

IN THE
Court of Appeal of the State of California

IN AND FOR THE
THIRD APPELLATE DISTRICT

RECALL GRAY DAVIS COMMITTEE et al.,
Petitioners,

v.

KEVIN SHELLEY, etc., et al.,
Respondents;
GRAY DAVIS, as Governor, etc.,
Real Party in Interest.

FILED

JUL 18 2003

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY _____ Deputy

C044487
Sacramento County

BY THE COURT:

Exhibit D to the Verified Petition for Alternative Writ of Mandate shows the respondent Secretary of State has instructed the respondent local election officials that, in fulfilling their duties to verify the validity of signatures on recall petition sections, the local election officials shall, among other things, report to the Secretary of State "the number of signatures, if any, that you have *chosen to verify* during the current reporting period [from June 17, 2003, through July 16, 2003]." (Emphasis added.)

When the constitutional and statutory scheme governing a petition to recall a state official is viewed as a whole, it appears that the above-quoted instruction by the Secretary of State is erroneous because a local election official has a duty (1) to examine and to verify the validity of signatures on sections of a recall petition "[u]pon each submission" (Elec. Code, § 11105; see also Elec. Code, §§ 9030, 9031, 11104, subd. (b)), (2) "upon the completion of each examination," to "forthwith" submit to the Secretary of State a certificate "showing the result of the examination" (Elec. Code, § 11107; see also Elec. Code, §§ 9030, 9031), and (3) to report *every 30 days* to the Secretary of State the "cumulative total of all *valid* signatures *received* since the time the recall was initiated and *ending five days previously*, excluding Saturdays, Sundays, and holidays" (Elec. Code, § 11104, subd. (a)(4) (emphasis added)) -- which duty continues during the "current reporting period" (Elec. Code, § 11104, subd. (a)(3)). In other words, contrary to the instruction by the Secretary of State, it appears that local election officials lack the discretion to choose whether or not to verify signatures during the current reporting period.

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It also appears that, as alleged in the Verified Petition for Alternative Writ of Mandate, the Secretary of State has the duty to maintain a continuous count of verified signatures submitted up to, and during, the current reporting period, and to make that count available to the public upon request. (Cal. Const., art. 11, § 14, subd. (c); Elec. Code, §§ 11104, 11105, 11107, 11108; Gov. Code, §6253.)

Let an alternative writ of mandate issue. Written return to the alternative writ by respondents is to be personally served and filed on or before July 24, 2003. Petitioners' replication, if any, is to be personally served and filed on or before July 28, 2003. No further time will be granted.

The above-captioned case is ordered on calendar for hearing on Thursday, July 31, 2003, at 9:30 a.m., and all counsel are directed to appear. Counsels' attention is directed to the attached memorandum that describes the calendar procedures of this court.

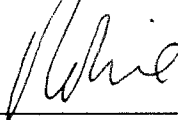
DATED: July 18, 2003



Presiding Justice Arthur G. Scotland



Associate Justice Rick Sims



Associate Justice Ronald B. Robie

cc: See Mailing List

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Real Party in Interest.

C044487
Sacramento County

ALTERNATIVE WRIT OF MANDATE

TO: Kevin Shelley, etc. et al, Respondents and Gray Davis, as Governor, etc.,
Real Party in interest:

THE above-named petitioners have filed a verified petition for writ of mandate and it appears to this court that petitioners have no other plain, speedy, or adequate remedy at law, and that the relief specified below should be granted.

THEREFORE, Kevin Shelly, as Secretary of State of California, is directed forthwith to instruct local election officials that they have a continuing duty, during a current reporting period, (a) to examine and verify the validity of signatures on sections of a recall petition upon each submission; (b) upon completion of each examination, forthwith to submit to the Secretary of State a certificate showing the result of the examination; and (c) to report every 30 days to the Secretary of State the cumulative total of all valid signatures received since the time the recall was initiated and ending five days previously, excluding Saturdays, Sundays, and holidays, which duty continues during the current reporting period, and indicate to this court that he has done so or show cause in writing on or before July 24, 2003, why he has not done so and why the relief specified herein should not be granted.

FURTHERMORE, Kevin Shelly, as Secretary of State of California, is directed to maintain a continuous count of verified signatures submitted to him up to, and during, a current reporting period, and to make that count available to the public upon request, and indicate to this court that he has done so or show cause in writing on or before July 24, 2003, why he has not done so and why the relief specified herein should not be granted.

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FURTHERMORE, Ernest R. Hawkins, as Registrar of Voters of Sacramento County, Warren Slocum, as Assessor-County Clerk-Recorder of San Mateo County, Laura Winslow, as Registrar of Voters of Solano County, and Mary Alice George, as County Clerk-Recorder of Tehama County, are directed to examine and verify the validity of signatures on sections of a recall petition upon each submission; upon completion of each examination, forthwith to submit to the Secretary of State a certificate showing the result of the examination; and to report every 30 days to the Secretary of State the cumulative total of all valid signatures received since the time the recall was initiated and ending five days previously, excluding Saturdays, Sundays, and holidays, which duty continues during a current reporting period, and indicate to this court that they have done so or show cause in writing on or before July 24, 2003, why they have not done so and why the relief specified herein should not be granted.

WITNESS the Honorable Arthur G. Scotland, Presiding Justice of the Court of Appeal of the State of California, in and for the Third Appellant District, and the Honorable Rick Sims and the Honorable Ronald B. Robie, Associate Justices of the Court of Appeal of the State of California, in and for the Third Appellate District.

Attest my hand and the seal of the court this 18th day of July 2003.

DEENA C. FAWCETT
Clerk/Administrator

Darlene A. Warnock

BY: DARLENE A. WARNOCK
Supervising Deputy Clerk

