

1 LAW OFFICE OF CHAD D. MORGAN
2 **Chad D. Morgan, Esq. SBN 291282**
3 1101 California Ave., Ste. 100
4 Corona, CA 92881
5 Tel: (951) 667-1927
6 Fax: (866) 495-9985
7 chad@chadmorgan.com

8 Attorney for Petitioner
9 Aaron Starr

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF VENTURA — HALL OF JUSTICE

12 **Aaron Starr,**

13 Petitioner,

14 vs.

15 **Michelle Ascencion** in her official capacity as
16 Oxnard City Clerk; and
17 DOES 1 through 25, inclusive,

18 Respondents;

19 **Tim Flynn,**

20 Real Party in Interest.

Case No.:

IMMEDIATE ACTION REQUIRED
ELECTION LAW MATTER:
Priority Over All Civil Matters
CCP § 35; Elec. Code § 13314(a)(3)

Verified Petition for Alternative and/or
Peremptory Writ of Mandate;
Complaint for Injunctive Relief
[Elec. Code § 13314; CCP §§ 1085 & 526]

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22
23 **TO THE HONORABLE JUDGES OF THE SUPERIOR COURT:**

24 Petitioner AARON STARR, by this Verified Petition and Complaint for Injunctive
25 Relief, petitions this court for a Writ of Mandate and/or requests an Injunction directed to
26 Respondent and by this Petition alleges:
27
28

1 **JURISDICTION AND VENUE**

2 6. Petitioner is authorized to bring this action, because he is an elector in the City of Oxnard.
3 (Elec. Code § 13313, subd. (b)(1).)

4 7. Elections Code section 13313 authorizes a writ of mandate or injunction to correct
5 “material in [a candidate statement that] is false, misleading, or inconsistent with the
6 requirements of [the Elections Code].” (Elec. Code § 13313, subd. (b)(2).)

7
8 8. This lawsuit is timely filed within the 10-day public examination period provided in the
9 Elections Code for the purpose of permitting judicial review of candidate statements. (Elec. Code
10 § 13314, subs. (a)-(b)(1).)

11 9. The Ventura County Superior Court is the proper venue for this action because this
12 action relates to an election for Mayor of the City of Oxnard, which is wholly contained in the
13 County of Ventura. The Respondent City Clerk is named in her official capacity as an official for
14 a government entity located in the County of Ventura, and the Real Party in Interest is a resident
15 of the City of Oxnard, County of Ventura.

16 10. The relief sought is within the jurisdiction of this Court.
17

18 **FIRST CAUSE OF ACTION**

19 Writ of Mandate (Code Civ. Proc. § 1085; Elec. Code § 13314)
20 Candidate Statement

21 11. Petitioner realleges and incorporates by reference each preceding paragraph.

22 12. Elections Code section 13307 allows candidates to submit a statement that includes the
23 “name, age, and occupation of the candidate and a brief description, of no more than 200 words,
24 of the candidate’s education and qualifications expressed by the candidate himself or herself.”
25 (Elec. Code § 13313, subd. (a)(1).)

26 13. Candidate statements are “limited to a recitation of the candidate’s own personal
27 background and qualifications and shall not *in any way* make reference to other candidates for that
28

1 office or another candidate’s qualifications, character, or activities.” (Elec. Code § 13308
2 [emphasis added].)

3 14. During the 10-day examination period, any voter may seek a writ of mandate to delete any
4 material that is “false, misleading, or inconsistent with the requirements of [the Elections
5 Code].” (Elec. Code § 13313, subd. (b)(2).)

6 15. Petitioner does not have an adequate remedy in the ordinary course of law. Indeed, a writ
7 of mandate or injunctive relief is Petitioner’s exclusive remedy to prevent the Real Party in
8 Interest’s candidate statement from being printed in elections materials with false or misleading
9 information or statements that are inconsistent with the Elections Code. (Elec. Code § 13313.)
10

11 16. The Elections Code does not permit any changes or modification to candidate statements
12 except by order of the court. (*Ibid*; Elec. Code § 13307, subd. (a)(3))

13 17. The issuance of a timely peremptory writ of mandate or injunction will not substantially
14 interfere with the conduct of the election because Respondent has ample time to correct and print
15 ballot pamphlets as necessary prior to the May 1, 2018 Recall Election.

16 18. This action is filed within the 10-day public review period. (See Elec. Code § 13313; see
17 also Elec. Code § 11381 [filing deadline for recall election].) To this end, the Legislature
18 contemplated that challenges filed during this time frame could be resolved without interfering
19 with the conduct of the election.

20 19. Petitioner does not have a plain, speedy, or adequate remedy in the ordinary course of law
21 because Petitioner is entitled to judicial review, and this Petition for Writ of Mandate is the
22 appropriate procedure to do so.

23 20. Petitioner alleges that the following statements in Real Party in Interest Tim Flynn’s
24 candidate statement are false, misleading, or inconsistent with the Elections Code:
25

26 **Count 1**

27 21. The third paragraph of Flynn’s candidate statement includes the sentence: “Today, the
28 city has the first balanced budget and clean audit in decades!” (Exh. A.)

1 22. This statement is false and misleading both with respect to the balanced budget and the
2 clean audit.

3 23. The City's most recently adopted budget is *not* balanced. Instead, the City's approved
4 budget has a general fund deficit of more than \$500,000.

5 24. Moreover, the City has had several balanced budgets in the last 10 years demonstrating
6 that even if the current budget was balanced, it is not the first balanced budget in decades.

7 25. The City has at least two annual audits, the audit of its financial statements that results in
8 its Comprehensive Annual Financial Report (CAFR); and its "Single Audit," which satisfies
9 federal requirements. While the City's FY 2017 CAFR audit was "clean," the City's auditor
10 expects to report adverse findings in the yet-to-be completed Single Audit. To this end, the
11 assertion that the City has a "clean" audit is, at best, misleading.

12 26. Moreover, the assertion that the City had its first clean audit in decades implies that
13 audits in the last ten years were not clean. However, the City's CAFRs for FY 2012, 2013, and
14 2014 were "clean." Therefore, even if the current audit is clean, it is not the City's first clean
15 audit in decades.

16 27. Petitioner requests that this statement be deleted from Flynn's candidate statement.
17
18

19 **Count 2**

20 28. The sixth paragraph of Flynn's candidate statement includes the sentence: "It's a record
21 I'm proud of, and I hope you'll agree by voting NO on recalling **any of my colleagues on this**
22 **fine City Council.**" (Exh. A [emphasis added].)

23 29. This statement is inconsistent with Elections Code provisions limiting candidate
24 statements to recitations of the candidate's background and qualifications and prohibiting any
25 references to other candidates for that office. Three of Flynn's City Council colleagues face recall
26 elections on May 1 and this statement is a reference to them. Further, this statement misuses
27 Flynn's candidate statement to defend his colleagues rather than state his own qualifications and
28

1 background as the code requires. In other words, Flynn cannot claim as a qualification his support
2 for his colleagues.

3 30. Petitioner requests that Flynn's reference to his council colleagues be deleted from his
4 candidate statement.

5 **SECOND CAUSE OF ACTION**

6 Injunctive Relief (Code Civ. Proc. § 526; Elec. Code § 13313)

7 31. Petitioner realleges and incorporates by reference each preceding paragraph.

8 32. The Elections Code specifically authorizes a writ of mandate *or injunctive relief* when
9 material in a candidate statement is false, misleading, or inconsistent with the Elections Code.
10 (Elec. Code § 13313.)

11 33. The Elections Code expressly prohibits false and misleading information from being
12 printed in candidate statements. Since candidate statements appear in official elections materials,
13 voters will presume that they are truthful. Many voters will rely exclusively on these arguments
14 when deciding how to vote on the measures in question.

15 34. The Elections Code limits candidate statements to a recitation of the candidate's
16 qualifications and does not permit candidate statements from being used as a platform to promote
17 the candidate's friends.

18 35. Our elections process depends on having accurate and truthful elections materials. The
19 inclusion of the statements at issue in this case will cause irreparable harm to Petitioner and every
20 other voter in City of Oxnard.

21 36. There is no pecuniary relief that can substitute for ensuring that a candidate's candidate
22 statement complies with the Elections Code.

23 37. As an alternative to his request for Writ of Mandate, Petitioner requests injunctive relief
24 for the relief set forth above in paragraphs 12 through 30. Petitioner seeks a mandatory injunction
25 ordering Respondent to make the changes set forth above and/or a prohibitory injunction
26 prohibiting Respondent from printing elections materials with the offending statements.
27
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1
2 **PRAYER FOR RELIEF**

3 Wherefore, Petitioner prays that the Court:

4 On the first cause of action:

5 1. Issue an Alternative Writ of Mandate ordering that Respondent make all of the
6 changes requested in the First Cause of Action or show cause before the Court at a time and
7 place specified by the Court why she should not be required to do so and why a peremptory
8 writ should not issue;

9 2. Issue a Peremptory Writ of Mandate ordering that Respondent make all of the
10 changes requested in the First Cause of Action;

11 On the second cause of action:

12 3. Issue a preliminary, temporary, and/or permanent injunction ordering
13 Respondent to make the changes requested and/or enjoining Respondent from including any
14 of the statements at issue in this action in official elections materials;

15 On all causes of action:

- 16 4. Award Petitioner his attorneys' fees and costs reasonably incurred herein; and
17 5. For such other and further relief as the Court deems proper.

18
19 DATE: February 22, 2018

Respectfully Submitted,
LAW OFFICE OF CHAD D. MORGAN

20
21 By: 
22 Chad D. Morgan Esq.
23 Attorney for Petitioner
24 Aaron Starr

VERIFICATION

1 I, Aaron Starr declare that I am the Petitioner in the above-entitled action. I have read the
2 foregoing **Verified Petition for Alternative and/or Peremptory Writ of Mandate; Complaint**
3 **for Injunctive Relief** and know the contents thereof to be true to my own knowledge, except as
4 to those statements made upon information and belief, and as to them, I believe them to be true.
5

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.
8

9 Executed on February 22, 2018.
10

Aaron Starr

Aaron Starr, Petitioner

**EXHIBIT
A**

STATEMENT OF OFFICER BEING RECALLED

For the Special Election to be held on May 1, 2018.

Instructions to Incumbent:

- Statements must be submitted as a Word document via email, CD, or USB drive, and provided to the official filing agent when filing the nomination documents. A paper copy of the Statement of Officer being recalled must also be filed along with the electronic version.
- This statement may include your age.
- Prepare statements according to the following rules:
 - > Statement must be a recitation of candidate's own personal background and qualifications, and shall not in any way make reference to other candidates for that office or to another candidate's qualifications, character, or activities.
 - > Statement must be typed in upper and lower case.
- Statements which do not conform to the rules will be corrected by the elections official.
- Neither grammar nor spelling will be proofed or changed.

NO MORE THAN 200 WORDS. ESTIMATED COST: \$1,600.00 TO BE PAID BY: INCUMBENT

The estimated cost is an approximation based on multiple candidates filing statements and may be significantly higher or lower depending on the actual number of statements filed. Payment is required upon submission of your statement. A refund or invoice will be sent after the election.

STATEMENT OF OFFICER BEING RECALLED CITY OF OXNARD

Name: Tim Flynn
Occupation: Teacher, Mayor

Age: 59

Five years ago, you elected me mayor to restore trust in our city's local government. Today, I ask you to vote NO on this wasteful recall effort and consider my record of accomplishments.

In my first action as mayor, I led the Council in abolishing multimillion-dollar contract giveaways such as those that resulted in the FBI and DA investigation of City Hall.

I refused to settle a multimillion-dollar lawsuit with the former city manager. I led the Council in hiring a new city manager, who, together with the Council, kept the city out of bankruptcy. Today, the city has the first balanced budget and clean audit in decades!

As a rate-payer, you should know that I spearheaded the takeover of the city's trash facility for an annual savings of \$2.5 million dollars.

I focused the Council's attention on aggressively paving residential streets, creating a one-stop shop to support local businesses, and securing a seat at the table to direct the future of Channel Islands Harbor.

It's a record I'm proud of, and I hope you'll agree by voting NO on recalling any of my colleagues on this fine City Council.

THANK YOU FOR BELIEVING IN OXNARD.

Tim Flynn, Mayor

I have reviewed the above statement and I understand no corrections or changes are allowed according to E.C. §13307(3) after it has been filed. I understand I am limited to a recitation of my own personal background & qualifications and shall not in any way make reference to other candidates for this office or to another candidate's qualifications, character, or activities. E.C. §13308 I also understand that the candidate statement is optional and it is not mandatory to file.

I certify under penalty of perjury that the candidate statement is true and correct to the best of my knowledge and belief.

Date 2/15/18 Signature of Incumbent Tim Flynn

I do not elect to file a statement as permitted by E.C. §13307

Withdraw my statement if no one else files a statement by the close of nomination.

Candidate sign here if choosing not to have a statement.

YES NO

Candidate to Initial: _____

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02/22/2018

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IP: 47.157.181.209



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