1 2 3	THOMAS A. WILLIS, State Bar No 160989 KRISTEN MAH ROGERS, State Bar No 274672 OLSON REMCHO, LLP 1901 Harrison Street, Suite 1550 Oakland, CA 94612	FILED Superior Court Of California, Sacramento 08/10/2022 ggalavlz By, Deputy Case Number: <b>34-2022-80003925</b>	
4	Phone: (510) 346-6200 Fax: (510) 574-7061 Email: twillis@olsonremcho.com		
6	Attorneys for Petitioner Governor Gavin Newsom		
7 8		THE STATE OF CALIFORNIA	
9	COUNTY OF SACRAMENTO		
10		URISDICTION)	
11 12	GOVERNOR GAVIN NEWSOM, in his official capacity as Governor of the State of California,	No.:Action Filed: August 10, 2022	
13	Petitioner,	VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE	
14			
. 15	SHIRLEY N. WEBER, Ph.D., in her official capacity as Secretary of State of the State of California,	[Cal. Elec. Code § 9092; Cal. Gov't Code § 88006]	
16 17	Respondent. IMMEDIATE ACTION REQUESTED – PRIORITY ELECTION MATTER (Cal. Elec. Code § 13314)		
18 19	PAUL G. DIXON, in his official capacity as State Printer of the State of California, and THE HONORABLE PATRICIA GUERRERO,	CRITICAL DATE: AUG. 15, 2022	
20	Real Parties in Interest.	NO FILING FEE (CAL. GOV'T CODE § 6103)	
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	VERIFIED PETITION FOR PER	EMPTORY WRIT OF MANDATE	
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## **INTRODUCTION**

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Earlier today, petitioner Governor Gavin Newsom nominated the Honorable Patricia Guerrero, Associate Justice of the California Supreme Court, to become the next Chief Justice of California. Justice Guerrero will appear on the November 8, 2022, state general election ballot if her nomination is confirmed by the Commission on Judicial Appointments later this month.

Governor Newsom brings this action to ensure that the state voter information guide for the November election is amended to be complete and include accurate information about Justice Guerrero's qualifications for the office of Chief Justice. Without court action, the voter guide will not contain accurate qualification information about the Justice, depriving voters of critical information when casting their ballots. For many voters, the only information they receive about California Supreme Court nominees comes from the judicial qualifications information published in the voter information guide. Although a court order is necessary to add information to the voter guide at this date, both the Secretary of State and State Printer have been apprised of this action and support both the request and the relief being sought. Granting the writ will not interfere with the conduct of the election.

16 On July 27, 2022, Chief Justice Tani Cantil-Sakauye announced that she would not seek 17 re-election for a new twelve-year term at the November 8, 2022 general election. Under these 18 circumstances, the California Constitution requires Governor Newsom to nominate a candidate before 19 September 16, 2022, and the nominee must appear on the November election ballot. Cal. Const. 20 art. VI, § 16(d)(1). Governor Newsom has now nominated Justice Guerrero for the office of Chief 21 Justice. If she is confirmed by the Commission on Judicial Appointments at a hearing later in August, 22 her nomination will become effective, see Cal. Const. art. VI, § 16(d)(2), and she will appear on the 23 November ballot for confirmation by the voters.

Elections Code section 9084(j) requires that the state voter information guide contain "information on justices of the Supreme Court who are subject to confirmation or retention." Accordingly, each Supreme Court candidate is allowed to submit information in the form of a questionnaire describing their educational, professional, and judicial background. The deadline for submitting that information was July 20, 2022, before Chief Justice Cantil-Sakauye announced her decision not to seek re-election for another term, and before Governor Newsom could make his nomination. Additionally, Elections Code section 9092 and Government Code section 88006 provide for a twenty-day public display and litigation period for all materials to be included in the voter information guide for statewide elections. For the November 2022 general election, the display period runs from July 26, 2022 through August 15, 2022, and thus commenced before Chief Justice Cantil-Sakauye announced her decision not to seek re-election for another term, and before Governor Newsom could make his nomination.

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8 A court order is therefore necessary to add the qualifications information of 9 Justice Guerrero for the position of Chief Justice of California to the voter information guide. Prior to 10 her nomination, Justice Guerrero was to appear on the November ballot as a candidate for Associate 11 Justice and she submitted a judicial information questionnaire for that office. But her previously <sup>1</sup>12 submitted form states she is a candidate for Associate Justice, and the Secretary of State's office has 13 confirmed that it will remove Justice Guerrero's qualification statement for Associate Justice from the 14 voter information guide now that she is no longer a candidate for that office. Therefore, a new 15 qualification statement for Chief Justice must be added to the voter information guide in order to 16 provide the voters with accurate and complete information. Omitting this information would violate 17 the mandatory requirement in Elections Code section 9084(j) that the voter information guide include 18 information on the qualifications of the Supreme Court nominees subject to electoral confirmation. 19 Moreover, in the absence of the addition requested here, the voter guide would be false and misleading 20 in violation of Elections Code section 9092, since it would not include information about Justice 21 Guerrero as a candidate for the role of Chief Justice.

Governor Newsom and real party Justice Guerrero have acted expeditiously to fulfill
their responsibilities under an exceedingly compressed timeline. Governor Newsom made his
nomination only fourteen days after Chief Justice Cantil-Sakauye made her announcement and well in
advance of his September 15 deadline. Cal. Const. art. VI, § 16(d). Moreover, since Chief Justice
Cantil-Sakauye made her announcement on July 27, Justice Guerrero could not have been nominated
before the July 20 deadline had passed for submission of her Judicial Information Questionnaire for the
office of Chief Justice.

1 Accordingly, pursuant to Elections Code section 9092 and Government Code 2 section 88006, Governor Newsom petitions this Court for a writ of mandate directing respondent 3 Secretary of State Shirley N. Weber and real party in interest State Printer Paul G. Dixon to add the judicial qualification information of Justice Guerrero as a candidate for Chief Justice of California to 4 5 the state voter information guide. This request for relief is consistent with the relief the Court granted in 2010 in essentially the same circumstances, when then-Chief Justice Ronald George decided not to 6 7 seek a new term of office the day before the deadline for judicial questionnaires had passed. On 8 July 21, 2010, the day after the public display period for the voter information guide commenced, 9 Governor Schwarzenegger nominated Chief Justice Tani Cantil-Sakauve for that position and then 10 quickly sought judicial relief from this Court to have her judicial information added to the 2010 state 11 voter information guide. That writ petition was promptly granted. Thus, petitioner is simply seeking 12 the same relief that was granted to one of his predecessors under similar circumstances. 13 PARTIES 14 1. Petitioner Governor Newsom is the Governor of the State of California and is 15 also an elector. Under article VI, section 16(d) of the California Constitution, he is charged with the 16 responsibility of nominating justices to the California Supreme Court.

17 2. Respondent Shirley N. Weber, Ph.D., is the Secretary of State of the State of 18 California. In her capacity as the State's chief election officer, she is responsible for preparing the state voter information guide. Elections Code section 9092 and Government Code section 88006 require that the Secretary of State be named as a respondent in any proceeding seeking amendments to the voter information guide.

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22 3. Real party in interest Paul G. Dixon is the State Printer of the State of 23 California. In his capacity as the State Printer, he is responsible for printing and distributing the state 24 voter information guide. Elections Code section 9092 and Government Code section 88006 require 25 that the State Printer be named as a real party in interest in any proceeding seeking a change in the 26 voter information guide.

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4. Real party in interest Justice Patricia Guerrero has been nominated to be the next Chief Justice of California. Justice Guerrero has completed a Judicial Information Questionnaire for the position of Chief Justice for inclusion in the voter information guide. Elections Code section 9092 and Government Code section 88006 require that she be named as a real party in interest because she authored the statement sought to be added to the voter information guide for the office of Chief Justice.

## **JURISDICTION**

5. Elections Code sections 9092 and 13314, and Government Code section 88006, provide that any elector may seek a writ of mandate directing that the state voter information guide be amended. Those same statutes provide that venue for such a proceeding "shall be exclusively in Sacramento County." Elec. Code §§ 9092, 13314(b); Gov't Code § 88006. The Secretary of State is required to be named as the respondent, and the State Printer and "the person or official who authored the copy in question shall be named as real parties in interest." *See, e.g.*, Elec. Code § 9092.

6. Given the exigency of this matter, all parties to this proceeding have been apprised of this action and the specific relief requested, and have consented to service via electronic mail.

## FACTS

7. On June 15, 2022, the California Secretary of State's Office wrote to the clerk of the California Supreme Court to inform the justices who would be on the November election ballot that they had until July 20, 2022, to complete a Judicial Information Questionnaire, and that the information submitted would be included in the voter information guide. The Judicial Information Questionnaire is reviewed by the Secretary of State's Office and then included in the voter information guide to provide information to the voters as to each judicial candidate's educational, professional, and judicial qualifications.

8. On July 27, 2022, Chief Justice Cantil-Sakauye announced that she would not seek re-election as Chief Justice of California. On information and belief, she has not submitted a declaration of candidacy pursuant to article VI, section 16(d)(1) of the California Constitution.

9.

Chief Justice Cantil-Sakauye's term ends January 2, 2023.

10.	Pursuant to article VI, section 16(d), the process for choosing a new Chief			
Justice is as follows:				
	a. The Governor must nominate a candidate by no later than			
	<ul><li>September 15, 2022.</li><li>b. The nomination is effective upon confirmation by the</li></ul>			
	Commission on Judicial Appointments.			
	c. The nominee appears on the November 8, 2022 ballot for confirmation by the voters.			
	d. The nominee takes office on January 2, 2023, for a twelve-year term.			
11.	On August 10, 2022, Governor Newsom nominated Justice Guerrero as his			
choice for Chief Justice of California.				
· 12.	The same day Justice Guerrero was nominated, she completed the Judicial			
Information Questionnaire for the office of Chief Justice.				
13.	Without a writ of mandate from this Court, the voter information guide for the			
November 2022 general election will not contain information about Justice Guerrero as the nominee				
for the office of Chief Justice of California. That same voter information guide will, however, contain				
judicial qualifications information detailing educational, professional, and judicial experience of three				
other California Supreme Court Justices: Joshua P. Groban, Martin J. Jenkins, and Goodwin Liu, who				
were able to meet the July 20, 2022 deadline for submitting their completed Judicial Information				
Questionnaires. The presence of the judicial qualification information for those Justices but the				
absence of that same information for the Governor's nominee for Chief Justice would falsely suggest				
that Justice Guerrero lacks comparable qualifications to hold the office for which she has been				
nominated or that she did not seek to have her information included. Either way, the voter information				
guide would be false and misleading.				
CAUSE OF ACTION				
Peremptory Writ of Mandate				
(Elections Code §§ 9092, 13314; Government Code § 88006)				
14. Paragraphs 1 through 13 are hereby incorporated as if fully set forth herein.				
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6 VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE				
	11. choice for Chief Justi 12. Information Question 13. November 2022 gene for the office of Chief judicial qualifications other California Supra were able to meet the Questionnaires. The absence of that same that Justice Guerrero nominated or that she guide would be false			

15. A peremptory writ of mandate may issue to amend language in the voter 2 information guide upon clear and convincing proof that it is "false, misleading, or inconsistent with the requirements of [the Elections or Government Code] and that issuance of the writ will not substantially 3 interfere with the printing and distribution of the state voter information guide as required by law." 4 Elec. Code §§ 9092, 13314; Gov't Code § 88006. 5

16. Elections Code section 9092 and Government Code section 88006 provide for a twenty-day public display and litigation period for all materials to be included in the voter information guide for statewide elections. For the November 2022 general election, the display period runs from July 26, 2022 through August 15, 2022.

17. So long as the Court issues the requested writ relief prior to August 15, 2022, 10 11 the requested changes will not interfere with printing and distribution of the state voter information 12 guide. Elec. Code § 9092; Gov't Code § 88006.

13 18. Unless this Court issues the writ of mandate requested, the state voter 14 information guide will not include information regarding Justice Guerrero as candidate for office of 15 Chief Justice in violation of Elections Code section 9084(j), which states that the state voter 16 information guide "shall contain . . . information on justices of the Supreme Court who are subject to 17 confirmation or retention," despite the fact that it was impossible for Justice Guerrero to meet the deadline for submitting a Judicial Information Questionnaire for the office of Chief Justice, because 18 19 the Governor could not have nominated her until after the deadline to do so had passed and after the 20mandatory public review period had commenced. Omitting this critical information will mislead the 21 voters by suggesting that there is no nominee for Chief Justice of California. It will also mislead the 22 voters by suggesting that Justice Guerrero does not possess educational, professional, or judicial 23 experience comparable to the other Associate Justices who will appear on the November 2022 election 24 ballot, or that she did not seek to have her information included.

## PRAYER FOR RELIEF

26 Petitioner therefore prays that this Court issue a writ of mandate directing respondent Secretary of State to:

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1	1.	Include the qualifications information of Justice Guerrero for the office of the	
2		Chief Justice of California in the State Voter Information Guide for the	
3		November 8, 2022, General Election.	
4	2.	Include the following information describing the process for confirming Justice	
5		Guerrero's nomination for Chief Justice of California in the State Voter	
6		Information Guide for the November 8, 2022 General Election:	
7		a. On August 10, 2022, the Honorable Patricia Guerrero, Associate Justice	
8 9		of the Supreme Court, was nominated by Governor Gavin Newsom to be the next Chief Justice of California. A nomination by the Governor is effective when confirmed by the Commission on Judicial Appointments. If confirmed by the Commission, then Justice Guerrero will appear on	
10		the November 8, 2022, General Election ballot. For more information on	
11		judicial elections, see page <u>f</u> of this guide. For updated information about California Supreme Court nominations, go to <u>www.courts.ca.gov</u> .	
12	3.	Make the revisions to the text of the State Voter Information Guide set forth	
13		above available for public examination until August 15, 2022, the end of the	
14		public display period. Thereafter, if no further Court-ordered changes are made,	
15		the Secretary of State is directed to forward the revised text to real party in	
16	interest State Printer Paul Dixon for inclusion in the State Voter Information		
17		Guide for the November 8, 2022 General Election.	
18	4.	Each party is to bear his or her own costs.	
19	Dated: August 10, 2	022 Respectfully submitted,	
20		OLSON REMCHO, LLP	
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22	By:		
23		Thomas A. Willis	
24	Attorneys for Petitioner Governor Gavin Newsom		
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		8 VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE	

1	VERIFICATION		
2	I, Thomas A. Willis, hereby declare as follows:		
3	I am one of the attorneys for petitioner Governor Gavin Newsom. I make this		
4	verification for the reason that petitioner is absent from the county where I have my office. I have read		
5	the foregoing Verified Petition for Peremptory Writ of Mandate and believe that the matters therein are		
6	true and on that ground allege that the matters stated therein are true.		
7	I declare under penalty of perjury that the foregoing is true and correct. Executed this		
8	10th day of August, 2022, at San Francisco, California.		
9	Anon		
10	Thomas A. Willis		
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