of State of the State of California,
 	
        Respondent.
	No.: _____
	
	Action Filed: June 28, 2021
	
	VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF
	
	ELECTION MATTER – IMMEDIATE ACTION REQUESTED
	
	REQUESTED ACTION BY: JULY 12, 2021 [Cal. Elec. Code § 13314]
	
	Hearing:
	
	Date: TBD
	Time: TBD
	Dept.: TBD
	Judge: TBD

Petitioner GAVIN NEWSOM petitions this Court pursuant to Elections Code section 13314 and Code of Civil Procedure sections 1085 and 1086 for a writ of mandate commanding respondent DR. SHIRLEY N. WEBER, Secretary of State of California, to accept his election to have his party preference printed on the recall ballot and, pursuant to Elections Code section 11320(c), to require all recall ballots to include either next to or below NEWSOM's name his party preference as follows: "Party Preference: Democratic." NEWSOM also seeks a judicial declaration pursuant to Code of Civil Procedure section 1060 that he substantially complied with Elections Code section 11320, that WEBER must therefore accept NEWSOM's party preference election as timely and properly filed, and that WEBER must require all recall election ballots to contain NEWSOM's party preference. Finally, NEWSOM seeks injunctive relief pursuant to Code of Civil Procedure section 526 requiring WEBER to accept NEWSOM's party preference election and that WEBER must require all recall election ballots to contain NEWSOM's party preference.

Petitioner further requests that pursuant to Elections Code section 13314, the Court take immediate action to ensure that the recall ballot will include petitioner's party preference. Petitioner is informed and believes, and on that basis alleges that the Secretary of State WEBER can accept changes to the recall ballot at least 59 days before the recall election, when the nomination period ends for replacement candidates. The recall has not yet been called. The Lieutenant Governor must call the election and set the election date between 60 and 80 days from the date the Secretary of State certifies the recall, which has not yet occurred. As a result, the Court has sufficient time to act before the recall ballot is finalized. Petitioner respectfully requests that the Court decide this matter by July 12, 2021, to allow for appellate review if necessary before the recall ballot is set.

By this verified petition, petitioner alleges:

PARTIES

1.   Petitioner GAVIN NEWSOM is the Governor of the State of California. Petitioner is a registered voter of the State of California and the County of Sacramento, where he resides. Petitioner is registered to vote as a Democrat. Petitioner is beneficially interested in ensuring that his party preference election appears on the recall ballot as provided in Elections Code

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF

section 11320 to ensure that voters are able to make a more informed choice when deciding how to vote in the upcoming recall election.

2.   Respondent DR. SHIRLEY N. WEBER is the California Secretary of State and is sued in her official capacity. As the Secretary of State, respondent WEBER has a duty to administer the provisions of the Elections Code in a manner that fully complies with the law, including the law requiring her to accept the election of party preference filed by a state elected official holding a voter-nominated office and who is subject to a recall. Respondent WEBER is the elections official responsible for overseeing a statewide recall election and the contents of the recall ballot. *See, e.g.,* Cal. Elec. Code § 11381(a).

JURISDICTION AND VENUE

3.   This Court has jurisdiction over this matter pursuant to Elections Code section 13314 and Code of Civil Procedure sections 1060 and 1085, et seq.

4.   The proper venue for this action is the County of Sacramento pursuant to Elections Code section 13314.

GENERAL ALLEGATIONS

5.   On February 21, 2020, Orrin Heatlie and other individuals filed a notice of intent to circulate a recall petition against Governor NEWSOM. Governor NEWSOM timely filed an answer to the notice of intent with the Secretary of State on February 28, 2020. *See* Cal. Elec. Code § 11023. Now, sixteen months later, and after proponents received a four-month extension of time to collect signatures, the recall has qualified for the ballot.

6.   The recall, however, has not yet been certified as sufficient by the Secretary of State. Before that occurs the Department of Finance must estimate the cost of the election and the Joint Legislative Budget Committee must have an opportunity to review and comment on the estimate. Cal. Elec. Code §§ 11108(d)-(e), 11109. (At the time of this filing, the Legislature was considering a budget trailer bill, AB 152, that could eliminate the need for the Joint Legislative Budget Committee review and comment period if the Legislature appropriates funds for the recall in the budget act.) Once the Secretary of State certifies the recall, the Lieutenant Governor must call the election for a date

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between 60 and 80 days from the date the Secretary of State certified the recall as sufficient. Cal. Const. art. II, §§ 15(a), 17; Cal. Elec. Code § 11109.

7. The recall ballot will have two parts. In the first part, voters will be asked to vote "yes" or "no" on the question "Shall Gavin Newsom be recalled from the office of Governor?" Cal. Elec. Code § 11320. In the second part, voters can vote on a replacement candidate, and those votes for a successor candidate would only be counted if more than 50% of voters casting ballots in the recall election vote to recall the Governor. Cal. Const. art. II, § 15(c); Cal. Elec. Code § 11322(a).

8. The official subject to a recall, in this case Governor NEWSOM, is not required to file any pre-election documents with elections officials ahead of the election. However, in order to appear on the ballot, replacement candidates must file nomination documents, including a declaration of candidacy, and all other required filings such as a statement of economic interests and copies of their federal tax returns from the last five years. Cal. Elec. Code § 11381. A summary of the qualifications and required filings that apply to replacement candidates are summarized in the recall FAQ recently published by WEBER, attached hereto as **Exhibit A**. As part of the declaration of candidacy, replacement candidates can elect to have their party preference on the ballot. Cal. Elec Code § 8002.5. The replacement candidates must file all required documents during the nominating period, which runs from the day the Lieutenant Governor calls the election until 59 days before the election. Cal. Elec. Code § 11381(a). Thus, the replacement candidates have until 59 days before the election to file their party preference election. The Secretary of State must certify the list of replacement candidates to be placed on the ballot by the 55th day prior to the election. *Id.*

9. Notwithstanding the fact that replacement candidates have until 59 days before the recall election to file their party-preference election, NEWSOM, for no discernable reason, was required to file his party preference election back in February 2020, when he first filed his answer to the initial notice of intent to circulate the recall petition. Cal. Elec. Code § 11320(c).

10. Elections Code section 11320(c), which went into effect January 1, 2020, states that the officer holding a voter-nominated office and who is subject to a recall, shall inform the Secretary of State whether the officer elects to have their party preference on the ballot when they file

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the answer to the recall notice of intent. That would mean that Governor NEWSOM would have been required to file his election on February 28, 2020, when he filed his answer to the current recall. Due to an inadvertent but good faith mistake on the part of his elections attorney, NEWSOM timely filed his answer but did not include his party-preference election. Upon discovering the mistake, NEWSOM's counsel promptly caused NEWSOM to file a notice of party preference election with WEBER on June 19, 2021, and requested WEBER to accept the notice of election. WEBER, however, declined to accept the notice, necessitating this action. A true and correct copy of NEWSOM's Notice of Election filed with the Secretary of State's Office is attached to this petition as **Exhibit B** and is incorporated into this petition by reference.

11. No prejudice results from the delay in submitting the request. The Secretary of State has not yet certified as sufficient the recall election, the Lieutenant Governor has not yet called the election, the nomination period for replacement candidates has not yet begun, and the format and content of the recall ballot is, at a minimum, still weeks away from being drafted and finalized. Petitioner is informed and believes, and on that basis alleges that the Secretary of State WEBER can accept changes to the recall ballot at least up to and including 59 days before the election, when the nomination period for replacement candidates ends.

12. The deadline set forth in Elections Code section 11320(c) serves no purpose related to the efficient administration of running the election. Instead, the deadline was likely selected for the convenience of the officer being recalled, so they could file their party-preference request and answer at the same time. An officer being recalled does not have to file any nomination documents, and thus the only time the officer would file any election-related paperwork is when they file the answer.

13. NEWSOM's notice of party preference must be accepted under the doctrine of substantial compliance. The California Supreme Court has held that "an unreasonably literal or inflexible application of constitutional or statutory" election procedural requirements that fails to take into account the purpose underlying the particular requirement at issue is inconsistent with the fundamental rights involved and should not be permitted. *Costa v. Super. Ct.*, 37 Cal. 4th 986, 1013

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(2006). As long as the fundamental purposes underlying the applicable constitutional or statutory requirements have been fulfilled, there is compliance with the applicable statute. *Id.* As the Court held in *Costa v. Superior Court*, the substantial compliance rule requires a realistic evaluation as to "whether the particular defect in question frustrates the purposes of the applicable election requirement." *Id.* at 1027. The Court stated that "[a]lthough each of the constitutional and statutory requirements at issue in these and similar past California cases was clear on its face and ostensibly not difficult to comply with, all of the decisions in this area implicitly recognize that inadvertent, good-faith human error cannot always be avoided" and should not subvert fundamental constitutional interests "when it is apparent that the technical defect in question, as a realistic matter, did not adversely affect the integrity of the electoral process or frustrate the purposes underlying the relevant constitutional or statutory requirements." *Id.*

14.   Elections Code section 11320(c) was added by the Legislature through Senate Bill 151, which became effective January 1, 2020. SB 151, ch. 556, 2019 Cal. Leg. 2019-2020 Sess. Prior to its passage, officials subject to a recall were not able to include a party preference on the recall ballot. SB 151 received unanimous approval from both the Senate (38-0) and Assembly (77-0). Its stated purpose is to provide the voters more information so they could make a more informed choice about whether to retain or remove an elected official. Specifically, the bill analyses repeatedly described the purpose of SB 151 as follows:

> According to the author, unlike the elected official being recalled, candidates seeking to succeed the elected official in a recall election are able to have a ballot designation. This includes being afforded the ability to have a party preference stated on the ballot. SB 151 allows an elected official in a partisan state office who is subject to a recall to have their party preference identified on the ballot. *By providing additional identifying information on the ballot, voters are able to make a more informed choice when deciding to retain or remove an individual from office.*
>
> Cal. S. Rules Comm., S. Floor Analysis of SB 151, 2019-2020 Reg. Sess., at 4-5 (Sept. 3, 2019) (emphasis added).

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15.   Thus, the purpose of SB 151 was to provide more information for voters to see *"on the ballot."* That purpose will be entirely frustrated by strict adherence here to the arbitrary deadline in Elections Code section 11320(c). Furthermore, NEWSOM has now filed his party preference election many weeks *before* the recall election has been called, before the nomination period has opened for replacement candidates, and before the form and length of the ballot have been finalized. In doing so NEWSOM fully complied with the stated objective of the statute. The failure to accept NEWSOM's notice of election now would turn the very purpose of the statute on its head, a result that should not be allowed to stand.

16.   In addition, there is no evidence in the legislative history of SB 151 that the deadline set forth in Elections Code section 11320(c) serves an important purpose. In fact, the record as to why the Legislature required the filing so early in the process suggests the deadline was meant to be convenient to the officer being recalled rather than a hard deadline relating to the efficient administration of the election. The original version of SB 151 that existed through the Senate floor vote did not include any deadline but stated that the ballot should include the party preference listed "on the candidate's declaration of candidacy pursuant to Section 8002.5." SB 151 (as introduced on Jan. 22, 2019). But elected officials subject to a recall are not considered replacement candidates and do not file a declaration of candidacy as part of the recall process. Cal. Elec. Code § 11381(a), (c). Unlike replacement candidates, they are not required to file any elections paperwork leading up to the election. Instead, the only election-related paperwork that an official subject to recall files is the answer. That likely explains why the Assembly subsequently amended the bill to have the officer being recalled file a party-preference election when they file an answer. There is nothing in SB 151's text or legislative history to suggest the Legislature fixed that deadline out of a concern for election administration efficiency.

17.   NEWSOM has filed his party preference election well *before* the recall election has been called, before the nomination period has opened for replacement candidates, and before the form and length of the ballot has been finalized. NEWSOM has complied with every reasonable objective of Elections Code section 11320.

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18.   No elections official or potential replacement candidate has been inconvenienced or prejudiced by NEWSOM's delay in submitting his notice of election.

19.   In addition, enforcing the deadline against NEWSOM would be fundamentally unfair and raise First Amendment and equal protection concerns given that replacement candidates can file their notice of party preference up to 59 days before the election. The same deadline should apply to NEWSOM.

20.   To apply that deadline here would also lead to absurd results. The voters would be deprived of the very information the Legislature has deemed important for them to receive, all because the Governor's counsel inadvertently failed to file a form about the Governor's *ballot designation* at least sixteen months before the recall election has been called and long before it became clear that the recall would even qualify for the ballot.

FIRST CAUSE OF ACTION

(Writ of Mandate)

21.   Petitioner incorporates by reference each and every allegation made in paragraphs 1-20 above as though fully set forth herein.

22.   NEWSOM has filed with WEBER a request to have his party-preference appear on all recall election ballots, which substantially complies with Elections Code section 11320.

23.   Elections Code section 13314(a) provides that a writ shall issue upon proof that an error or omission is about to occur in the printing of a ballot, county voter information guide, or other official matter, or that any neglect of duty has occurred, or is about to occur, in violation of the Elections Code or the Constitution, and that issuance of the writ will not substantially interfere with the conduct of the election.

24.   Pursuant to Elections Code section 11320, an official subject to a recall shall have the right to have their party preference listed on the ballot. NEWSOM has requested for his party preference to appear on the ballot and has complied with the reasonable objectives of the statutes yet WEBER has stated she will not require the recall ballot to include NEWSOM's party preference without a Court order.

25. Respondent WEBER's decision not to accept NEWSOM's party preference election violates Elections Code sections 11320 and constitutes an error and omission under Elections Code section 13314.

26. Issuance of the writ will not substantially interfere with the conduct of the recall election, which has not even been called. Petitioner is informed and believes, and on that basis alleges that the Secretary of State can accept court-ordered changes to the recall ballot at least 59 days before the recall election, when the nomination period ends for replacement candidates Because this Court can issue this writ prior to that date, which is still uncertain, there will be adequate time to incorporate NEWSOM's party preference on the ballot.

27. Code of Civil Procedure section 1086 requires that a "writ must issue in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." Petitioner is informed and believes that respondent WEBER has refused to accept NEWSOM's party preference election and will not accept it without a court order. Consequently, there is no plain, speedy or adequate legal remedy in the ordinary course of the law for ensuring that NEWSOM's party preference election appears on the recall ballot that will be presented to the voters.

28. Petitioner's statutory rights, and the right of California voters to be accurately and fully informed about the recall election, will be irreparably injured if real party WEBER is not ordered to accept NEWSOM's party preference election and require NEWSOM's party preference to be listed on all recall ballots in accordance with Elections Code section 11320.

SECOND CAUSE OF ACTION

(Declaratory Relief)

29. Petitioner incorporates by reference each and every allegation made in paragraphs 1-28 above as though fully set forth herein.

30. As set forth above, there is now a current and present controversy and dispute between NEWSOM and WEBER as to whether NEWSOM has the right to have his political party preference appear on the ballot and whether WEBER has the duty to accept NEWSOM's notice of

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party preference election and require his party preference to be listed on all recall ballots. NEWSOM has filed his notice of election, but WEBER has stated she cannot accept it without a Court order.

31. Accordingly, NEWSOM seeks a declaration by the Court pursuant to Code of Civil Procedure section 1060 of the parties' rights, duties and obligations under Elections Code section 11320, specifically that NEWSOM substantially complied with Elections Code section 11320, that his notice of election must be accepted under the doctrine of substantial compliance and that his party preference must be printed on all recall ballots.

THIRD CAUSE OF ACTION

(Injunctive Relief)

32. Petitioner incorporates by reference each and every allegation made in paragraphs 1-31 above as though fully set forth herein.

33. Pursuant to section 526 of the Code of Civil Procedure, and based on NEWSOM's right to have his party preference appear on the recall ballot due to his substantial compliance with section 11320(c) of the Elections Code, petitioner is entitled to injunctive relief compelling WEBER to accept NEWSOM's notice of party preference election and ensure that it appear on the ballot as set forth in Elections Code section 11320.

WHEREFORE, petitioner prays:

1. That this Court issue a writ of mandate directing respondent WEBER to accept NEWSOM's previously filed notice of election to have his party preference appear on the recall ballot, and to require all recall ballots to include NEWSOM's party preference on the ballot as set forth in Elections Code section 11320.
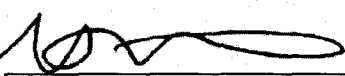
2. That this Court issue a declaration pursuant to Code of Civil Procedure section 1060 that NEWSOM substantially complied with Elections Code section 11320 when he filed his Notice of Election to have his party preference appear on the recall ballot, so that WEBER has the duty to accept this statement of party preference and ensure that it appear on the ballot as set forth in Elections Code section 11320; and

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT
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3.   That this Court issue a temporary restraining order, preliminary injunction, and/or a permanent injunction pursuant to section 526 of the Code of Civil Procedure requiring WEBER to accept NEWSOM's notice of party preference election and ensure that it appear on the ballot as set forth in Elections Code section 11320.

4.   For such other and further relief as the Court deems just and equitable.

Dated: June 28, 2021   Respectfully submitted,
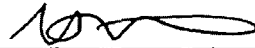
                                                                      OLSON REMCHO, LLP

                                                                      By: _____
                                                                             Thomas A. Willis

                                                                      Attorneys for Petitioner Gavin Newsom

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF

VERIFICATION

I, Thomas A. Wills, declare:

I am one of the attorneys for petitioner Gavin Newsom. I make this verification for the reason that petitioner is absent from the county where I have my office. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunctive Relief and believe that the matters therein are true and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed the 28th of June, 2021, at Cloverdale, California.

_____
Thomas A. Willis

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY RELIEF AND INJUNCTIVE RELIEF

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within

cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

On June 28, 2021, I served a true copy of the following document(s):

**Verified Petition for Writ of Mandate
and Complaint for Declaratory Relief
and Injunctive Relief**

on the following party(ies) in said action:

Steven J. Reyes   *Attorneys for Respondent Secretary of State*
Chief Counsel   *Dr. Shirley N. Weber*
Office of the Secretary of State
300 S. Spring Street, 16th Floor
Los Angeles, CA 90013
Phone: (213) 897-6225
Email: steve.reyes@sos.ca.gov

Kevin Calia   *Attorneys for Respondent Secretary of State*
Boersch & Illovsky LLP   *Dr. Shirley N. Weber*
1611 Telegraph Avenue, Suite 806
Oakland, CA 94612
Phone: (916) 547-4175
Email: kevin@boersch-illovsky.com

☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and

   ☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

   ☐ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in Oakland, California, in a sealed envelope with postage fully prepaid.

☐ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.

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☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons
2   at the fax numbers listed based on an agreement of the parties to accept service by
fax transmission. No error was reported by the fax machine used. A copy of the
3   fax transmission is maintained in our files.

☒ **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at
4   the email addresses listed based on a court order or an agreement of the parties to
accept service by email. No electronic message or other indication that the
5   transmission was unsuccessful was received within a reasonable time after the
transmission.

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I declare, under penalty of perjury, that the foregoing is true and correct. Executed on
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June 28, 2021, in Piedmont, California.
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10   Alex Harrison

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EXHIBIT A

The California Secretary of State is responsible for overseeing recalls for state officers, including for constitutional offices (Governor, Lieutenant Governor, Attorney General, etc.), state legislators, and justices of the Supreme and Appellate Courts. Local recalls are overseen by county or city elections officials.

The recall process is outlined in the California Constitution (Article II, Sections 13-19) and the California Elections Code (Sections 11000-11110, 11300-11386).

PLEASE NOTE: Although the current effort to recall Governor Newsom has not qualified for the ballot, the following provides answers to frequently asked questions in the event the gubernatorial recall does qualify for the ballot.

QUESTIONS & ANSWERS TOPICS

State Officer Recalls in General

Governor Newsom's Recall Petition

Gubernatorial Recall Process

Qualifications & Filing Requirements for Replacement Candidates

Gubernatorial Recall Ballot

Voters

Voter Information Guides

Campaign Contributions

After Election Day

State Officer Recalls in General

What is a recall?

The recall has been part of California's political system since 1911. It provides a mechanism for the public to attempt to remove elected public officials from office before the end of their term of office. Before a recall election can be initiated, a certain number of voters must sign a recall petition within a specified amount of time.

How many signatures are required for a gubernatorial recall?

To qualify a recall of the Governor for the ballot, proponents need a minimum of 1,495,709 valid petition signatures. This is equal to 12 percent of the votes cast for the office of Governor in 2018, which is the last time the office was on the ballot. Signatures from at least 5 counties must each equal 1 percent of the total number of votes cast in the last election for Governor in the county. (Cal. Const., art. II, § 14(b)) The total number of votes cast for Governor in the 2018 election was 12,464,235.

Who may sign the recall petition?

Only the signatures of registered California voters are counted to qualify the recall for the ballot. (Elec. Code, §§ 322, 11045)

Are the petitions filed with the Secretary of State?

No, each petition must be filed with the elections official of the county where it was circulated by the proponents or their authorized representatives. (Elec. Code, §§ 11102, 11103)

Who verifies petition signatures?

County elections officials are responsible for counting the recall petition signatures and must verify recall petition signatures once the proponents have submitted for verification at least 10 percent of the total number of required signatures. (Elec. Code, § 11104(d))

Has a California Governor ever been recalled?

Since the people added the power of the initiative, referendum, and recall to the California Constitution in 1911, there have been 54 previous attempts to recall California Governors. Only one Governor has been recalled – Gray Davis in 2003.

<u>Governor Newsom's Recall Petition</u>

Who are the proponents of the current gubernatorial recall effort?

By law, the proponents are those persons who signed the original Notice of Intention to Recall Governor Gavin Newsom that was filed with the Secretary of State's Office. The lead proponent of this current effort to recall Governor Newsom is Orrin E. Heatlie. Including Mr. Heatlie, there are 125 official proponents of the current recall effort against the Governor. (Elec. Code, §§ 343, 11020)

When did the current recall effort begin?

The proponents' petition to recall Governor Newsom was approved for circulation by the Secretary of State on June 10, 2020. (Elec. Code, § 11042(d))

Each petition section is required to include specific information, including the proponents' Notice of Intent with the statement of grounds for initiating the recall, as well as the Governor's answer. (Elec. Code, §11041) <u>Notice of Intent (PDF)</u> and <u>Answer (PDF)</u>.

How much time did the recall proponents have to gather signatures?

In general, recall proponents have 160 days to circulate the approved petition in at least five counties. (Cal. Const., art. II, § 14(a))

For the current effort to recall Governor Newsom, the original deadline for the proponents to circulate and file petitions with county elections officials was November 17, 2020. However, an extension of time for the circulation and filing of the petitions up to and including March 17, 2021, was granted by the Sacramento County Superior Court, due to the impact of COVID-19. <u>Stipulated Order 1/8/2021 (PDF)</u>

Did the recall proponents gather enough signatures?

Yes. On April 26, 2021, California Secretary of State Dr. Shirley N. Weber announced that the threshold of 1,495,709 verified signatures reported by counties had been met for the recall of Governor Gavin Newsom. <u>County elections officials</u> reported the final signature verification on April 29, 2021.

Can voters withdraw their signature from the Governor Gavin Newsom recall petition?

Any voter who has signed a recall petition may provide a written request to their county elections official to have their signature removed from the petition within 30 business days. Voters seeking to withdraw their signature from a recall petition should submit the withdrawal request to the county elections official where the voter lived at the time they signed the petition.

The withdrawal period for the gubernatorial recall election was April 26, 2021, to June 8, 2021. (Elec. Code, § 11108(b)) County elections officials must report the total number of withdrawn signatures to the Secretary of State by June 22, 2021. The Secretary of State must then determine if the petition still has the requisite number of valid signatures to initiate a recall election.

If it is determined that that there is not the requisite number of valid signatures, the recall effort would fail. However, if it is determined that there is still the requisite number of valid signatures to initiate a recall election, the Secretary of State must promptly notify the Department of Finance of the results. (Elec. Code, § 11108(c) and (d))

Gubernatorial Recall Process

Who sets the date of a gubernatorial recall election?

The Lieutenant Governor sets the date of a gubernatorial recall election. A recall election must be held between 60 and 80 days from the date the Secretary of State certifies that it has qualified, unless there is a regularly scheduled statewide election within 180 days. (Cal. Const., art. II, § 15) Normally, the Governor would be required to set the election for a qualified statewide recall; however, when the Governor is the target of a recall, any of the Governor's duties related to the recall are performed by the Lieutenant Governor. (Cal. Const., art. II, § 17)

What is the cost of a gubernatorial recall election?

The Department of Finance will estimate the costs of the gubernatorial recall election, including expenses for verifying signatures, printing ballots and voter information guides, and operating polling places. (Elec. Code, § 11108(d))

The estimated costs of the recall election will be posted on the Secretary of State's website. (Elec. Code, § 11108(e), (f))

Qualifications & Filing Requirements for Replacement Candidates

What is the deadline for filing as a replacement candidate in the Governor's recall?

The deadline to file as a replacement candidate is contingent upon the election date included in a recall election proclamation issued by the Lieutenant Governor.

Can Governor Newsom, who is the target of a recall effort, run as a replacement candidate?

No. A person whose recall is being sought cannot be a candidate to succeed themselves at a recall election. (Elec. Code, § 11381(c))

Who can run as a replacement candidate?

A replacement candidate must meet legal qualifications and requirements to run for the office of Governor. A candidate must: be a U.S. citizen; be a California registered voter and otherwise qualified to vote for that office at the time nomination papers are issued; not have been convicted of a felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes; and not have served two terms in the office since November 6, 1990. (Cal. Const., art V, § 2; Elec. Code, §§ 20, 201)

What are the candidate filing requirements to run as a replacement candidate?

A replacement candidate must follow existing primary election nomination procedures to run for the office of Governor and must file the required paperwork no less than 59 days before the scheduled recall election.

A replacement candidate must:

- File with the county elections official, in which the candidate is registered to vote, the following:

    o A Declaration of Candidacy, and

    o Nomination Papers, with 65 to 100 valid nomination signatures.

- Pay a filing fee of $4,194.94 to the county elections official at the time the candidate obtains their Declaration of Candidacy and nomination papers.

- A candidate may choose to submit a minimum of 7,000 valid signatures on petitions in lieu of the filing fee.

- File, no later than the candidate filing deadline, with the Secretary of State two (2) copies of every income tax return the candidate filed with the Internal Revenue Service (IRS) in the five (5) most recent taxable years, one unredacted copy and another copy with required redactions.

(Elec. Code, §§ 333, 8020, 8062(a)(1), 8103(a)(1), 8105, 8106(a)(3),(b)(3), 8902, 8903)

More detailed candidate filing procedures and deadlines will be provided on this website if once the recall election is called by the Lieutenant Governor.

When will we find out who the candidates are for the recall election?

The Secretary of State must provide the certified list of candidates to the county elections official by the 55th day before the recall election. (Elec. Code, § 11381(a))

Gubernatorial Recall Ballot

What does a recall ballot look like?

Recall ballots have two parts.

In the first part, voters would have the option to vote "yes" or "no" to the question of whether to remove the Governor from office.

In the second part, the voter would have an opportunity to select a replacement candidate, and those votes for a successor candidate would only be counted if more than 50% of voters casting ballots in the recall election vote to recall the Governor. (Cal. Const., art. II, § 15(c); Elec. Code, §§ 11320, 11322)

Will initiatives or referenda appear on a gubernatorial recall ballot?

No. Initiatives and referenda will not appear on a gubernatorial recall ballot.

Under Sections 8(c) and 9(c) of Article II of the California Constitution, only the Governor may call a special election that would place an initiative or referendum on the ballot. Under Section 17 of Article II of the California Constitution, the Lieutenant Governor is authorized to issue a proclamation for the recall election only.

In addition, the Secretary of State can only place an initiative on a ballot that has qualified at least 131 days before a regularly scheduled statewide general election or a special election held before that election. (Cal. Const., art. II, § 8(c)) Since recall elections are called 60 to 80 days before the recall election occurs, there is not enough time to place an initiative on a recall ballot.

Will a replacement candidate's political party preference and occupation be noted on a recall ballot?

Yes. A replacement candidate's political party preference will be included on the ballot along with their occupation, if a ballot designation worksheet has been filed with their county elections official and the candidate's ballot designation has been approved by the Secretary of State.

Voters

Who can vote in a gubernatorial recall election?

Any California registered voter may vote in a gubernatorial recall election.

If you are not yet registered to vote in California you can check whether you are registered and where you are registered to vote on the My Voter Status page at voterstatus.sos.ca.gov. If you need to update your voter registration or find out if you are eligible to register to vote, you can visit our California Online Voter Registration page at registertovote.ca.gov.

Will every active registered voter be mailed a vote-by-mail ballot?

Yes. Every active registered voter will be mailed a vote-by-mail ballot for the recall election. Counties will begin to mail vote-by-mail ballots approximately 29 days before Election Day.

Recall ballots have two parts. Must voters vote on both parts of the recall ballot?

No. Voters can vote on either one or both parts of the recall ballot. A voter can vote "no" to the question of removing the current elected officer from office and also select a replacement candidate.

Voter Information Guides

Will the Secretary of State mail an Official State Voter Information Guide for a recall election?

Yes. An Official State Voter Information Guide will be mailed to every active registered voter household in the State. The Official State Voter Information Guide will have information on the statewide recall election.

Will counties mail county voter information guides for a recall election?

Yes. A county voter information guide will be mailed to every active California registered voter. Some counties include this guide in the same packet with a voter's vote-by-mail ballot. County voter information guides will provide information on polling locations, a sample of the ballot, and other helpful voter information.

Will there be candidate statements for the replacement candidates?

Yes. A replacement candidate may purchase space for a statement up to 250 words in the Official State Voter Information Guide, if they accept the voluntary expenditure limits to run as a candidate. The current voluntary expenditure limit to run for Governor is $9,728,000.

Information on how to file a candidate statement will be posted on the Secretary of State's Elections Division website once the recall election has been called by the Lieutenant Governor.

Campaign Contributions

Do campaign contribution laws apply to recall elections?

Yes, campaign contribution laws apply to recall elections.

Committees formed to support or oppose the recall and candidates seeking to replace the elected state officer must comply with campaign finance requirements. The Fair Political Practices Commission is responsible for providing advice about campaign finance issues. They have prepared a fact sheet specific to recall elections that expands on this information. See: https://www.fppc.ca.gov/media/factsheets.html. For more information, please contact the FPPC or visit https://fppc.ca.gov/.

Are campaign contribution and expenditure reports for recall committees and candidates available on the Secretary of State's website?

Yes. Committees supporting or opposing the recall are required to form committees and to file contribution and spending reports with the Secretary of State's Political Reform Division. Recall targets may form recall committees or use existing committees to report contributions and spending related to the recall. Replacement candidates are required to form committees and file disclosure reports.

Campaign contribution and expenditure reports are available on the Secretary of State's website at https://www.sos.ca.gov/campaign-lobbying.

After Election Day

What happens after the recall election?

If a majority of the voters vote "yes" on the first question, then the recall is successful. The replacement candidate who gets the most votes is elected for the unexpired term of office.

If a majority of the voters vote "no" on the first question, then the recall has failed and the officer will remain in office.

If the current effort to recall Governor Newsom is successful, when would a new Governor take office?

County elections officials have 30 days after the election to complete the official canvass. On the 38th day after the election, if the recall is successful, the Secretary of State will certify the election results and the new Governor would take the oath of office and assume the position.
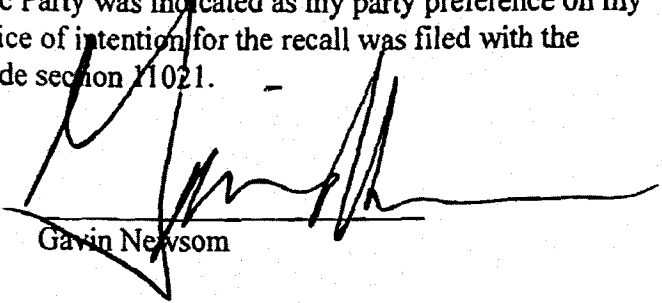
How do I get updates on the recall election process?

The Secretary of State's Elections Division posts all updates on the website at https://www.sos.ca.gov/elections/recalls/current-recall-efforts.

EXHIBIT B

NOTICE OF ELECTION TO HAVE
PARTY PREFERENCE IDENTIFIED ON BALLOT

I, Gavin Newsom, hereby elect, pursuant to Elections Code section 11320, to have my party preference identified on the ballot if the recall against me qualifies for the ballot. My party preference is Democratic. The Democratic Party was indicated as my party preference on my affidavit of registration at the time the notice of intention for the recall was filed with the elections official pursuant to Elections Code section 11021.

Dated:

_____
Gavin Newsom

(00438908-3)