

No.

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

JAMES B. FRANKEL AND LOUISE FRANKEL,

Petitioners,

v.

KEVIN SHELLEY, Secretary of State of the State of
California,

Defendant.

**PETITION FOR WRIT OF MANDATE;
SUPPORTING MEMORANDUM OF POINTS AND
AUTHORITIES; AND EXHIBITS**

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**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PETITION
FOR WRIT OF MANDATE**

INTRODUCTION

Petitioners bring this Petition for an original writ of mandate under Article VI, Section 10 of the California Constitution and Rule 56(a) of the California Rules of Court. Although it relates to the forthcoming recall election, it does *not* seek to interfere with the conduct of that election. Rather, it seeks a writ of mandate preventing Respondent, the Secretary of State, from including and conducting an unauthorized—and unnecessary—direct election of a successor to the incumbent Governor on the forthcoming recall ballot, and from preparing and circulating ballot materials that include the names of candidates to succeed the incumbent Governor in the event he is recalled.

The California Constitution provides that in an election for the recall of a state officer, the ballot shall include the names of persons who have qualified as candidates to succeed the incumbent *if*—and *only* if—it is “appropriate” to do so. CAL. CONST. art. II, §15(a). That provision necessarily implies that there are *some* circumstances in which it would *not* be “appropriate” to conduct a successor election. Whatever the reach of that term, the recall of a Governor is plainly such a case, for a unique provision in the Constitution resolves the issue of succession in the event of a vacancy in the office of Governor. This provision, which applies only to that office, explicitly designates the Lieutenant Governor as the successor in the event the office of the Governor becomes “vacant.” *Id.* art. V, §10.

A principal duty and aspect of the Lieutenant Governor’s office is to be prepared and stand ready to assume the office of Governor in the event of a vacancy. It applies to any vacancy, whatever the cause: resignation, death, or removal by impeachment. Vacancy due to recall of the Governor is no different. Voters measure the fitness of a candidate for Lieutenant Governor—as they do candidates for the Vice Presidency of the United States—by, among other things,

his or her ability to accept that larger responsibility should it become necessary. There are no exceptions in Section 10: any vacancy is filled by the Lieutenant Governor.

Because the Constitution designates a successor for the office of Governor—and for no other—the otherwise-applicable procedure for combining a recall election and an election for the challenged officer’s successor is unauthorized and unnecessary, and therefore not “appropriate” within the meaning of Article II, Section 15(a).

It is critical to the interests of the State of California, and *every* citizen, that this issue be resolved now. If it is not, tens of millions of public and private dollars will be expended conducting, and campaigning in, an election for the successor of the Governor, if he is recalled. Those funds will be wasted, and the energies of candidates, supporters and voters will be squandered because the successor to the Governor has already been determined by Article V, Section 10 and by the vote of the electorate in 2002 when they elected the current Lieutenant Governor.

Were the Court to defer resolution of this issue until after the election, a successful recall of the Governor would inevitably bring this issue to this Court. In that event, there would be a question that only this Court could resolve: whether the Lieutenant Governor or the successor candidate receiving the most votes is the Governor of California. At a minimum, that would mean a period of uncertainty as to which of those persons is the Governor. And, if the conclusion reached is—as we believe it must be—that the Lieutenant Governor succeeds to the office, it will surely be a matter of statewide concern that the needless expenditure of public and private funds, and the energies of voters and candidates, will have been expended in a fruitless exercise that could have been avoided by prompt resolution of the question of constitutional interpretation presented in this Petition. That is why Petitioners ask this Court to resolve this issue forthwith.

STATEMENT OF FACTS

A petition for the recall of the incumbent Governor has qualified for the ballot. Petition for Writ of Mandate ¶4. Pursuant to Article II, Section 15(a) and Section 17 of the Constitution, the Lieutenant Governor has called a special recall election for October 7, 2003. In addition, the Lieutenant Governor has ordered that at the special election, the voters shall vote “to elect a successor” applicable “if the majority vote on the question is to recall.” *Id.* ¶5.

Respondent Secretary of State intends to conduct an election in accordance with the foregoing determination by the Lieutenant Governor. *Id.* ¶6. Therefore, in addition to placing the issue of whether the Governor should be recalled before the voters, the Secretary of State will put before the voters the names of candidates for Governor and will conduct an election for the successor Governor, applicable if the recall is successful. *Id.*

As a result, the State and its citizens are facing what nearly every observer has identified as a political and electoral nightmare. A large number of persons could meet the minimal requirements (\$3500 and the signatures of 65 persons) for appearing on the ballot. The election will be a special election, held at a time when other contested races that ordinarily attract the attention and participation of voters will not be on the ballot. With a low turnout and many candidates, the next Governor could be selected by a small minority of eligible voters. Indeed, if the Governor is recalled, and a successor election held in the way presently proposed, it is highly probable that the winner of the successor election will have received a substantially *smaller* number of voters than the number voting to recall the incumbent Governor. To make matters worse, candidates of the Governor’s party—and, for that matter, candidates of other parties who do not believe the recall is justified—may feel obliged to refrain from declaring their candidacy. And, in all events, if the recall of the Governor is successful, a serious dispute will have to be resolved by this Court as to whether the incumbent Governor will be succeeded by the constitutionally designated successor, the Lieutenant

Governor, or the person receiving a plurality of votes in the October 7 election.

Petitioners James B. Frankel and Louise Frankel are citizens and taxpayers of the State of California. They seek to compel Respondent to limit the October 7 election to the recall of the Governor and to restrain him from conducting an election for the Governor's successor that is not authorized by California law.

ARGUMENT

I.

INCLUSION ON THE RECALL BALLOT CANDIDATES TO SUCCEED THE GOVERNOR IF THE RECALL IS SUCCESSFUL IS UNAUTHORIZED AND UNNECESSARY.

Article V, Section 10 of the California provides that “[t]he Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor.”

Article II, Section 15 of the California Constitution provides as follows:

(a) An election to determine whether to recall an officer and, *if appropriate*, to elect a successor shall be called by the Governor and held not less than 60 days nor more than 80 days from the date of certification of sufficient signatures.

* * * *

(c) If the majority vote on the question is to recall, the officer is removed and, if there is a candidate, the candidate who receives a plurality is the successor. The officer may not be a candidate, nor shall there be any candidacy for an office filled pursuant to subdivision (d) of Section 16 of Article VI. (Emphasis added)¹

¹The limiting language, “if appropriate,” was added to the Constitution in 1974. In that year, the Legislature placed on the ballot a constitutional revision that had its origin in the Constitutional Revision Commission. The “if appropriate” language was added by an amendment when the proposal was in committee. See Exhibit B attached hereto. We have been able to locate nothing in the legislative history of

(continued . . .)

Section 15(a) plainly implies that there are *some* circumstances in which it is *not* “appropriate” to elect a successor. The recall of a *Governor*—an office for which the Constitution specifies the successor in the event of a “vacancy” for any reason—is such a circumstance. There is no need to elect a successor when the electorate did exactly that at the preceding election: the people elected the Lieutenant Governor who is, under Article V, Section 10, the successor whenever there is a vacancy in the office of Governor.

This interpretation of Section 15 is supported by settled principles of constitutional interpretation. The first is the principle that the Constitution is to be interpreted as a whole, giving effect to every provision and harmonizing potential inconsistencies wherever possible. *Miller v. Superior Court*, 21 Cal. 4th 883, 895 (1999); *City & County of San Francisco v. County of San Mateo*, 10 Cal. 4th 554, 563 (1995). The second is the principle that where potential conflicts appear between two provisions, the more specific provision prevails over the more general provision, even where the more specific provision was enacted first and the more general provision was enacted thereafter. *Miller*, 21 Cal. 4th at 895. The third is that in interpreting a provision of the Constitution, every word and phrase is to be given meaning, wherever possible. *City & County of San Francisco v. Farrell*, 32 Cal. 3d 47, 54 (1982).

Here, in connection with a recall, the Constitution has provided for the election of the recalled officer’s successor in *some* but not *all* instances—*i.e.*, only where a successor election is “appropriate.” The Constitution also provides that if the office of Governor ever becomes vacant, the Lieutenant Governor shall become the Governor. This provision applies to any vacancy, whether caused by

(. . . continued)

what became ACA No. 29 that comments on the reasons for that amendment. Nor is there any comment on that language in the official ballot pamphlet. *See* Exhibit C attached hereto. Accordingly, the constitutional language at issue here must be interpreted in accordance with the principles of interpretation discussed in the text above.

resignation, death or removal by impeachment.² A vacancy caused by a successful recall of the Governor is no different. In case of *any* vacancy in the office of Governor, the Constitution specifies that the Lieutenant Governor shall succeed to that office. The latter provision is specifically applicable to the office of Governor, and to no other office; the Constitution does not provide for the succession in the event of a vacancy in any other state office. By contrast, the more general former provision relating to recall applies to all State “officers.” Because a successful recall of a Governor would result in the immediate succession by the Lieutenant Governor, election of a successor in connection with the recall would be pointless and, moreover, a waste of taxpayer funds. Any other view would allow the more general provision for successor elections in “appropriate” instances to trump the specific provision for successorship in the event of a vacancy in the office of Governor, in violation of the canon of interpretation giving precedence to a specific provision over a general one in the event of a conflict.

Moreover, if it were “appropriate” to hold an election for a recalled Governor’s successor, the term “appropriate” as used in Section 15(a) would have *no* meaning at all—*i.e.*, would be surplusage, in violation of the rule that every word and phrase be given meaning if possible. It has been suggested in the press that the term “appropriate” refers to the recall of Justices of the Courts of Appeal and the Supreme Court (and to no other office). That view is erroneous: another provision—Section 15(c)—does that: Section 15(c) expressly provides that there is to be no successor election for officers selected pursuant to “subdivision (d) of Section 16 of Article VI”—the constitutional provision relating to the selection of appellate justices. The limiting phrase “if appropriate” in Section (a) would therefore have limited nothing—and would have no meaning

²Indeed, Article V, Section 10 provides that “[t]he Lieutenant Governor shall act as Governor *during the impeachment*, absence from the State, or other temporary disability of the Governor . . .” (Emphasis added.)

whatever—if it did nothing more than bar a successor election in the event of a recall of an appellate justice, which was already precluded by Section 15(c). Thus unless the canon requiring that every term be given meaning is to be disregarded, the term “appropriate” as used in Section 15(a) must refer to some *other* office, not to appellate justices. At a minimum, it must apply to a constitutional office for which the Constitution identifies an automatic successor: the office of Governor.³

These conclusions are consistent with sound public policy and democratic principles. A majority of the electorate has already voted to select the successor of the incumbent Governor should his office become vacant for any reason, be it death, resignation, removal by impeachment or any other cause—including a recall. Being present and prepared to step in as the Governor’s successor should it become necessary is, perhaps, the most important function of the Lieutenant Governor; and the electorate surely was well aware of that great, if conditional, responsibility when it voted (independently of each voter’s preference for the office of Governor) for a Lieutenant Governor. No effort has been made to recall the Lieutenant Governor, who remains the Governor’s designated successor.

This interpretation avoids a successorship election that threatens California with a political and electoral nightmare. The recall election will be held at a special election on October 7, 2003. Because there are no primaries for the successorship election, and the requirements for appearing on the ballot are relatively trivial—a

³Election Code Section 11322 provides that on “ballots at all recall elections” (other than a specified exception not applicable here), “[t]he names of the candidates nominated to succeed the officer sought to be recalled shall appear under each recall question.” But that general provision is trumped by the specific provisions of the Constitution which provide that if the Governor’s office becomes vacant, the Lieutenant Governor shall become the Governor and that there will be no successor election together with a recall unless it is “appropriate.” That is so for two reasons: first, where inconsistent, general provisions are trumped by specific provisions; and second, statutes inconsistent with the Constitution are void.

few thousand dollars and a handful of signatures—a large number of persons could run for the Governor’s office. As a result of low turnout and numerous candidates, the next Governor could be selected by only a small minority of eligible voters. Indeed, if the recall is successful, and a successor election is held simultaneously, the candidate who obtains the most votes in the successor election will in all probability have received a substantially *smaller* number of voters than the number voting to recall the incumbent Governor. To make matters worse, candidates of the Governor’s party—and, for that matter, candidates of other parties who do not believe the recall is justified—may feel obliged to refrain from declaring their candidacy, lest they be perceived as indirectly lending support to the recall.

A democratic system designed to select a Governor truly representative of the will of the voters would almost certainly be thwarted in this scenario. In contrast, the successorship of the Lieutenant Governor would let the Governorship be filled by the public official whom the voters have already selected at a statewide general election to fill the Governor’s office should it become vacant.

II.

RESOLUTION OF THIS ISSUE BY THIS COURT IS NECESSARY AND APPROPRIATE.

This is, self-evidently, a matter of grave statewide public importance. The State is about to be put through the first election for the recall of a Governor in California history. That much is a *fait accompli* and this Petition in no way seeks to disrupt the recall election. However, the State also faces a second issue being placed on the ballot: the question of who should succeed the Governor. Many candidates may seek placement on that ballot. Tens of millions of dollars will be spent by those candidates to secure electoral support. Millions of dollars of public money will be spent to administer the more elaborate election and to count the votes for the successor. The candidate who obtains the plurality of votes will claim to be the new

Governor, even though the Constitution unequivocally provides that in the event of a vacancy in the office of Governor, the Lieutenant Governor succeeds to that office. At the least, the millions of dollars of public and private money expended on this unnecessary and meaningless successor election will have been wasted; and, at worst, a disruptive and costly dispute as to who lawfully occupies the office of Governor will arise—a dispute that, until resolved by this Court under Article V, Section 10 of the Constitution—would gravely impair the governance of the State of California.

This Court has original jurisdiction to issue a writ of mandate. Exercise of that jurisdiction has long been recognized as particularly appropriate for matters of statewide importance. *See, e.g., Senate v. Jones*, 21 Cal. 4th 1142 (1999); *Legislature v. Eu*, 54 Cal. 3d 492 (1991). Nothing could be more important to the State of California than the conduct of statewide elections in accordance with the Constitution, and the prevention of confusion or uncertainty in the election, recall, or succession of the Governor.

In this case, the issue cannot be resolved by any other body or court: In addition to providing for succession by the Lieutenant Governor in the event of a vacancy in the office of Governor, Article V, Section 10 provides that “[t]he Supreme Court has exclusive jurisdiction to determine all questions arising under this section.” Accordingly, this Petition could not have been brought in a Superior Court or in a Court of Appeal. Only this Court can resolve the issue.

As citizens and taxpayers, Petitioners have standing to seek a writ of mandate preventing the conduct of an unlawful election or any other unlawful expenditure of public funds. *See, e.g., Board of Social Welfare v. County of Los Angeles*, 27 Cal. 2d 98, 100-01 (1945) (“where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced” (citation omitted)); *League of Women Voters v. Eu*, 7 Cal. App. 4th 649, 657

(1992), and authorities cited. Accordingly, conducting an election—or, in this case, a portion of an election—that is contrary to law (and that, as well, will require the expenditure of public funds) may, therefore, be restrained by a citizen/taxpayer-instituted petition for writ of mandate. *See, e.g., McFadden v. Jordan*, 32 Cal. 2d 330 (1948); *Clark v. Jordan*, 7 Cal. 2d 248 (1936); *Boyd v. Jordan*, 1 Cal. 2d 468 (1934); *California Trial Lawyers Ass’n v. Eu*, 200 Cal. App. 3d 351 (1988).

Article V, Section 10 goes on to provide that standing to raise a subset of questions falling within this Court’s exclusive jurisdiction—“questions of vacancy or temporary disability”—“is vested exclusively in a body provided by statute”—namely the Commission on the Governorship. *See* GOV’T CODE §12070 *et seq.* This Court has explained that this allocation of exclusive standing to the Commission was inserted on the floor of the Legislature in 1966, at the request of the Governor, “for the purpose of forestalling frivolous or harassing attacks on the validity of gubernatorial actions.” *In re the Petition of the Commission on the Governorship of California*, 26 Cal. 3d 110, 115 (1979). The history of that provision reveals that, in particular, its purpose was to prevent inappropriate actions brought to declare a sitting Governor disabled. *See* Memorandum to Constitutional Revision Commission, dated April 22, 1966, at 3 (Exhibit A hereto) (“The initiation of questions regarding the Governor’s *abilities to perform his duties of office* was restricted to a special body provided by law. This was to eliminate the nuisance value of unchecked private charges and litigation” (emphasis added)).

The instant Petition does not attack the validity of any gubernatorial action or seek a determination that the Governor is disabled; nor, indeed, does it assert that there is a vacancy in the office of Governor. Rather, Petitioners seek only to restrain the expenditure of public funds unlawfully through the carrying out of an unnecessary and unauthorized successorship vote as part of the recall election—a traditional use of the writ of mandate procedure. The

Commission on the Governorship has no statutory responsibility for conducting, monitoring, or ensuring compliance with law in connection with elections in general, or recall elections in particular. Accordingly, under the foregoing authorities, Petitioners have ordinary standing, as citizens and taxpayers of California, to seek the relief prayed for herein.

Resolution of this issue promptly is critical. The election is scheduled for October 7. Millions of additional dollars will be spent by the State and local governments in conducting the successorship election and counting the ballots for the various candidates. Millions of dollars will be spent by those candidates and their supporters in campaigning for the Governor's position. Should the recall succeed, one of those candidates will obtain the greatest number of votes and claim the office of Governor. At that point, the Commission on the Governorship will be obliged to petition this Court and seek a determination of whether the successful candidate or the Lieutenant Governor is the Governor of California. While that process unfolds, and during the period that this Court needs to decide that case, the government of this State will be thrown into confusion. And, of course, a decision at that juncture to set aside the election will infuriate not only those citizens whose candidate prevailed in the successor election but is also likely to dismay many, if not most, other Californians who participated in the election process and who inevitably will wonder why a pointless, unnecessary and illegal election was carried on in the first place. For these reasons, the constitutional issue raised herein should be resolved by this Court now.

CONCLUSION

For these reasons, the Petition should be granted.⁴

DATED: July 28, 2003.

Respectfully,

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HOWARD, RICE, NEMEROVSKI, CANADY,
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A Professional Corporation

By _____
JEROME B. FALK, JR.

Attorneys for Petitioners

⁴The Petition in this case includes a prayer for attorney's fees. If the Court grants the Petition, an award of fees under Section 1021.5 of the Code of Civil Procedure will be appropriate, and the Court should follow the procedure set forth in *Planned Parenthood Affiliates v. Swoap*, 173 Cal. App. 3d 1187, 1202 (1985), and direct Petitioners to file declarations regarding the appropriate amount of the fee award.

PETITION FOR WRIT OF MANDATE

Petitioners bring this Petition for an original writ of mandate under Article VI, Section 10 of the California Constitution and Rule 56(a) of the California Rules of Court, and by this verified Petition allege:

1. This Petition seeks a writ of mandate preventing Respondent, the Secretary of State, from including and conducting a direct election of a successor to the incumbent Governor on the forthcoming recall ballot, and from preparing and circulating ballot materials that include the names of candidates to succeed the incumbent Governor in the event he is recalled.

2. Petitioners James B. Frankel and Louise Frankel are citizens and taxpayers of the State of California.

3. Respondent Kevin Shelly is the Secretary of State of the State of California. Under the Constitution, the Secretary of State is the chief election officer of California (ELEC. CODE §10; GOV'T CODE §12172.5) and is required to “see that elections are efficiently conducted and that state election laws are enforced.” GOV'T CODE §12172.5.

4. Respondent has already determined that sufficient valid signatures on a petition to recall the incumbent Governor have been filed. Pursuant to Article II, Section 15(a) and Section 17, the Lieutenant Governor has called a special recall election for October 7, 2003.

5. In addition, the Lieutenant Governor has ordered that at the special election, the voters shall vote “to elect a successor” applicable “if the majority vote on the question is to recall.” Exhibit D attached hereto.

6. On information and belief, Respondent Secretary of State intends to conduct an election in accordance with the foregoing determination by the Lieutenant Governor. Therefore, in addition to placing the issue of whether the Governor should be recalled before the voters, the Secretary of State will put before the voters the names

of candidates for Governor and will conduct an election for the successor Governor, applicable if the recall is successful.

7. This Petition does not challenge the submission of the question of whether the Governor should be recalled at the forthcoming October 7 election.

8. Conducting an election for the successor of the Governor is unnecessary and contrary to law, for the following reasons:

a. Article V, Section 10 of the California provides that “the Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor.”

b. Article II, Section 15 of the California Constitution provides as follows:

(a) An election to determine whether to recall an officer and, *if appropriate*, to elect a successor shall be called by the Governor and held not less than 60 days nor more than 80 days from the date of certification of sufficient signatures.

* * * *

(c) If the majority vote on the question is to recall, the officer is removed and, if there is a candidate, the candidate who receives a plurality is the successor. The officer may not be a candidate, nor shall there be any candidacy for an office filled pursuant to subdivision (d) of Section 16 of Article VI. (Emphasis added)

c. Section 15(a) plainly implies that there are *some* circumstances in which it is *not* “appropriate” to elect a successor. At minimum, the recall of a Governor—an office for which the Constitution specifies the successor in the event of a “vacancy” for any reason—is such a circumstance. There is no need to elect a successor when the electorate did exactly that at the preceding election: the people elected the Lieutenant Governor who is, under Article V, Section 10, the constitutionally specified successor whenever there is a vacancy in the office of Governor.

9. The foregoing interpretation of the Constitution is consistent with sound public policy and democratic principles. The people, at an orderly, well-financed, highly publicized general election, elected

a Lieutenant Governor under a constitutional scheme by which that office holder would become Governor in the event of a vacancy in the Governor's office. The recall provisions of the Constitution provide for election of a successor to the recalled officer where it is "appropriate." The Constitution designates a successor for the office of Governor and for no other state office. Obviously, it is not "appropriate" to hold a second election for a successor when one has been lawfully elected at the last general election.

10. This interpretation avoids what nearly every observer has identified as a political and electoral nightmare. A large number of persons could meet the qualifications for appearing on the ballot. The election will be a special election, held at a time when other candidates and issues that attract voters will not be on the ballot. With a low turnout and many candidates, the next Governor could be selected by a small minority of eligible voters. Indeed, if the Governor is recalled, and a successor election held in the way presently proposed, it is highly probable that the next Governor will be elected by a substantially *smaller* number of voters than the number voting to recall the incumbent Governor. To make matters worse, candidates of the Governor's party—and, for that matter, candidates of other parties who do not believe the recall is justified—may feel obliged to refrain from declaring their candidacy. A democratic system designed to select a Governor truly representative of the will of elected would almost certainly be thwarted in this scenario.

11. The Constitution provides for a recall process, and this Petition does not for a moment ask the Court to interfere with it. The electorate—or at least that part of the electorate that participates in this off-year, special election—will determine the fate of the incumbent Governor. But a majority of the electorate has already voted to select the successor of the incumbent Governor should his office become vacant for any reason, be it death, resignation or any other cause—including a recall. Being present and prepared to step in as the Governor's successor should it become necessary is, perhaps, the most important function of the Lieutenant Governor; and

the electorate surely is well aware of that great, if conditional, responsibility when it votes (independently of each voter's preference for the office of Governor) for a Lieutenant Governor. No effort has been made to recall the Lieutenant Governor, who remains the Governor's designated successor. Respondent should, therefore, be directed to refrain from conducting an unnecessary successor election and from expending public funds for that purpose.

12. Petitioners have no plain, speedy or adequate remedy at law.

13. This Petition presents an urgent matter of statewide concern that requires prompt resolution and decision by this Court in the first instance. Immediate resolution of the dispute by this Court is necessary to prevent the imminent illegal waste and expenditure of taxpayer's money and, of equal gravity, the disruption of California government. Moreover, if the recall were to succeed, there would be an immediate issue of whether the "successor" purportedly elected on October 7 or the Lieutenant Governor would be the Governor.

WHEREFORE PETITIONERS PRAY:

1. That this Court issue its alternative writ of mandate ordering Respondent not to include and conduct a direct election of a successor to the incumbent Governor on the forthcoming recall ballot, or to prepare and circulating ballot materials that include the names of candidates to succeed the incumbent Governor in the event he is recalled.

2. That, upon return of the alternative writ, and the hearing on the order to show cause, or alternatively in the first instance, a peremptory writ of mandate issue under seal of this Court ordering Respondent not to take any of the foregoing actions;

3. That this Court set this matter for hearing at the earliest possible date consistent with its calendar;

4. That Petitioners be awarded their attorney's fees and costs of suit; and

5. That Petitioners be awarded such other and further relief as is just and proper.

DATED: July ____, 2003.

Respectfully,

JEROME B. FALK, JR.
STEVEN L. MAYER
HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN
A Professional Corporation

By _____
JEROME B. FALK, JR.

Attorneys for Petitioners

VERIFICATION

I, LOUISE FRANKEL, declare:

I am one of the petitioners in this action. I have read the foregoing Petition and know its contents, and I declare the facts alleged therein are true of my own personal knowledge, except as to information and belief, and as to those matters, I believe them to be true.

Executed this 28th day of July, 2003 at San Francisco, California. I declare under penalty of perjury that the foregoing is true and correct.

LOUISE FRANKEL