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8 Attorneys for Plaintiff,
9 CAMPAIGN FOR CALIFORNIA FAMILIES,
10 RANDY THOMASSON

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SACRAMENTO**

13 CAMPAIGN FOR CALIFORNIA FAMILIES,)
14 A California Nonprofit Corporation, RANDY)
15 THOMASSON, an individual,)
16)
17 Plaintiffs/Petitioners,)

18 vs.)

19 STATE OF CALIFORNIA, DIANA WALDO,)
20 an individual, in her official and individual)
21 capacities, JOSEPH "GRAY" DAVIS, in his)
22 official capacity as Governor of California,)
23 CALIFORNIA STATE ASSEMBLY,)
24 CALIFORNIA STATE SENATE,)
25 and DOES 1 through 1000, Inclusive.)
26)
27 Defendants/Respondents)
28)

CASE NO. _____

PETITION FOR ALTERNATIVE
WRIT OF MANDATE

[CCP 1086].

29 **Petitioners, and each of them, upon information, belief, and/or personal knowledge,**
30 **hereby petition for an alternative writ of mandate as follows:**

31 **JURISDICTIONAL STATEMENT & IDENTITY OF PARTIES**

32 1. This action relates to the wrongful and actionable conduct of the Respondents, including
33 JOSEPH GRAY DAVIS, Governor of the State of California; DIANA WALDO of the
34 Legislative Data Center, of the STATE OF CALIFORNIA, the CALIFORNIA STATE
35 ASSEMBLY, and the CALIFORNIA STATE SENATE. Each of these parties are "state

1 agencies” responsible for maintaining all public records within the meaning of *California*
2 *Government Code* § 6252. Moreover, each of these entities are duly organized agencies and
3 officers of the STATE OF CALIFORNIA.

4 2. Each of the Respondents have a constitutional duty to avoid infringement of the free speech
5 rights of the Petitioners, and each of them. This duty arises under the First Amendment to
6 the United States Constitution, and under the California Constitution.

7 3. Petitioners are persons residing within, or operating a business within, the State of California
8 and have a right to petition their government, including all Respondents, for grievances.

9 4. Petitioner, RANDY THOMASSON, is a private individual living in the State of California,
10 and who attempted to bring written grievances before Respondents during the week of
11 January 13-17, 2003.

12 5. Petitioner, CAMPAIGN FOR CALIFORNIA FAMILIES, is a nonprofit California
13 corporation, whose relevant function is to assist individual citizens in becoming better
14 educated about governmental affairs. Petitioner conducts its operations in Sacramento,
15 California. Said Petitioner assists other “persons”, most of whom are California citizens and
16 taxpayers, in bringing written grievances before the Respondents.

17 6. Based on the residency, and official capacities, of the above parties, jurisdiction is
18 appropriate over all parties.

19 7. DOES 1 through 1000, are state legislators, and other government officials responsible for
20 maintaining all written communications sent to them, and who are prevented from interfering
21 with the First Amendment right of citizens to bring grievances before said Respondents, and
22 each of them.

23 **VERIFIED PETITION FOR WRIT OF MANDATE**

24 8. Petitioners hereby reincorporate Paragraphs 1 through 7 as though fully set forth and alleged
25 herein.

26 9. On January 13, 2002, and thereafter, Petitioners were assisting others in sending e-mail
27 communications concerning Respondents’ affairs relating to the current ‘budget crisis’ in
28 California and the possibility of new taxes and assessments being leveled against taxpayers

1 of California in this legislative session.

2 10. At all relevant times, Petitioners assisted several hundred Californians in their attempts to
3 bring written grievances before the Respondents. Petitioners assisted these persons by
4 providing access to Petitioners' website, <http://www.savecalifornia.com>. Petitioner,
5 RANDY THOMASSON is the Executive Director of CAMPAIGN FOR CALIFORNIA
6 FAMILIES, the operator and owner of the website.

7 11. Writings, in the form of e-mail communications, concerning tax issues and policy, were sent
8 to the Respondents, by Petitioners, on behalf of themselves, and at the request of hundreds
9 of other California citizens, between January 13-16, 2002.

10 12. The writings were generated by Petitioners and hundreds of other Californians, and
11 transmitted to Respondents through Internet servers maintained and operated by the parties.

12 13. In the last 72 hours, Respondents have intentionally, knowingly, and maliciously destroyed
13 or interfered with the transmission of over 20,000 individual communications between
14 Californians and the governmental officials that represent them. Said actions are in violation
15 of FCC regulations, the First Amendment, and the California Public Records Act.
16 Respondents are mandated to comply with all such laws, and any other laws coming to bear
17 on the issues presented and alleged herein.

18 14. At all relevant times, Petitioners assisted other individuals in communicating with their
19 elected officials about the "conduct of the public's business". Respondents have no
20 legitimate interest in the destruction, suppression, or interference with these protected First
21 Amendment communications between citizens and their governmental officials.

22 15. At all relevant times, each of the e-mail communications sent to Respondents are, and were,
23 "public records" and "writings" within the meaning of *California Government Code* § 6253.
24 As such, these records and writings were required to be saved, preserved, and maintained by
25 Respondents, and each of them, since the communications are in the normal course of the
26 public's business and were communicated to Respondents in the regular course of
27 governmental affairs and official conduct.

28 16. At all relevant times, each of the e-mail communications send by Petitioners, on behalf of

1 themselves and other individuals, were received by Respondents via the Respondents'
2 Internet servers. As such, an official public record was created and received by Respondents.

3 17. At all relevant times, Respondent WALDO was acting as the official responsible for
4 transmitting communications to the other Respondents. All Respondents are directly, or
5 through imputed knowledge, aware that written communications are routed through
6 WALDO.

7 18. At relevant times, certain of the DOE defendants were aware of the fact that Petitioners were
8 attempting to communicate with elected officials, concerning public business, and
9 intentionally instructed or knowingly allowed WALDO to take the action of interfering with
10 citizen communications to governmental officials. Ostensibly, WALDO did not act without
11 authority from her superiors.

12 19. The written electronic messages were registered at the Respondents' e-mail servers, and
13 subsequently blocked, thus resulting the permanent destruction of the messages sought to be
14 conveyed by California citizens seeking to express their protected First Amendment opinions
15 and comments on official governmental conduct and policy. In other words, Respondents
16 are intercepting the First Amendment expressions of Californians, and destroying the
17 messages before reaching their intended recipients.

18 20. "Public records" includes any writing containing information relating to the conduct of the
19 public's business prepared, owned, used, or retained by any state or local agency regardless
20 of physical form or characteristics. "Public records" in the custody of, or maintained by, the
21 Governor's office means any writing prepared on or after January 6, 1975.

22 21. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every
23 other means of recording upon any form of communication or representation, including
24 letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps,
25 magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs,
26 drums, and other documents.

27 22. During the week of January 13, 2003, and continuing to the present day, Respondents, and
28 each of them, failed to maintain the public records created by virtue of Petitioners'

1 communications with Respondents. During said time, Respondents destroyed said records
2 by “blocking” them from their intended recipients.

3 23. At all relevant times, Respondent DIANA WALDO, prevented Petitioners, and hundreds of
4 other California citizens, from being able to communicate, via e-mail, with their elected
5 officials. (See Exhibit “1”, Respondent WALDO’s letter to Petitioners’ e-mail server).

6 24. The intended recipients of the e-mails were most members of Respondents CALIFORNIA
7 STATE ASSEMBLY and CALIFORNIA STATE SENATE and GOVERNOR DAVIS.

8 25. By blocking the e-mail “writings”, Respondents did so destroy some 22,000, or more
9 “writings”, and First Amendment written grievances from citizens, as defined by *California*
10 *Evidence Code* § 250 and *California Government Code* §§ 6253, 6253.9

11 26. Respondents are required to maintain all electronic records, including letters written by the
12 public, for three years. *California Government Code* § 6253-6254.

13 27. Respondents’ decision to block, and therefore destroy, thousands of letters from Petitioners
14 and others was content-based.

15 28. Specifically, Respondents sought to censor the fact that tens of thousands of written
16 communications complaining of the possible imposition of new taxes in 2003.

17 29. Respondents, and each of them, are not similarly blocking all communications concerning
18 a ‘pro-tax’ position by constituents. In violation of the First Amendment to the United States
19 Constitution, Respondents are censoring, suppressing, and restricting protected political
20 speech. The actions of the Respondents are not content-neutral and, thus violate the First
21 Amendment. Moreover, the actions of the Respondents are not neutral time, place, or
22 manner restrictions since they are not equally applying the ‘blocking policy’ to all e-mail
23 communications from the public.

24 30. The Internet and Respondents’ servers constitute a public forum under the First Amendment.

25 31. By depriving Petitioners of the right to bring written grievances before Respondents, without
26 adequate notice or hearing, Respondents have violated the Due Process rights of Petitioners,
27 and each of them. The right to bring written grievances before Respondents is a fundamental
28 right that may not be deprived without adequate notice, opportunity to be heard, and an

1 opportunity present evidence against the deprivation.

2 32. An actual controversy has now arisen as to the actions of the Respondents, and this Court's
3 intervention is necessary to restore the First Amendment rights of the Respondents and to
4 order the Respondents to immediately follow their ministerial mandate to maintain all public
5 records and the writings of Petitioners concerning the "business of the public".

6 33. There is no administrative remedy available for the failure of the Respondents to follow their
7 statutory and constitutional mandate to protect the First Amendment rights of Petitioners
8 against infringement by officers and agencies of the STATE OF CALIFORNIA.

9 34. Because the issue of new taxation is currently being debated in the CALIFORNIA STATE
10 ASSEMBLY and CALIFORNIA STATE SENATE, there is an imminent threat of harm to
11 the First Amendment interests of Petitioners and each of them.

12 35. Petitioners have no adequate legal, regulatory, or administrative remedy available to them
13 to prevent the harm being occasioned by the Respondents failure to abide by their official
14 duty to maintain the "writings" sent by Petitioners and other California citizens.

15 36. This case seeks enforcement of important public and constitutional rights.

16 37. The relief sought herein is in the public interest as defined by *California Code of Civil*
17 *Procedure* § 1021.5.

18 38. The exhibits attached hereto are true and correct copies of records generated by Respondents,
19 or their agents, employees, or other persons responsible for regulating the flow and receipt
20 of the "writings" alleged herein.

21 39. The contents of Exhibit "1" are a true and accurate description of the actions taken by
22 Respondents against the First Amendment concerns of the Petitioners.

23 40. As a result of receiving Exhibit "1", and upon intimidation by Respondent WALDO,
24 Petitioners' Internet server ceased doing business with Petitioners and did so cause economic
25 harm to Petitioners and each of them.

26 41. Petitioners pray that this Court order Respondents to comply with their mandate to respect
27 the First Amendment rights of the Petitioners and to preserve the public records created by
28 Petitioners' e-mail communications to Respondents.

1 **PRAYER FOR RELIEF**

2 Wherefor, Petitioners pray for relief as follows:

- 3 A. For the issuance of an alternative writ requiring Respondents to accept, preserve, and
- 4 maintain the e-mail communications, in the form of protected political speech and
- 5 communications to governmental officials, as required by law.
- 6 B. For the issuance of an alternative writ requiring Respondents to abide by their
- 7 constitutional mandate to respect the First Amendment rights of the Petitioners, and
- 8 each of them.
- 9 C. For the issuance of an alternative writ directing the Respondents to cease interference
- 10 with the communications between California citizens and their elected officials.
- 11 D. For the issuance of an alternative writ requiring Respondents to comply with all
- 12 federal and FCC regulations concerning interference with electronic communications
- 13 over telephone wires.
- 14 E. For costs of suit.
- 15 F. For damages as the Court sees fit.
- 16 G. For attorneys fees.
- 17 H. For any and all other relief as the Court deems fit to remedy the harms alleged herein.

18 **VERIFICATION**

19 I, Richard D. Ackerman, do hereby attest to the facts alleged herein. The facts are based on
20 public records, and the information provided by the Respondents by virtue of Exhibit "1" attached
21 hereto. I am personally familiar with the facts of this case and could competently attest to the truth
22 of the allegations contained herein.

23 I declare under penalty of perjury that the foregoing is true and correct to the best of my
24 personal knowledge, information, and belief.

25 Executed this 17th Day in the Year of our Lord, 2003, in the City of Escondido, County of
26 San Diego, State of California.

27 _____
28 RICHARD D. ACKERMAN, Affiant/Declarant,
Attorney for Petitioners.

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Respectfully Submitted:

DATED : January 16, 2003

UNITED STATES JUSTICE FOUNDATION

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Attorneys for Petitioners,
CAMPAIGN FOR CALIFORNIA FAMILIES,
RANDY THOMASSON.

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EXHIBIT "1"

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