

1 STEPHEN YAGMAN (SBN 69737)
filing@yagmanlaw.net
2 YAGMAN + REICHMANN, LLP
333 Washington Boulevard
3 Venice Beach, California 90292-5152
4 (310) 452-3200

5 JOSEPH REICHMANN (SBN 29324)
filing@yagmanlaw.net
6 YAGMAN + REICHMANN, LLP
333 Washington Boulevard
7 Venice Beach, California 90292-5152
8 (310) 452-3200

Attorneys for Plaintiffs

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 **R.J. BEABER and A.W. CLARK,**
14 Plaintiffs,
15 v.
16 **SHIRLEY N. WEBER,** as California
Secretary of State,
17
18 Defendants.

COMPLAINT

19 **JURISDICTION AND VENUE**

20
21 1. Plaintiffs assert federal claims, under 42 U.S.C. § 1983 (civil rights),
22 against defendant, and subject matter jurisdiction lies pursuant to 28 U.S.C. §
23 1331 of the federal claims.

24 2. The matters that are the bases for this action occurred in Los Angeles
25 County, California, and defendant maintains an office in Los Angeles County,
26 California, and therefore venue lies in the United States District Court for the
27 Central District of California, and in its Western Division, pursuant to 28 U.S.C. §
28 1391.

1 **THE PARTIES**

2 3. Plaintiffs are persons who are eligible voters as to the upcoming
3 California, Sept. 14, 2021 recall election, in which it is to be decided whether or
4 not to recall Governor Gavin Christopher Newsom, and, if decided to be "yes," by
5 a majority of voters, then who should succeed him as governor, but to be decided
6 by only a plurality of voters, thus diluting the one person-one vote constitutional
7 standard of the voters who vote "no" on the first, recall issue. Governor
8 Newsome's supporters would be disenfranchised as to the second, succession
9 issue. *See infra*.

10 4. Defendant is the California officer who is charged with conducting and
11 administering the Sept. 14, 2021 recall election.

12 **ALLEGATIONS COMMON TO EACH COUNT**

13 6. Each and every allegation set forth in each and every averment of this
14 complaint hereby is incorporated in each and every other averment and allegation
15 of this complaint.

16 7. "All political power is inherent in the people. Government is instituted
17 for their protection, security, and benefit, and they have the right to alter or reform
18 it when the public good may require." California Constitution, Art. II, § 1.

19 8. "A United States citizen 18 years of age and resident in this State may
20 vote." *Id.* at § 2(a).

21 9. "A voter who casts a vote in an election in accordance with the laws of
22 this State shall have that vote counted." *Id.* at § 2.5.

23 10. "Recall of a state officer is initiated by delivering to the Secretary of
24 State a petition alleging reason for recall." *Id.* at §14(a).

25 11. "An election to determine whether to recall an officer and, if
26 appropriate, to elect a successor shall be called by the Governor and held not less
27

28

1 than 60 days nor more than 80 days from the date of certification of sufficient
2 signatures." *Id.* at § 15(a).

3 12. "If the majority vote on the question is to recall, the officer is removed
4 and, if there is a candidate, the candidate who receives a plurality is the successor.
5 The officer may not be a candidate, nor shall there be any candidacy for an office
6 filled pursuant to subdivision (d) of Section 16 of Article VI." *Id.* at § 15(c).

7 13. Cal. Const. Art. II, § 15(c) is unconstitutional under the United States
8 Constitution, because it violates the legal standard of "one person, one vote."

9 14.-99. Reserved.

10 **COUNT 1**

11 **(Violation of the Right to Equal Protection, Under the 14th Amendment)**

12 100. Section 1 of the Fourteenth Amendment to the United States
13 Constitution provides that "nor [shall any State] deny to any person within its
14 jurisdiction the equal protection of the laws."

15 101. Cal. Const. Art. II, §§ 2 and 2.5 Section 2 and 2.5 explain that people
16 18 and over may vote, and they have a right to have that vote counted.

17 102. Inherent in that right to vote is the right to an equal vote, one that is of
18 equal weight and equal power in deciding an election. The United
19 States Supreme Court has similarly affirmed the constitutional requirement that
20 votes be of equal weight and power.

21 103. The recall provision in the California Constitution, specifically, § 15,
22 does not establish a way for votes to be of equal weight and power, since the state
23 officer sought to be recalled specifically is prohibited for running and cannot run
24 to replace her/himself. Most importantly, it creates a situation in which a larger
25 plurality can support keeping the elected officer in office, while a smaller plurality
26 has more say in whom the successor would be.

27 104. Put another way, electors who would vote to recall have two votes --
28 one whether or not to recall, and one to select a successor if recall is voted, while

1 electors who would vote not to recall and who in effect vote for the incumbent
2 who is sought to be recalled, have only one vote, thus diluting the vote of the latter
3 group of electors by 50%, which results in their not being one person, one vote.
4

5 105. 2010's Proposition 14 (Top Two Primaries Act), which amended
6 sections 5 and 6 of Art. II of the California Constitution, invalidated and rendered
7 unconstitutional the recall sections, because Prop. 14 mandated that all California
8 state-wide offices be chosen by a majority of voters, whereas the recall sections
9 allow a plurality of electors to choose statewide officers.

10 106. This violates both the Equal Protection Clause of the Fourteenth
11 Amendment, and the Equal Protection Clause of the Fourteenth Amendment, as
12 interpreted by the United States Supreme Court.

13 **COUNT 2**

14 **(Violation of the Right to Due Process of Law, Under the 14th Amendment)**

15 107. Section 1 of the Fourteenth Amendment to the United States
16 Constitution provides that "nor shall any State deprive any person of life, liberty,
17 or property, without due process of law" This right includes the right to vote.

18 108. Cal. Const. Art. II, §§ 2 and 2.5 Section 2 and 2.5 explain that people
19 18 and over may vote, and they have a right to have that vote counted.

20 109. Inherent in that right to vote is the right to an equal vote, one that is of
21 equal weight and equal power in deciding an election. The United
22 States Supreme Court has similarly affirmed the constitutional requirement that
23 votes be of equal weight and power.

24 110. The recall provision in the California Constitution, specifically, § 15,
25 does not establish a way for votes to be of equal weight and power, since the state
26 officer sought to be recalled specifically is prohibited for running and cannot run
27 to replace her/himself. Most importantly, it creates a situation in which a larger
28

1 plurality can support keeping the elected officer in office, while a smaller plurality
2 has more say in whom the successor would be.

3 111. Put another way, electors who would vote to recall have two votes --
4 one whether or not to recall, and one to select a successor if recall is voted, while
5 electors who would vote not to recall and who in effect vote for the incumbent
6 who is sought to be recalled, have only one vote, thus diluting the vote of the latter
7 group of electors by 50%, which results in their not being one person, one vote.

8 112. 2010's Proposition 14 (Top Two Primaries Act), which amended
9 sections 5 and 6 of Art. II of the California Constitution, invalidated and rendered
10 unconstitutional the recall sections, because Prop. 14 mandated that all California
11 state-wide offices be chosen by a majority of voters, whereas the recall sections
12 allow a plurality of electors to choose statewide officers.

13 113. This violates both the Due Process Clause of the Fourteenth
14 Amendment, and the Due Process Clause of the Fourteenth Amendment, as
15 interpreted by the United States Supreme Court.

16 **Wherefore**, plaintiffs request relief against defendant, as follows:

17 1. Declaratory relief that the California Constitution Art. II, § 15(c) is
18 unconstitutional as a matter of law and as sought to be applied, under the U.S.
19 Const. 14th Amendment, in the Sept. 14, 2021 recall election;

20 2. Injunctive relief prohibiting the use of California Constitution Art. II, §
21 15(c) in the Sept. 14, 2021 recall election;

22 3. Injunctive relief prohibiting the holding of the Sept. 14, 2021 recall
23 election;

24 4. Costs of suit, including attorneys' fees; and,

25 5. Such other relief as is just and proper.

26 //

27 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

YAGMAN + REICHMANN, LLP

By: /s/ Stephen Yagman
STEPHEN YAGMAN

By: /s/ Joseph Reichmann
JOSEPH REICHMANN