

1 Raymond P. Boucher (115364)
2 Paul R. Kiesel, Esq. (119854)
3 Patrick DeBlase, Esq. (167138)
4 KIESEL, BOUCHER & LARSON, LLP
8648 Wilshire Boulevard
Beverly Hills, California 90211
(310) 854-4444

5 Wylie Aitken, Esq.
6 AITKEN AITKEN & COHN
7 3 Imperial Promenade, Suite 800
Santa Ana, California 92707-0555
(714) 434-1424

8 Attorneys for Plaintiffs and Class Members

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11
12 CAMILLE ROBINS, ROBERT MANLEY,
13 EUNICE AZZANI, GLORIA JOHNSON,
14 LINDA MUNOZ-KIMBELL, JOSEPH
VINCENT KERR, individuals, on behalf of
themselves and all others similarly situated.

15 Plaintiffs,

16 v.

17 KEVIN SHELLEY, an individual; CONNY
18 McCORMACK, an individual; STEVE
RODERMUND, an individual; SALLY
19 McPHERSON, an individual; and DOES 1
through 100, inclusive,

20 Defendants.

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUL 15 2003

John A. Clarke, Executive Officer/Clerk
By _____, Deputy
LUNG VO

CASE NUMBER: BC299066

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

CLASS ACTION

21
22
23 **INTRODUCTION**

24 The integrity of California's election process is threatened by the drive to recall
25 Governor Gray Davis. Unable to find Californians willing to circulate petitions to recall the
26 governor they elected only nine months ago, the proponents of the recall violated California
27 law in order to obtain signatures they needed. Sworn declarations filed with this complaint
28 demonstrate that:

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- Supporters of the recall hired professional signature-gathering firms from Arizona and Washington State to gather signatures using paid circulators from out of state.
- Press reports make clear that these firms have been plagued with allegations of fraud and illegal activity when they circulated petitions in other states.
- The out-of-state firms bused in signature gatherers, some of them convicted felons, and put them up in motels. Using convicted felons is a violation of California law.
- Because only registered voters can circulate recall petitions in California, the out-of-state firms either told their employees to register by giving the address of the motels at which they were staying or simply to lie on the sworn declaration they must submit with the petitions saying they are registered to vote. These out of state signature gatherers had no intention of establishing residency in California.
- Many paid signature-gatherers also lied when they claimed to have witnessed each signature on the petitioners they submitted. Because they are paid by the signature, many circulators set up tables in several locations, pre-signed the declaration of the circulator, and left the petitions unattended. Plaintiffs have video and still photos of individuals signing these petitions, with no circulator/witness in sight.

These illegal circulators collected and turned in thousands of signatures in support of the recall. Press reports and campaign disclosure reports make clear that until the arrival of the paid signature-gatherers, the recall movement was foundering and without

1 them the recall had no chance of qualifying.

2

3 Despite the fact that state law specifically requires circulators to sign under penalty
4 of perjury that they are registered voters and that they witnessed the signatures on the
5 petitioners they submit, the Secretary of State has instructed the defendant registrars not
6 to check whether circulators are properly registered to vote. Unless this Court orders the
7 defendants to comply with their duty under the Elections Code, the taxpayers of California
8 will be forced to pay a minimum of \$25 million for an illegitimate special election and to
9 undergo the enormous disruption of a recall election this fall.

10

11 THEREFORE, in order to bring legitimacy and integrity to the democratic process
12 Plaintiffs Camille Robins, Robert Manley, Eunice Azzani, Gloria Johnson, Linda Munoz-
13 Kimbell and Joseph Vincent Kerr, on behalf of themselves and a class consisting of all
14 California voters and taxpayers, bring this complaint for declaratory and injunctive relief
15 and allege as follows:

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PARTIES

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1. Plaintiff Camille Robins is a registered voter in Los Angeles County. Camille
19 Robins is a taxpayer in the State of California, having each paid California taxes within the
20 past year.

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2. Plaintiff Robert Manley is a registered voter in Los Angeles County. Plaintiff
23 Robert Manley is a taxpayer in the State of California, having paid California taxes within
24 the past year.

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3. Plaintiff Eunice Azzani is a registered voter in San Francisco County. Plaintiff
27 Eunice Azzani is a taxpayer in the State of California, having paid California taxes within
28 the past year.

1 4. Plaintiff Gloria Johnson is a registered voter in San Diego County. Plaintiff
2 Gloria Johnson is a taxpayer in the State of California, having paid California taxes within
3 the past year.

4
5 5. Plaintiff Joseph Vincent Kerr is a registered voter in Orange County. Plaintiff
6 Joseph Vincent Kerr is a taxpayer of the State of California, having paid California taxes
7 within the past year.

8
9 6. Plaintiff Linda Munoz-Kimbali is a registered voter in San Diego County.
10 Plaintiff Linda Munoz-Kimbali is a taxpayer in the State of California, having paid California
11 taxes within the past year.

12
13 7. Plaintiffs bring this action on behalf of themselves and a class of all California
14 voters and taxpayers in order to ensure the integrity of California's election processes and
15 to prevent the waste of public funds that will result from verification of invalid recall
16 petitions.

17
18 8. Defendant Kevin Shelley is the Secretary of State of the State of California.
19 The Secretary of State is California's chief elections officer. Pursuant to California
20 Government Code section 12172.5, the Secretary of State is responsible for "assuring the
21 uniform application and administration of state election laws." In addition, pursuant to
22 California Elections Code section 11109, the Secretary of State must certify that the
23 proponents of the recall have submitted a sufficient number of valid signatures to qualify
24 the recall for the ballot.

25
26 9. Defendant Conny McCormack is the Registrar of Voters in Los Angeles
27 County. Pursuant to California Elections Code sections 11104 through 11106, county
28 registrars are required to verify the petitions submitted by the recall proponents.

1 proponents are not required to submit their signatures all at once, as they would have to do
2 with an initiative or referendum petition. Rather, the proponents of a statewide recall may
3 submit sections of their petition while they are still gathering signatures. Once they have
4 submitted petition sections containing 10% of the number of signatures needed to qualify
5 the recall for the ballot, the Secretary of State must notify registrars that they should begin
6 verifying the signatures on the petition sections. On June 24, 2003, the Secretary of State
7 delivered a certificate to county election officials advising them to begin the process of
8 verifying signatures on petitions for the recall of the Governor.

9
10 19. Pursuant to California Elections Code section 11104(b), county registrars are
11 required to verify 500 signatures or three percent, whichever is greater. Registrars then
12 multiply the percentage of valid signatures by the raw number of signatures submitted. If,
13 based on this random sample, the counties report that the proponents have submitted 110
14 percent or more of the total number of signatures required for certification, the Secretary of
15 State is required to certify the recall for the ballot. (*Id.*; Cal. Elec. Code, § 9030.) If
16 counties report that the proponents have submitted between 95 percent and 110 percent of
17 the total number of signatures required, however, county registrars must verify each
18 signature. (*Id.*)

19
20 **B. Circulation of Recall Petition by Out-of-State Residents**

21
22 20. The proponents of the recall hired signature-gathering firms from other states
23 to recruit petition circulators, most of them from out-of-state, to gather signatures for the
24 recall, promising them between 75 cents and one dollar for each signature they collected.
25 These circulators came to California for the sole purpose of gathering signatures. They
26 stayed in hotels and motels and had no intention of remaining in California after the
27 conclusion of the recall drive. They are residents of other states and, therefore, they are
28 not eligible to register as California voters.

1 21. The signature-gathering firms directed some of the circulators to register to
2 vote, notwithstanding their ineligibility, and allowed others to collect signatures without
3 even bothering to register. For example, William Byrd is a resident of Washington State.
4 About a month ago, Frank Ricker, an employee of one of the signature gathering firms
5 retained by the proponents, contacted Mr. Byrd. Mr. Byrd had worked for Mr. Ricker in the
6 past, and he agreed to come to California to gather signatures for the recall petition. Mr.
7 Ricker made the necessary arrangements, buying Mr. Byrd a bus ticket from Seattle to
8 Pomona, California, and reserving a room for Mr. Byrd at the Travel Lodge in Pomona.
9 After Mr. Byrd began collecting signatures, Mr. Ricker told him to register to vote in
10 California. Mr. Ricker knew that Mr. Byrd was a resident of Washington State. Mr. Byrd
11 testifies:

12
13 He [Frank Ricker] told me to put down the address of the Travel
14 Lodge in Pomona for my California residency address. Frank
15 knew I was a resident of Washington State but I did what he
16 told me to do. He also said if anyone asks me about being a
17 resident in California to tell them that I have been living here for
18 sometime. The day after that I worked at the Vons parking lot
19 in Pasadena. ... I only worked for a few days then decided that it
20 just didn't feel right so I quit.¹

21
22 22. Likewise, Derrick Lee, the owner of Lee Petition Company in Arizona,
23 arranged for out-of-state residents, with whom he had worked in the past, to travel to
24 California to collect signatures for the recall. Like Mr. Ricker, Mr. Lee made the travel
25 arrangements for the circulators and reserved hotel rooms for them in California. Kim
26 Dickson, for example, is a resident of Arizona; Derrick Lee recruited her to come to

27 _____
28 ¹Declaration of William Byrd attached hereto and incorporated herein as though set
forth in full at this point.

1 California to collect signatures and arranged for her to travel by bus to Santa Ana. Mr.
2 Lee met Ms. Dickson and a fellow out-of-state circulator at the bus station and took them to
3 the Red Roof Inn on Main Street in Santa Ana, where Ms. Dickson and another circulator
4 stayed while collecting signatures. Ms. Dickson testifies:

5
6 I have known Derrick for three years or so. When I first met
7 him, I lived in Cleveland Ohio. While living there, he sent me to
8 the Boston area to get signatures. I told Derrick all about me.
9 He knows that I have been convicted of four felonies and also
10 the time that there was a warrant out fo my arrest. He told me
11 not to worry about anything.²
12

13 23. Mr. Lee also recruited Edward Lorenzo Garrett, an Arizona resident, to gather
14 signatures in Santa Ana. Mr. Lee bought Mr. Garrett's bus ticket to Santa Ana and
15 reserved a room for him at the Red Roof Inn in Santa Ana.
16

17 24. Mr. Lee instructed Ms. Dickson and Mr. Garrett to register as California
18 voters, using the address of the Red Roof Inn as their California residence. Neither Ms.
19 Dickson nor Mr. Garrett considered themselves California residents, nor did they have any
20 intention of remaining in the state after the completion of the recall drive. In addition, both
21 Ms. Dickson and Mr. Garrett have each been convicted of numerous felonies, a fact known
22 by Mr. Lee.
23

24 25. Despite the requirement that they certify under penalty of perjury that they
25 witnessed each signature placed on the petition, some signature-gatherers pre-signed the
26 declarations of circulator and left petitions unattended on tables in front of supermarkets
27

28 ²Declaration of Kim Theresa Dickson attached hereto and incorporated herein as
though set forth in full at this point.

1 and chain stores, where people signed them.

2
3 26. These recall petition circulators, in addition to numerous other out-of-state
4 circulators, signed a Declaration of Circulator, under penalty of perjury, in which they
5 swore that they were registered voters and that they witnessed each of the signatures
6 being written and believed it to be genuine. Permitting the recall to qualify for the ballot on
7 the basis of numerous perjured petitions violates the integrity of the election process and is
8 a waste of public funds.

9
10 27. Circulators have failed to abide by the election laws by pre-signing
11 verifications and failing to be present to verify signatures. This conduct was and is
12 rampant in the Counties of Orange, San Diego, San Francisco and Los Angeles. Diane
13 Blair, Kendyl McCall, Amy Heine and Sharon O'Hara each witnessed unattended petitions
14 in the Orange County wherein petitions were signed not in the presence of any circulators.³

15
16 28. Circulators have failed to abide by the election laws by pre-signing
17 verifications and failing to be present to verify signatures. This conduct was and is
18 rampant in the Counties of Orange, San Diego, San Francisco and Los Angeles. Zachary
19 Deiner, Colin Parent, Rachele Scaringelli, Erin Emblem and Zena Hindiyeh each witnessed
20 unattended petitions in the Orange County wherein petitions were signed not in the
21 presence of any circulators and/or petitions were pre-signed by the circulator prior to
22 obtaining signatures.⁴

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25 ³Declarations of Diane Blair, Kendyl McCall, Amy Heine and Sharon O'Hara
26 attached hereto and incorporated herein as though set forth in full at this point.

27 ⁴Declarations of Zachary Deiner, Colin Parent, Rachele Scaringelli, Erin Emblem
28 and Zena Hindiyeh attached hereto and incorporated herein as though set forth in full at
this point.

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July 5, 2003 at Walmart, 2595 E. Imperial Hwy, Brea California:



Pre-Signed Petitions



Unattended Petitions



Pre-Signed Petitions

June 8, 2003 at Target in Woodland Hills, California:



Pre-Signed Petitions



Unattended Petitions



Unattended Petitions

June 23, 2003 at Albertsons, 151 Woodland Pkwy, San Marcos, California:



Unattended Petitions



Unattended Petitions



Unattended Petitions

1 July 3, 2003 at Walmart, 8230 Talbert, Huntington Beach, California:



Unattended Petitions



Unattended Petitions

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12 July 1, 2003 at Vons in Palmdale, California:



Unattended Petitions



Unattended Petitions



Unattended Petitions

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21 July 5, 2003 at the Home Depot, 550 San Marcos Blvd., San Marcos, Calif.:



Unattended Petitions



Unattended Petitions

1 July 2, 2003 at Fry's, 151 Bent Avenue, San Marcos, California:

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Unattended Petitions



Unattended Petitions

10 July 1, 2003 at Sav-On Drugs, 480 S. Main St., Orange, California:

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Unattended Petitions



Unattended Petitions



Unattended Petitions

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21 July 3, 2003 at Target in Orange, California

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Unattended Petitions



Unattended Petitions

1 C. The Secretary of State's Guidelines

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3 30. California Elections Code sections 11045, 11046 and 102 provide that a
4 recall petition may only be circulated by a registered voter.

5

6 31. On June 26, 2003, Ann Reed, President of the California Association of
7 Clerks and Election Officials ("CACEO"), requested, on behalf of her members, the
8 Secretary of State's guidance regarding the counties' duty to verify recall petition
9 signatures. (Please see Exhibit "A" attached hereto and incorporated herein as though set
10 forth in full at this point.) Ms. Reed complained that "[t]o date we have not been provided
11 sufficient guidance on how to conduct [the] verification . . . despite numerous calls to your
12 office." (*Id.*) Ms. Reed advised the Secretary of State that her members intended to verify
13 recall petition signatures, even if "[t]he circulator is not a registered voter." (*Id.*) Ms. Reed
14 also informed the Secretary of State of her members' position on several other signature
15 verification issues. (*Id.*) Because of the need for uniformity, Ms. Reed "urged" the
16 Secretary of State to adopt signature verification rules "immediately." (*Id.*)

17

18 32. On June 30, 2003, the Secretary of State issued "Official Signature
19 Verification Guidelines" to the county elections officials. (Please see Exhibit "B" attached
20 hereto and incorporated herein as though set forth in full at this point.) The "guidelines,"
21 according to the Secretary of State, "answer many questions about whether the signatures
22 on the petition sections should be counted as valid." (*Id.*) Among other instructions, the
23 guidelines direct county registrars to verify recall petition signatures, even if the circulator is
24 not a registered voter. By contrast, the guidelines instruct the registrars not to verify
25 petition signatures if a circulator signs his initials rather than his full name or fails to include
26 the dates of execution and circulation. (*Id.*)

27

28 33. The guidelines are intended to ensure the uniform application of California

1 election laws, yet the Secretary of State did not promulgate the guidelines pursuant to the
2 Administrative Procedures Act. The Secretary of State failed to (1) provide notice of the
3 guidelines to the public; (2) issue the guidelines to the public before approving them; (3)
4 provide an initial written statement describing the purpose of the guidelines; or (4) provide
5 interested parties with an opportunity to comment on the proposed guidelines, either in a
6 hearing or in writing.

7
8 **FIRST CAUSE OF ACTION**

9 **(Declaratory Relief – Government Code Section 11350)**

10
11 34. Plaintiffs incorporate the allegations set forth in each of the paragraphs above
12 of this Complaint as though fully set forth herein at this point.

13
14 35. In order to be eligible to vote in California, a person must be a citizen of the
15 United States, a resident of California, and at least 18 years of age. In addition, a person
16 is ineligible to register if he or she is in prison or on parole for conviction of felony or has
17 been judged by a court to be mentally incompetent to vote. (Cal. Const., art. II, § 2; Cal.
18 Elec. Code, § 2101.) To be a resident of California, a person must have his domicile within
19 the state. (Cal. Elec. Code, § 349(a).) A person's domicile is "that place in which his or
20 her habitation is fixed, wherein the person has the intention of remaining, and to which,
21 whenever he or she is absent, the person has the intention of returning. At a given time, a
22 person may have only one domicile." (*Id.*, § 349(a).) Moreover, "a person does not gain a
23 domicile in any precinct into which he or she comes for temporary purposes merely,
24 without the intention of making that precinct his or her home." (Cal. Elec. Code, § 2021,
25 emphasis added.)

26
27 36. California Elections Code sections 102, 11045 and 11046 provide that only
28 registered voters of the jurisdiction of the officer sought to be recalled are qualified to

1 apply generally rather than in a specific case, and (2) the rule implements, interprets, or
2 makes specific the law enforced or administered by the agency. (Tidewater Marine
3 Western, Inc. v. Bradshaw (1996) 14 Cal.4th 557, 571; Sherwin-Williams Co. v. South
4 Coast Air Quality Management Dist. (2001) 86 Cal.App.4th 1258, 1283.)

5
6 46. One of the purposes of the Act is to prevent administrative agencies from
7 relying on "underground" regulations. (Bonta, supra, 106 Cal.App.4th at 504.) Thus, under
8 California Government Code section 11340.5(a), a state agency is prohibited from
9 adopting "any guideline, criterion, bulletin, manual, instruction, order, standard of general
10 application, or other rule" without first adopting it as a regulation and filing the regulation
11 with the Secretary of State.

12
13 47. Another purpose of the Act is to ensure that those persons or entities whom a
14 regulation will affect have a voice in its creation as well as notice of the law's requirements
15 so that they can conform their conduct accordingly. (Armistead v State Personnel Board
16 (1978) 22 Cal.3d 198, 204-205; Bonta, 106 Cal.App.4th at 507; Ligon v State Personnel
17 Board (1981) 123 Cal.App.3d 583, 588.)

18
19 48. If a rule constitutes a "regulation" within the meaning of the Act, it may not be
20 adopted, amended, or repealed except in conformity with "basic minimum procedural
21 requirements." (Bonta, 106 Cal.App.4th at 507.) These "basic minimum procedural
22 requirements" require an agency to: (1) provide public notice of its proposed regulatory
23 action (Cal. Gov. Code § 11346(a)); (2) issue a complete text of the proposed regulation
24 with a statement of the reasons for it (Cal. Gov. Code §§ 11346.4 and 11346.5); (3)
25 provide interested parties with an opportunity to comment on the proposed regulation (Cal.
26 Gov. Code § 11346.8); and (4) respond in writing to public comments (Cal. Gov. Code §§
27 11349.1 and 11346.9)

28

1 registered to vote despite the fact that they had no intention of remaining in California. Still
2 other circulators cared so little that they did not even bother to witness the signatures they
3 collected. All of these circulators lied under penalty of perjury when they signed the
4 declaration of circulator that must be included on the petitions.

5
6 54. Based on the Secretary of State's guidelines, defendant registrars are
7 verifying petition signatures even if the circulator is not qualified to circulate the recall
8 petition.

9
10 55. Unless enjoined from doing so, defendants will continue to verify petitions
11 circulated by unqualified circulators and petitions circulated by circulators who did not
12 witness the signatures being written.

13
14 56. Plaintiffs have no plain and adequate remedy at law, and in the absence of
15 injunctive relief, plaintiffs will suffer irreparable harm as a result of defendants' waste of
16 public funds.

17
18 **PRAYER FOR RELIEF**

19
20 Wherefore, plaintiffs pray for judgment as follows:

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22 1. That the Court enjoin the Secretary of State from taking any further action
23 with respect to the recall, including certification of the measure for the ballot, unless and
24 until county elections officials, including the named defendants, have verified that the
25 persons who circulated the petitions are validly registered to vote;

26
27 2. That the Court order defendants McCormack, Rodermund, and Sally McPherson
28 to refrain from checking the validity of any signatures on the recall petitions until they have

1 verified that the person who circulated the petitions are validly registered to vote;

2

3 3. That the Court order defendants Shelley, McCormack, Rodermund, and Sally
4 McPherson to refrain from checking the validity of any signatures on petition sections
5 signed by circulators who did not witness the signatures placed on those sections;

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7 4. That the Court declare the Secretary of State's "Official Signature Verification
8 Guidelines" invalid pursuant to California Government Code section 11350(b)(1);

9

10 5. That the Court declare the Secretary of State's "Official Signature Verification
11 Guidelines" invalid pursuant to California Government Code section 11350(a);

12

13 6. That the Court order the Secretary of State to issue regulations directing
14 county elections officials to verify the registration status of circulators and to invalidate
15 petitions submitted by disqualified circulators.

16

17 7. That the Court award such other relief as it deems just and proper; and

18

19 8. That the Court award plaintiffs' their attorneys' fees and costs of suit.

20

21 DATED: July 15, 2003

KIESEL, BOUCHER & LARSON, LLP

22

23

By: 

Paul R. Kiesel, Esq.
Raymond P. Boucher, Esq.
Patrick DeBlase, Esq.
Attorneys for Plaintiffs

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