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CASE #: C100304

No.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

DR. SHIRLEY N. WEBER, IN HER OFFICIAL CAPACITY AS THE CALIFORNIA SECRETARY OF STATE,

Petitioner,

v.

THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA FOR THE COUNTY OF SACRAMENTO,

Respondent;

VINCE FONG,

Real Party in Interest.

Sacramento County Superior Court, Case No. 23WM000137
The Honorable Shelleyanne W.L. Chang, Judge

PETITION FOR WRIT OF MANDATE

IMMEDIATE RELIEF REQUESTED
ELECTION LAW MATTER ENTITLED TO CALENDAR PREFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE § 35; ELECTIONS CODE § 13314(a)(3).

Critical Date: April 12, 2024

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TO THE HONORABLE PRESIDING JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT:

Petitioner California Secretary of State Dr. Shirley N. Weber urgently requests a peremptory writ of mandate directing respondent Superior Court for the State of California, County of Sacramento, to vacate its ruling in *Fong v. Weber* (Sac. County Sup. Ct., Jan. 4, 2024, No. 23WM000137).

That decision, apparently for the first time in modern history, allowed one candidate—Real Party in Interest Vince Fong—to simultaneously run for two offices in the same election. The trial court expressed concern about its ruling, noting that it "somewhat defie[d] common sense" and "may result in voter confusion and the disenfranchisement of voters," but nevertheless thought the relevant statute commanded the result. The trial court's concerns are well-founded and require this Court's immediate correction.

On April 12, Secretary of State Weber will be certifying the results of the election. Absent a court order directing otherwise, the Secretary will include votes cast for Fong in the 20th Congressional District, even though Fong should not have been placed on the ballot for the office he is seeking. And, if Fong is one of the top two vote-getters in the primary election, the Secretary will ultimately be required to place Fong's name on the general election ballot.

INTRODUCTION

For 110 years, it has been understood in California that candidates for office can only run for one office at a time. The legal underpinning for this understanding is California Elections Code section 8003(b), which prohibits a candidate from filing nomination papers "for more than one office at the same election." (Elec. Code, § 8003, subd. (b).) This longstanding understanding makes sense. A contrary interpretation would allow one candidate to run for any number of offices at once, which would cause voter confusion, lead to frivolous candidacies, deter other qualified candidates from running, and require costly special elections if one person were elected to multiple seats and then resigned from the offices they did not want to serve in.

Real party in interest Vince Fong, a current Assemblymember, initially submitted his nomination papers to run for re-election in Assembly District 32. The Secretary of State, California's chief elections officer, filed those papers and included Fong's name on the list of certified candidates for the March 5 primary ballot. No other candidate chose to run for the seat, meaning that Fong's re-election is currently unopposed. Then Fong decided he wanted to run for Congress as well, and submitted nomination papers for that office. However, because section 8003(b) prohibits multiple candidacies, the Secretary did not accept the second filing. Litigation ensued.

The trial court rejected the Secretary's interpretation of section 8003(b), and issued a writ of mandate allowing Fong to run for two offices because he was running as a Republican

rather than as an independent. The Secretary complied with the writ and included Fong on the certified list of candidates for both offices.

The Secretary believes that the plain language of section 8003(b), as well as principles of statutory interpretation and longstanding precedent, prohibit Fong from running for both offices. However, even if this Court were to disagree with the Secretary's interpretation, the Secretary urges this Court to grant the petition to clarify the meaning of the statute for the future administration of elections.

NEED FOR IMMEDIATE RELIEF

The Secretary of State requests that this matter be resolved by April 12, which is the deadline for the Secretary to certify the statement of the vote for the March 5 primary election. Given the timing of the normal appeal cycle, there is no plain, speedy, and adequate remedy at law.

Pre-election appellate relief was unavailable here. The trial court issued its decision at approximately 4:55pm on December 28, which, by statute, was the last day for the Secretary to certify a list of candidates for the March 5 primary election. As a result, the Secretary had no ability to seek appellate relief without delaying certification, which "would have [had] a severe impact on the printing and mailing of ballots and the printing of County Voter Information Guides in the affected counties." (Exhibits to Petition, pp. 155-156.) Accordingly, the Secretary certified the list of candidates, which was then sent to the counties so that they could start preparing, printing, and mailing ballots.

The Secretary of State has also filed an appeal. (*Fong v. Weber*, 3rd DCA case no. C100273.) However, there is insufficient time for a ruling on the appeal by April 12. (See *Becerra v. Superior Court* (2017) 19 Cal.App.5th 967, 971 fn. 1 ["[T]he judgment is appealable by the Attorney General, and he has appealed it. However, given the immediate time constraints . . . the Attorney General's remedy by appeal is inadequate"].)

PETITION FOR WRIT OF MANDATE

I. JURISDICTION

1. This Court has original jurisdiction over this matter under article VI, section 10 of the California Constitution and Code of Civil Procedure sections 1085 and 1086, to decide issues of great public importance that require prompt resolution. This is such a case. It involves an issue of great public importance because it concerns a candidate that has been incorrectly placed on the ballot by the trial court. Moreover, that court noted that its decision "may result in voter confusion and the disenfranchisement of voters." (Exhibits to Petition, p. 190.) This Court should decide this issue now to minimize those harms.

2. The Secretary of State is entitled to a writ of mandate because she does not have a "plain, speedy, and adequate remedy, in the ordinary course of law." (Code of Civ. Proc., § 1086.) Action by this Court is necessary as the Secretary is required to certify the election results by April 12, and Fong is not entitled to appear on the primary ballot for two offices.

II. PARTIES

3. Petitioner California Secretary of State Dr. Shirley Weber is the chief elections officer in California. (Elec. Code, § 10; Gov. Code, § 12172.5.) She is charged with administering the provisions of the Elections Code and ensuring that California's elections laws are enforced. (Gov. Code, § 12172.5.)

4. Respondent Superior Court for the County of Sacramento, the Honorable Shelleyanne W.L. Chang presiding, is a duly qualified Superior Court exercising its judicial powers in connection with the proceeding below.

5. Real Party in Interest Vince Fong is an Assemblymember from the Central Valley and is the current officeholder for the 32nd Assembly District.

III. FACTS

6. In California, before a candidate can appear on the primary election ballot for the state legislature or the United States Congress, they must file their nomination documents with the Secretary of State. (Elec. Code, § 8100, subd. (a).)

7. No candidate's name can be printed on the primary ballot unless they submit a declaration of candidacy and signed nomination papers to the county elections official, who then must promptly deliver the documents to the Secretary of State for filing. (Elec. Code, § 8020; see also Elec. Code § 8082 [requiring county elections official to forward documents to Secretary of State within five days].)

8. A candidate's nomination papers must be submitted no later than 5:00 p.m. on the 88th day prior to the primary election.

(Elec. Code, § 8020, subd. (b).) If an incumbent does not submit papers by the 88th day, any other eligible candidate has until the 83rd day prior to the election to submit these papers. (Elec. Code, § 8022.) And at least 68 days before the primary election, the Secretary is required to prepare a certified list of eligible candidates. (Elec. Code, § 8120.)

9. For the 2024 primary election, which will be held on March 5, the 88th day before the election was December 8, the 83rd day was December 13, and the 68th day was December 28. (Exhibits to Petition, pp. 155-157.)

10. Once a candidate submits their declaration of candidacy, they cannot withdraw as a candidate at that primary election. (Elec. Code, § 8800.) Accordingly, candidates who file a valid declaration of candidacy must appear on the primary ballot, with the only exception being for the death of a candidate. (See Elec. Code, § 8809.)

11. Since 1913, California law has prohibited a candidate from filing nomination papers "for more than one office at the same election." (Elec. Code, § 8003, subd. (b).)

12. On December 8, the Secretary of State received and filed Fong's nomination papers for the 32nd Assembly District. (Exhibits to Petition, p. 156.) No other candidate filed nomination papers for that office, meaning that Fong's re-election is currently unopposed. (*Ibid*.)

13. After committing to run for the State Assembly, Fong had a change of heart. On December 12, he submitted a

declaration of candidacy for the 20th Congressional District to county elections officials. (Exhibits to Petition, p. 156.)

14. On December 15, the Secretary of State announced that she had declined to accept and file Fong's declaration of candidacy for a second office (i.e., for the 20th Congressional District) in the March 5 primary election. (Exhibits to Petition, p. 156.) The Secretary noted that Elections Code section 8003(b) prohibited a candidate from filing nomination papers for more than one office at the same election, and that she had already "received and filed [real party's] nomination documents to appear as a candidate for the 32nd Assembly District." (Exhibits to Petition, p. 161.)

15. On December 22, Fong filed a lawsuit in Sacramento Superior Court challenging the Secretary's rejection of Fong's declaration of candidacy for the 20th Congressional District. Fong did not seek to withdraw his filing for the 32nd Assembly district—instead, Fong sought a writ of mandate to require the Secretary to allow him to be on the ballot for both Congress and the Assembly at the same time. After a very expedited briefing schedule over the Christmas holiday, the trial court held a hearing on December 28. (Exhibits to Petition, p. 87.)

16. The trial court granted real party's writ petition, holding that "section 8003 is inapplicable to Fong" and that the statute only applies to independent candidates. (Exhibits to Petition, p. 190.) Accordingly, the Secretary was ordered "to include the name of Petitioner Vince Fong on the Certified List of Candidates as a candidate for California's 20th Congressional

District, such that it shall be printed on the ballot for the March 5, 2024 primary election." (*Id.*, p. 194.)

17. However, the Court highlighted "that it is concerned about the outcome of this Petition, as it may result in voter confusion and the disenfranchisement of voters if Fong is ultimately elected for both offices but does not retain one. Moreover, it somewhat defies common sense to find the law permits a candidate to run for two offices during the same election." (Exhibits to Petition, p. 190.)

18. Because the trial court's decision was issued only a few minutes before the Secretary's deadline for certifying candidates for the primary election, there was insufficient time to seek pre-election appellate review. Any further delay in certifying a list of candidates "would have [had] a severe impact on the printing and mailing of ballots and the printing of County Voter Information Guides in the affected counties." (Exhibits to Petition, pp. 155-156.) Accordingly, the Secretary sent a list of candidates to the affected counties (Fresno, Kern, Kings, and Tulare) that included Fong as a candidate for both offices.

BASIS FOR RELIEF

19. The plain language of section 8003(b) makes clear that the statute's prohibition against multiple candidacies applies to all candidates, not just independent candidates. (Elec. Code, § 8003(b) ["*No person* may file nomination papers . . . for more than one office at the same election," emphasis added].)

20. In addition to being contrary to the plain language of the statute, the trial court's decision violates numerous principles

of statutory construction—it overlooks where the statute appears in the Elections Code (i.e., in the section governing *all* primary candidates, not in the section governing independent nominees), it gives no deference to the longstanding interpretation of the Secretary of State and Attorney General, and it leads to a result, that, in the trial court's own words, "somewhat defies common sense." (Exhibits to Petition, p. 190.) But statutes should not be read to lead to absurd results, even if the literal language of the statute so requires, and here it does not.

21. An unbroken line of precedent (multiple Attorney General opinions, a California Supreme Court decision, and multiple federal court opinions) read the statute the exact same way the Secretary does—as a general prohibition on dual candidacies during the same election.

22. The Secretary must certify the statement of the vote by April 12, 2024. (Elec. Code, § 15501.) Absent a court order directing otherwise, in addition to counting and certifying votes cast for Fong in the 32nd Assembly District, the Secretary will include votes cast for Fong in the 20th Congressional District, despite his disregard of California's filing requirements. And, if Fong is one of the top two vote-getters in the primary election, the Secretary will ultimately be required to place Fong's name on the general election ballot.

RELIEF REQUESTED

Wherefore, Petitioner requests that this Court:

1. Issue a peremptory writ of mandate, or other extraordinary relief as warranted, directing Respondent Superior

Court to vacate its order issued on January 4, 2024, and determine that section 8003(b) prohibits multiple candidacies.

2. Order such other relief as may be just and proper.

Dated: January 22, 2024 Respectfully submitted,

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/s/ Seth Goldstein
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VERIFICATION

I, Seth E. Goldstein, declare:

I am counsel for the Petitioner in this action. I have read the foregoing Petition for Writ of Mandate and am familiar with the contents thereof. The facts alleged in the petition are within my own knowledge and I know these facts to be true, and on that ground allege that the contents contained therein are true. I also verify that I have attached true and correct copies of the documents filed in the trial court as exhibits to this petition.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 22, 2024

/s/ Seth Goldstein
Seth E. Goldstein

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Since 1913, California law has prohibited a candidate from running for two offices at the same time. Elections Code section 8003, subdivision (b) states that "[n]o person may file nomination papers for a party nomination and an independent nomination for the same office, or for more than one office at the same election." (Elec. Code, § 8003, subd. (b).) This statute means what it says—a candidate may not run "for more than one office at the same election."

In addition to the plain language, decisions from the United States Supreme Court, the California Supreme Court, other federal courts, and multiple Attorney General opinions all confirm that section 8003, subdivision (b) is a prohibition on multiple candidacies. Moreover, the fact that apparently no candidate has simultaneously run for two offices in the 110 years of the statute's history is strong evidence that the universal understanding of the statute was that, until a few weeks ago, it prohibited such candidacies.

The trial court held that because Fong was running as a Republican, rather than an independent, he could run for both Assembly and Congress at the same time. Not only does this interpretation contradict the plain terms of section 8003(b), it makes no sense. And this Court need not take the Secretary's word for it: the trial court stated that it "somewhat defies common sense to find the law permits a candidate to run for two offices during the same election," but nevertheless ruled in favor

of Fong. An interpretation that defies common sense, and 110 years of history, cannot be the law.

This Court should grant the petition and vacate the decision of the trial court. It should do so before April 12, which is the date that the Secretary must certify the statement of the vote for the primary election.

But even if this Court agrees with the trial court's interpretation of section 8003(b), this Court's intervention is still necessary. As the trial court acknowledged, its interpretation "may result in voter confusion and the disenfranchisement of voters." If that is indeed the law, this Court should act to clarify the law so that the Legislature can fix the problem immediately.

STANDARD OF REVIEW

A writ of mandate may issue to compel the performance of an act which the law specially enjoins. (Code Civ. Proc., § 1085, subd. (a).) To obtain writ relief, the petitioner must show the respondent has a clear, present, and ministerial duty to act in a particular way, and that the petitioner has a clear, present, and beneficial right to performance of that duty. (*Riverside Sheriff's Assn. v. County of Riverside* (2003) 106 Cal.App.4th 1285, 1289.) And, of course, ministerial duties are those that are "prescribed by the statute." (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1081.) In addition, for a writ to issue a petitioner must establish that there is no other plain, speedy, and adequate remedy. (*Morgan v. Board of Pension Commissioners* (2000) 85 Cal.App.4th 836, 842-843.) "The official's duty to perform a mandatory ministerial duty in accordance with law embodies a corollary duty to not perform the duty in violation of

law." (*Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 262.)

ARGUMENT

I. THE TRIAL COURT ERRED IN ALLOWING VINCE FONG TO BE THE FIRST CANDIDATE IN MODERN CALIFORNIA HISTORY TO RUN FOR TWO OFFICES AT THE SAME TIME

A. The Plain Language of Section 8003(b) Mandates Reversal, As do Multiple Principles of Statutory Interpretation

Section 8003 as a whole reads:

> This chapter does not prohibit the independent nomination of candidates under Part 2 (commencing with Section 8300), subject to the following limitations:
>
> (a) A candidate whose name has been on the ballot as a candidate of a party at the direct primary and who has been defeated for that party nomination is ineligible for nomination as an independent candidate. He is also ineligible as a candidate named by a party central committee to fill a vacancy on the ballot for a general election.
>
> (b) *No person may file nomination papers* for a party nomination and an independent nomination for the same office, or *for more than one office at the same election*.
>
> (Elec. Code, § 8003, emphasis added.)

The plain language of subdivision (b) means what it says — "[n]o person" may run "for more than one office at the same election." This Court should grant the petition and vacate the trial court's decision to the contrary.

The trial court incorrectly determined that section 8003 only applies to independent candidates. (Exhibits to Petition, p. 190.)

The Court was correct that subdivision (a) of section 8003 specifically refers to independent candidates. However, subdivision (b) of the statute is much broader, as it is does not reference the type of candidate, but instead states that "No person may file nomination papers for a party nomination and an independent nomination for the same office, or for more than one office at the same election." (*Id*., subd. (b).) More specifically, subdivision (b) is a list set off with a disjunctive clause, with the "or" establishing two distinct prohibitions. In the first prohibition, "no person" may file papers for a party nomination and an independent nomination. In the second prohibition, "no person" may file nomination papers "for more than one office at the same time." This is how courts typically comprehend disjunctive clauses. As our Supreme Court has noted, "the ordinary and popular meaning of the word 'or' is well settled. It has a disjunctive meaning: In its ordinary sense, the function of the word 'or' is to mark an alternative such as 'either this or that.'" (*In re Jesusa V.* (2004) 32 Cal.4th 588, 622, cleaned up.)

Nor does the prefatory language before subdivisions (a) and (b) change the fact that these are general prohibitions applicable to all candidates. The prefatory language simply means the chapter (which governs "direct primary" elections) does not apply to independent nominees (who are not elected via direct primary). Subdivisions (a) and (b) are then exceptions to the exception—with subdivision (a) providing that someone who lost in a direct primary cannot run as an independent, and subdivision (b) providing that "no person" (1) may file nomination papers for a

party nomination and an independent nomination for the same office, or (2) may run for more than one office at the same election.

Even if this statute were ambiguous and could be read differently, multiple principles of statutory interpretation support this reading of section 8003, none of which the trial court considered, let alone distinguished:

- Location of statute in the Elections Code. (*Phelps* v. *Stostad* (1997) 16 Cal.4th 23, 32 ["When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear" and "the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole,"] citations and quotations omitted.) Elections Code section 8000 et seq. is in Division 8 of the Elections Code, and relates to "Nominations." Within Division 8, Section 8003 appears in part 1 ("Primary Election Nominations"), and more specifically, under chapter 1 of that part (titled "Direct Primary"). These provisions apply to all candidates in primary elections. In contrast, Part 2 starts at section 8300 and is titled "Independent Nominations." Section 8003's placement in Part 1 rather than Part 2 therefore indicates the legislative intent to have the statute apply to *all* candidates. In other words, had section 8003(b) been limited in scope to only apply to independent

nominees, the Legislature undoubtedly would have placed these provisions in part 2 of division 8.[1]

- Consideration of purpose and intent of Legislature. (*Ombudsman Services of Northern California v. Superior Court* (2007) 154 Cal.App.4th 1233,1244 ["Legislation should be given a reasonable, commonsense construction consistent with the apparent purpose of the Legislature"].) The trial court never considered why the Legislature would have adopted a prohibition on dual candidacy but applied it only to independent candidates. In significant contrast, the Secretary's interpretation advances the state's important interest in regulating how many candidates appear on the ballot and limiting gamesmanship. (See *Storer v. Brown* (1974) 415 U.S. 724, 732 ["The Court

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[1] In the trial court, Fong argued that the title of 8003(b) was "Independent Nomination of Candidates." (Exhibits to Petition, pp. 30, 32.) This was false. Fong's "title" was not created by the Legislature, but was merely generated by the publisher of whatever publication Fong was looking at. (See Wasatch *Prop. Mgmt. v. Degrate* (2005) 35 Cal.4th 1111, 1119 ["[t]itle or chapter headings are unofficial and do not alter the explicit scope, meaning, or intent of a statute."], internal quotations omitted; *In re Halcomb* (1942) 21 Cal.2d 126, 130 [noting that headings "are inserted in the code by the publisher and as such they are not binding upon the courts"].) Other publishers have different titles for this section, including one who labels it "Independent nomination of candidates *and prohibition against filing for multiple offices*." (Exhibits to Petition, p. 150, emphasis added.) And the Legislature's official version has no title at all. (*Id.*, p. 152.)

has recognized that a State has a legitimate interest in regulating the number of candidates on the ballot"], quoting *Bullock v. Carter* (1972) 405 U.S. 134, 145.) "[T]he State understandably and properly seeks to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of [special] elections." (*Ibid.*) Reading the statute as the Secretary does advances these election-related state interests.

- Deference to the administrative agency in charge of enforcing the statute, particularly with respect to a longstanding interpretation. (See *In re Dannenberg* (2005) 34 Cal.4th 1061, 1082 [according "significant weight and respect to the longstanding construction of a law by the agency charged with its enforcement"]; *Highland Ranch v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 848, 859 ["[t]he construction of a statute by the officials charged with its administration must be given great weight"].) The Secretary has always interpreted section 8003(b) as a general prohibition on dual candidacy. (See, e.g., Request for Judicial Notice, Ex. B [1982 Secretary of State opinion holding that county central committee is not an "office" for purposes of section 8003(b)]; Ex. C [1998 brief by Secretary of State noting "longstanding" and "consistent" policy that section 8003(b) prevents dual

candidacies, but stating that election for county office and state office were not "the same election"].)

- Avoiding an absurd result. (*Lungren v. Deukemjian* (1988) 45 Cal.3d 727, 735 ["[I]f a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed"]; *California Sch. Emps. Assn. v. Governing Bd.* (1994) 8 Cal.4th 333, 340 [courts need not follow the plain meaning of a statute when to do so "would lead to absurd results"].) If the trial court is correct, any candidate or candidates could run for an unlimited number of offices during the same election, review the results, and pick the office they want most of those won, and resign from the rest (likely necessitating special elections). For example, a party candidate could run for every California congressional seat at the same time. Or one very popular candidate could conceivably run for Governor, Lieutenant Governor, Secretary of State, Attorney General, Controller, and Treasurer at the same election, win them all, and then resign from all but the Governor's office and appoint their friends to the other statewide offices. As the trial court indicated, this interpretation "defies common sense." (Exhibits to Petition, p. 190.) It should therefore be avoided.

Accordingly, the plain language of the statute and compelling principles of statutory interpretation support the Secretary's construction of section 8003(b).

B. Ample Authority Supports the Secretary's Reading of § 8003(b); There Is No Authority to the Contrary

Moreover, no court or state official has ever interpreted section 8003(b) as applying to only independent nominees. The operative language in the statute has been in place since 1913. (*Moore v. Panish* (1982) 32 Cal.3d 535, 541). Yet, in the trial court, Fong did not identify a single case interpreting it in the manner he suggests.

In the three most relevant precedents, the Attorney General or Court was required to determine whether a county central committee seat for a political party constituted an "office" for purposes of section 8003(b). In other words, a necessary predicate to all three opinions was that section 8003(b) was *not* limited in its application to only independent nominees.

In 1940, then-Attorney General Earl Warren opined on the meaning of the predecessor to section 8003(b). A candidate in Contra Costa County submitted his declaration of candidacy for a Democratic Central Committee seat, but the next day appeared personally in the clerk's office and sought to withdraw his candidacy for that office and instead file for Assembly. Looking at section 8003(b), Attorney General Warren agreed that the county clerk was correct to reject the candidate's second filing. Attorney General Warren stated that 8003(b) "prohibits a person from filing nomination papers for more than one office in an election" and therefore the clerk "should refuse to file the declaration of candidacy of this candidate" for the second office. (Ops.Cal.Atty.Gen. (1940) No. NS-2739; see also Exhibits to

Petition, pp. 129-131.) Of course, the candidate at issue was not independent, as he was running for a position on the Democratic Party's central committee.

More than twenty years later, then-Attorney General Stanley Mosk opined again on the predecessor to section 8003(b) when a candidate sought to run for Congress as a Republican and also seek a seat in his party's county central committee. Then-Attorney General Mosk stated that this violated section 8003(b). The opinion stated that section 8003(b) "has been construed by this office as preventing an individual from seeking two offices at the same election" and that a candidate "cannot file nomination papers for two offices at the same election." (40 Ops.Cal.Atty Gen. 99, 100; see also Exhibits to Petition, p. 76.) "Opinions of the Attorney General, while not binding, are entitled to great weight. In the absence of controlling authority, these opinions are persuasive since the Legislature is presumed to be cognizant of that construction of the statute . . . and that if it were a misstatement of the legislative intent, some corrective measure would have been adopted." (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17; see also *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1087, fn. 17 ["Attorney General opinions are entitled to considerable weight"].)

The issue once again arose in the California Supreme Court in 1982. There, the majority disagreed with both Attorney General opinions and held that the Democratic (not independent) candidate could run for both a central committee seat and for a separate office. (*Moore*, *supra*, 32 Cal.3d at p. 548.) The Court's

rationale was that it had previously held that an elective seat on a party central committee is not a "public office," and therefore does not come within the bounds of 8003(b). (*Id*. at 538-539, 545-546.) Nowhere in that opinion did the California Supreme Court attempt to limit section 8003(b), as the majority described the law as "[a] statutory proscription against dual candidacy" (*id*. at p. 543), while the dissent in that case explained that "[f]or more than 42 years, it has been the unchallenged law in California that one person may not be a candidate for more than one office at one election," (*id*. at 550, Mosk, J. dissenting). The majority and dissent simply disagreed about whether a county committee was an "office" at all. Of course, if section 8003(b) only applied to independent candidates, the Supreme Court would not have had to decide this issue at all, because the candidate in that case was seeking a position with the Democratic Party's County Central Committee.

Federal courts have likewise interpreted section 8003, subdivision (b) as the Secretary did here. The United States Supreme Court described the precursor statute to section 8003 as "provid[ing] that a candidate who has been defeated in a party primary may not be nominated as an independent or be a candidate of any other party; and no person may file nomination papers for a party nomination and an independent nomination for the same office, *or for more than one office at the same election*." (*Storer v. Brown* (1974) 415 U.S. 724, 733, emphasis added.) Other federal courts have likewise interpreted this statute as applying to all candidates, not just independent

candidates. (*Dewitt v. Ryan* (N.D. Cal. Jan. 12, 2016) No. C 15-05261 WHA, 2016 WL 127291, at *3 [describing 8003(b) as a "One Office Requirement"]; *DeWitt v. Wilson* (9th Cir. 1997) 108 F.3d 1384, 1997 WL 105827 at *1 [describing section 8003(b) as "the California 'single-office-candidacy' statute which limits candidates to running for one office per election"].) And the Legislature has repeatedly reenacted section 8003 (or its predecessors) numerous times after these decisions and opinions interpreting section 8003(b) as applying to all candidates, which is "a strong indication" that these interpretations are consistent with legislative intent. (*Gerawan Farming, Inc. v. Agric. Lab. Rels. Bd.* (2017) 3 Cal.5th 1118, 1155–56.)[2]

Finally, the idea that a candidate cannot run for two offices at the same time has wide acceptance in the legal and political culture of the state. Newspaper articles from 1913 underscore that this provision has always been interpreted to mean that

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[2] Section 8003(b) was originally enacted in 1913 by Stats. 1913, Ch. 690. It eventually was reenacted in 1939 as Elections Code section 2634. (Stats. 1939, Ch. 26.) Then-Attorney General Warren opined on the statute in 1940. In 1961 the Elections Code was reorganized and renumbered and section 2634 became section 6402. (Stats. 1961, Ch. 23.) After the 1962 Attorney General opinion and *Storer v. Brown*, the statute was repealed and re-enacted in 1976. (Stats. 1976, ch. 1191 § 61.) *Moore v. Panish* was decided in 1982. The Elections Code was reorganized again in 1994, when section 6402 became section 8003 with no changes to the text of the statute. (Stats. 1994, ch. 920 sec. 2.) In other words, the Legislature had at least three opportunities to "correct" the long-standing understanding that California law prohibits *any* candidate from running for more than one office in the same election, but declined to do so.

"[n]o person shall be entitled to become a candidate for more than one office at the same election." (Exhibits to Petition, p. 148.) And that interpretation has persisted ever since. For example, it is worth noting that in the current race for United States Senate in California, three of the leading candidates are sitting members of Congress, all of whom, consistent with section 8003(b), are only running for Senate in the March primary election. Surely they would have chosen to not give up their current seats in Congress for the chance to run for Senate if the law had been understood differently. Moreover, Fong has not identified a single state official in modern California history that has ever ran for two offices at the same time, which further emphasizes the universal understanding of this law.[3]

The trial court disagreed with this precedent, seizing on two sentences in *Moore*. According to the trial court,

> The California Supreme Court concluded that it did not because, *inter alia*, members of county central committees are not ever elected "subsequent to or in lieu of a primary election," therefore, the statute "and its subdivisions could not apply to candidates for party county central committees.["] (*Moore* at pp. 541-542.) The California Supreme Court said, since "section 6402, by its terms, does not apply to the selection of party county central committees[, i]t follows that subdivision (b), which serves only to limit its application, [also] does not apply to such a committee office." (*Id*. at p. 538.)

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[3] In the trial court, Fong argued that Joseph J. McCorkle "simultaneously served in the California State Assembly and United States House of Representatives" in the 1850s. (Exhibits to Petition, pp. 165-166.) Even if this statement is accurate, McCorkle predated section 8003(b) by more than sixty years.

(Exhibits to Petition, p. 190.) This reading misunderstands *Moore*. The California Supreme Court was merely stating that 8003(b) was inapplicable because the result of a central committee election is not a nomination to run in the general election but rather is a direct election to the central committee. (*Moore*, *supra*, 32 Cal.3d at pp. 542-543.) Accordingly, section 8003(b)'s prohibition against filing for two offices in the same primary election would not apply to a central committee election, which is not a primary election. But nothing in this opinion can fairly be read to limit section 8003(b), particularly when the Court went on to analyze whether the county committee seat was an "office" for purposes of section 8003(b), which it would not need to have done if the statute as a whole only applied to independent nominees.[4] In other words, under the trial court's reading of *Moore*, the Court would not have been required to determine whether the central committee seat constituted an

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[4] It is also worth noting that petition for review filed by the candidate who had been excluded from the ballot in *Moore* supports the Secretary's reading of the statute. That petition assumed that section 8003(b) prohibited any person from filing for "more than one office at the same election," and did not attempt to limit the statute to independent nominees. (Petitioner's Request for Judicial Notice, Ex. A.) Instead, the petition asserted both that a county central committee position was not a public office and that the two positions were not elected at the same election. (*Id*.) Of course, the issues in the petition for review frame the issues that the California Supreme Court can decide on review. (See *Cnty. of Santa Clara v. Superior Ct.* (2023) 14 Cal.5th 1034, 1046 fn. 5 [court "may decide any issues that are raised or fairly included in the petition or answer"].)

"office," yet the court goes on to do just that for more than five pages.

Accordingly, in addition to the plain language of the statute, an unbroken line of precedent further supports the Secretary's decision here.

C. The Top-Two Primary Law Does Not Change this Result

In the trial court, Fong also argued that the 2010 Top-Two Primary Act (Proposition 14) rendered section 8003, subdivision (b) "a dead-letter statute" (Exhibits to Petition, pp. 33-34), but this does not assist him, and actually cuts against his claim. Fong is correct that there is no longer an independent nomination process for the general election (*id*., p. 33), but that does not affect the validity of section 8003, subdivision (b).

This argument suffers from several flaws. The first problem is that even after Proposition 14, courts have interpreted section 8003(b) exactly as the Secretary does now. (See, e.g., *Dewitt v. Ryan* (N.D. Cal. Jan. 12, 2016) No. C 15-05261 WHA, 2016 WL 127291, at *3 [describing 8003(b) as a "One Office Requirement" and prohibiting a candidate who wanted to run for multiple congressional offices during the same election].)

Second, interpreting section 8003(b) as a "dead-letter" would mean that the voters impliedly repealed the entirety of the law. But implied repeals are disfavored and should be avoided whenever possible. (*Stone St. Cap., LLC v. California State Lottery Com*. (2008) 165 Cal.App.4th 109, 119.) And "because the power to legislate is shared by the Legislature and the electorate through the initiative process (Cal. Const., art. IV, § 1), the

principles governing repeals by implication where the statutory conflict is the result of enactments by the Legislature should also apply where, as here, the question is whether the provisions of an initiative impliedly repealed preexisting statutes." (*Professional Engineers in California Gov't v. Kempton* (2007) 40 Cal.4th 1016, 1038–1039.)

Implied "repeal may be found where (1) "the two acts are so inconsistent that there is no possibility of concurrent operation," or (2) "the later provision gives undebatable evidence of an intent to supersede the earlier" provision." (*Ibid*.) Here, it is entirely possible to read both statutes concurrently. Under the Secretary's interpretation, which has been the law for more than a century, section 8003(b) prohibits any candidate, not just independent candidates, from running for more than one office in the same election. And Fong never even mentioned how the legal standard for an implied repeal is satisfied here, let alone conducted an analysis showing that there is "undebatable evidence" that the voters intended to supersede section 8003. In fact, the voter information guide is entirely silent on that point. (See Exhibits to Petition, pp. 133-143.)

Reading Section 8003(b) to apply to all candidates, and not just independent nominees, prevents an implied repeal of the entirety of section 8003(b). It explains why the statute is still in existence despite the ending of the independent nomination process. And it is the reading of the statute that best harmonizes section 8003(b) and the Top-Two Primary Act, as the court should do when conducting a statutory analysis. (See *People v.*

Attransco, Inc. (1996) 50 Cal.App.4th 1926, 1932-33 ["Where two apparently conflicting statutes exist within a given statutory scheme, courts must attempt to reconcile those conflicting provisions, rather than allowing one to 'annihilate' the other"].)

II. PETITIONER SEEKS RELIEF BY APRIL 12

The Secretary seeks relief by April 12, which is the date that the Secretary must certify the statement of the vote for the primary election. (Elec. Code, § 15501.) Given that Fong is currently on the ballot for both election contests, the Secretary needs clarification on the appropriate remedies.

However, even if this Court disagrees with the Secretary's interpretation, or decides that it is too late for the Secretary to receive relief with respect to Fong and the 20th Congressional District, this Court should still grant the petition to decide the meaning of the statute. In 1998, then-Judge Robie of the Sacramento Superior Court found that section 8003(b) was a general prohibition on dual candidacies, and prohibited a candidate from appearing on the ballot for both State Controller and County Auditor. (*Barrales v. Jones*, Sacramento County Superior Court case no. 98 CS00709.) After the election was over, this Court dismissed the appeal by the unsuccessful candidate as moot. (*Barrales v. Jones*, 3rd DCA case no. C029167.) Twenty-five years later, a different Sacramento Superior Court judge has now accepted the exact same arguments that then-Judge Robie rejected, while acknowledging that its interpretation "may result in voter confusion and the disenfranchisement of voters." (Exhibits to Petition, p. 190.) This Court should clarify the meaning of section 8003(b) even if it disagrees with the

Secretary's position, to avoid the harms identified by the trial court and to allow the Legislature to clarify the meaning of the statute.[5]

CONCLUSION

For all of the above reasons, this Court should grant the petition.

Dated: January 22, 2024 Respectfully submitted,

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[5] Two separate bills (AB 1784 and AB 1795) are pending in the Legislature that were a direct result of the trial court's decision. Both would clarify that section 8003(b) applies to all candidates, as it has been understood for more than a century. However, this Court should grant review anyway, as it is uncertain if either bill will become law. Moreover, the Secretary needs guidance before certifying the statement of the vote. (See Elec. Code, § 15501.)

CERTIFICATE OF COMPLIANCE

I certify that the attached **PETITION FOR WRIT OF MANDATE** uses a 13 point Century Schoolbook font and contains 6,885 words.

Dated: January 22, 2024

ROB BONTA
Attorney General of California

/s/ Seth Goldstein
SETH E. GOLDSTEIN
Deputy Attorney General
Attorneys for Petitioner

DECLARATION OF ELECTRONIC SERVICE

Case Name: **Dr. Shirley N. Weber v. The Superior Court of California for the County of Sacramento**

No.:

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On January 22, 2024, I electronically served the attached **PETITION FOR WRIT OF MANDATE** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on January 22, 2024, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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Supreme Court of California
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Via Electronic Submission
(Pursuant to Rule 8.212(c)(2))

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 22, 2024, at Sacramento, California.

Eileen A. Ennis
Declarant

Eileen A. Ennis
Signature

SA2024300119

Court of Appeal, Third Appellate District
Colette M. Bruggman, Clerk
Electronically FILED on 1/22/2024 by B. Dalangin, Deputy Clerk

STATE OF CALIFORNIA California Court of Appeal, Third Appellate District	***PROOF OF SERVICE*** **STATE OF CALIFORNIA** California Court of Appeal, Third Appellate District

Case Name: **Dr. Shirley N. Weber v. The Superior Court for the State of California for the County of Sacramento**

Case Number: **TEMP-EG9LBP3E**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **seth.goldstein@doj.ca.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

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PETITION - PETITION FOR WRIT OF MANDATE/PROHIBITION	Petition for Writ of Mandate
EXHIBIT - TO PETITIONS / RESPONSES / SUPPORTING DOCUMENTS	Exhibits to Petition for Writ of Mandate, Volume 1 of 1_compressed
REQUEST - REQUEST FOR JUDICIAL NOTICE (WITH ONE TIME RESPONSIVE FEE)	Petitioner's Request for Judicial Notice and Proposed Order
PROOF OF SERVICE - PROOF OF SERVICE	Declaration of Service

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1/22/2024

Date

/s/Eileen Ennis

Signature

Goldstein, Seth (238228)

Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

Law Firm