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9 COMMITTEE TO DEFEAT THE PRESIDENT

10 **IN THE SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**

12 COMMITTEE TO DEFEAT THE
13 PRESIDENT,

14 Petitioner,

15 vs

16 SHIRLEY WEBER, in her official
17 capacity as California Secretary of State,

18 Respondent.

Case No.

PETITION FOR WRIT OF MANDATE

[CALENDAR PREFERENCE
REQUESTED STATUTE (ELECTION
CODE § 13314(A)(3)]

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21 **INTRODUCTION**

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23 HERE COMES Committee to Defeat the President (“Petitioner”), a
24 committee dedicated to ensuring electoral integrity, submits this written request for
25 a Writ of Mandate, alleging that Representative Maxine Waters, a candidate for
26 California’s 43rd Congressional District, does not meet the federal constitutional
27 requirements for a Member of the U.S. House of Representatives and is therefore
28 ineligible to be a candidate for such office. As set forth below, after taking the oath

1 to defend and protect the Constitution, Representative Waters encouraged Black
2 Lives Matter (“BLM”) rioters to get more confrontational, fight, stay on the streets,
3 and otherwise encouraged their lawless, destructive violent behavior in furtherance
4 of insurrection. Representative Waters also attended and participated in a BLM
5 protest where she encouraged the mob of protestors to stay on the streets, get more
6 active, more confrontational, and fight. These actions aided and encouraged an
7 insurrection to obstruct the duties of the police and improperly influence the federal
8 judicial verdict in the Derick Chauvin trial, disqualifying her from serving as a
9 Member of Congress under Section 3 of the 14th Amendment and rendering her
10 ineligible under state and federal law to be a candidate for such office.

11 STATUTORY AND CONSTITUTIONAL BACKGROUND

12 1. California requires that every candidate for office meet the statutory
13 and constitutional qualifications for such office. *See People ex rel. Superior Court v.*
14 *Robinson*, 190 Cal. App. 3d 334, 339-40, 235 Cal. Rptr. 369, 372 (1987); *Briare v.*
15 *Matthews*, 202 Cal. 1, 7, 258 P. 939, 941 (1927).

16 2. When an elector seeks a “writ of mandate alleging that an error or
17 omission has occurred, or is about to occur, in the placing of a name on . . . a ballot .
18 . . . A peremptory writ of mandate shall issue only upon proof of both of the
19 following: (A) That the error . . . is in violation of this code or the Constitution [and]
20 (B) That issuance of the writ will not substantially interfere with the conduct of the
21 election.” Cal. Elec. Code § 13314(a).

22 3. Under Section Three of the Fourteenth Amendment to the U.S.
23 Constitution, known as the Disqualification Clause, “No Person shall be a . . .
24 Representative in Congress . . . who, having previously taken an oath, as a member
25 of Congress . . . to support the Constitution of the United States, shall have engaged
26 in insurrection or rebellion against the same.”
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1 4. Persons who trigger this provision are disqualified from congressional
2 office, just as those who fail to meet the age or citizenship requirements of Article I,
3 section 2 of the Constitution are disqualified from congressional office. “The oath to
4 support the Constitution is the test. The idea being that one who had taken an oath
5 to support the Constitution and violated it, ought to be excluded from taking it
6 again, until relieved by Congress.” *Worthy v. Barrett*, 63 N.C. 199, 204 (1869).
7 Consequently, such persons do not “meet the constitutional . . . qualifications for
8 holding the office being sought.” O.C.G.A. § 21-2-5(a).

9 5. The 1872 Amnesty Act does not remove any Fourteenth Amendment
10 disabilities. *See Madison Cawthorn v. Barbara Lynn Amalfi, et al., United States*
11 *Court of Appeals for the Fourth Circuit*, No. 22-1251 (May 24, 2022) (“We hold only
12 that the 1872 Amnesty Act does not categorically exempt all future rebels and
13 insurrectionists from the political disabilities that otherwise would be created by
14 Section 3 of the Fourteenth Amendment.”).

15 6. An “insurrection” or “rebellion” under the Disqualification Clause
16 includes actions against the United States with the intent to overthrow the
17 government of the United States or obstruct an essential constitutional function.
18 BLM riots and the resulting violence against the police and improper attempts to
19 influence judicial verdicts amount to an insurrection or a rebellion under Section
20 Three.

21 7. Under Section Three, to “engage” merely requires “a voluntary effort to
22 assist the Insurrection . . . and to bring it to a successful [from insurrectionists’
23 perspective] termination”. *United States v. Powell*, 65 N.C. 709 (C.C.D.N.C. 1871);
24 *Worthy v. Barrett*, 63 N.C. 199, 203 (1869) (in leading national precedent, defining
25 “engage” under Section Three to mean “[v]oluntarily aiding the rebellion, by
26 personal service or by contributions, other than charitable, of anything that was
27 useful or necessary”).
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1 12. A fellow representative, Marjorie Taylor Greene noted that “[a]s a
2 sitting United States congresswoman, Rep. Maxine Waters threatened a jury
3 demanding a guilty verdict and threatened violence if Chauvin is found not guilty.
4 This is also an abuse of power.”⁴

5 13. Senate Minority Leader Mitch McConnell added that “[i]ts hard to
6 imagine anything more inappropriate than a member of Congress flying in from
7 California to inform local leaders that this defendant had better be found guilty or
8 else there will be big trouble in the streets.”⁵

9 14. At a time when closing arguments were underway in the Chauvin trial
10 and violent protests were occurring across the country, Representative Waters
11 commented that “[w]e got to stay on the street. And we’ve got to get more active,
12 we’ve got to get more confrontational. We’ve got to make sure that they know that
13 we mean business,” and when asked about curfews, Representative Waters added
14 (in direct opposition to governmentally imposed curfews) that “I don’t think
15 anything about curfew. Curfew means I want you all to stop talking. I want you to
16 stop meeting. I want you to stop gathering. I don’t agree with that.”⁶

17 15. Representative Waters didn’t just make her violence inciting
18 comments in news media, but she traveled to Minnesota to join the protest⁷ and she
19 made clear that the BLM mob understood its “marching orders.” Specifically, she
20 spoke as follows:

21 We’ve got to not only stay in the street, but we’ve got to fight for
22 justice. But I am very hopeful and I hope that we’re going to get a

23 ⁴ Mariam Khan, [Chauvin defense asks for mistrial based on Rep. Maxine Waters' 'guilty' comments](https://abcnews.go.com/Politics/chauvin-defense-asks-mistrial-based-rep-maxine-waters/story?id=77164878),
24 ABC News (April 19, 2021, 4:02PM) [https://abcnews.go.com/Politics/chauvin-defense-asks-mistrial-
based-rep-maxine-waters/story?id=77164878](https://abcnews.go.com/Politics/chauvin-defense-asks-mistrial-based-rep-maxine-waters/story?id=77164878).

25 ⁵ *Id.*

26 ⁶ Chandelis Duster, [Waters calls for protesters to 'get more confrontational' if no guilty verdict is
reached in Derek Chauvin trial](https://www.cnn.com/2021/04/19/politics/maxine-waters-derek-chauvin-trial/index.html), CNN (April 19, 2021, 8:23AM)
<https://www.cnn.com/2021/04/19/politics/maxine-waters-derek-chauvin-trial/index.html>.

27 ⁷ Daniel Greenfield, [Rep. Maxine Waters Urges BLM Mob to "Stay in the Streets" "Get More
Confrontational": Will Corps Cut Off Donations?](https://www.frontpagemag.com/point/2021/04/rep-maxine-waters-urges-blm-mob-stay-streets-get-daniel-greenfield/), Frontpage Mag (April 18, 2021)
28 [https://www.frontpagemag.com/point/2021/04/rep-maxine-waters-urges-blm-mob-stay-streets-get-
daniel-greenfield/](https://www.frontpagemag.com/point/2021/04/rep-maxine-waters-urges-blm-mob-stay-streets-get-daniel-greenfield/).

1 verdict that will say, ‘Guilty, guilty, guilty’ ... I don’t know whether it’s
2 in the first degree, but as far as I’m concerned, it’s first-degree murder
3 ... We’ve got to stay on the street and we’ve got to get more active.
4 We’ve got to get more confrontational. We’ve got to make sure that
5 they know that we mean business.⁸

6 16. Not only did Representative Waters engage in insurrection against the
7 United States in relation to BLM protests, but she has a long history of
8 insurrection. During Trump’s presidency, Representative Waters encouraged her
9 supporters to swarm members of the Republican’s Cabinet in public following
10 reports of alleged mistreatment of migrants at the southern border.⁹

11 17. Specifically, Waters commented “if you see anybody from that Cabinet
12 in a restaurant, in a department store, at a gasoline station, you get out and you
13 create a crowd. And you push back on them. And you tell them they’re not welcome
14 anymore, anywhere.”¹⁰

15 18. In an MSNBC interview, Representative Waters commented “[t]he
16 people are going to turn on them,” and “[t]hey’re going to protest. They’re going to
17 absolutely harass them until they decide that they’re going to tell the president,
18 ‘No, I can’t hang with you.’”¹¹

21 ⁸ Tim Haines, Tucker Carlson: Maxine Waters Shows Her True Beliefs, Real Clear Politics (April 20,
22 2021)

23 https://www.realclearpolitics.com/video/2021/04/20/tucker_carlson_maxine_waters_shows_her_true_beliefs.html#!; see also <https://understandingthethreat.com/maxine-waters-actions-directly-support-communists-terrorists/>.

24 ⁹ Jake Dima, LA Riots and threats to Trump officials: Maxine Waters and her long history of controversial remarks, Washington Examiner (April 19, 2021, 1:15PM)

25 <https://www.washingtonexaminer.com/news/maxine-waters-has-long-history-controversial-remarks>.

26 ¹⁰ Mariam Khan, Chauvin defense asks for mistrial based on Rep. Maxine Waters' 'guilty' comments, ABC News (April 19, 2021, 4:02PM) <https://abcnews.go.com/Politics/chauvin-defense-asks-mistrial-based-rep-maxine-waters/story?id=77164878>.

27 ¹¹ Tim Haines, Maxine Waters Warns Trump Cabinet: “The People Are Going To Turn” On You, Real Clear Politics (June 24, 2018)

28 https://www.realclearpolitics.com/video/2018/06/24/maxine_waters_the_people_are_going_to_turn_on_trump_enablers.html#!.

1 jurisdiction-granting statute than it is currently governed by, *Worthy v.*
2 *Commissioners*, 76 U.S. 611, 613 (1869), it seemingly never occurred to anyone that
3 states lacked the power to enforce this provision entirely—an issue the Court would
4 arguably have jurisdiction over.

5 23. The Writ of Mandate process in California is fully competent to
6 adjudicate questions of ineligibility under the Disqualification Clause of the
7 Fourteenth Amendment.

8 24. Challengers meet the requirements for bringing a Writ of Mandate, as
9 Challengers allege that an error is about to occur if Representative Waters’ name is
10 placed on the ballot.

11 25. As provided in Cal. Elec. Code § 13314(a), “[a] peremptory writ of
12 mandate shall issue only upon proof of both of the following: (A) That the error . . .
13 is in violation of this code or the Constitution [and] (B) That issuance of the writ
14 will not substantially interfere with the conduct of the election.”

15 26. Here, the error (placing Waters’ name on the ballot) is in violation of
16 Section Three of the Fourteenth Amendment of the U.S. Constitution which
17 provides that “No Person shall be a . . . Representative in Congress . . . who, having
18 previously taken an oath, as a member of Congress . . . to support the Constitution
19 of the United States, shall have engaged in insurrection or rebellion against the
20 same.”

21 27. The 1872 Amnesty Act does not remove Representative Waters’ 14th
22 Amendment insurrection disability.

23 28. As discussed in detail above, because Representative Waters has
24 engaged in activities that constitute an insurrection against the United States, she
25 is disqualified from office and placing her name on the ballot would be an error in
26 violation of the Constitution.
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1 29. Additionally, issuance of the writ will not substantially interfere with
2 the conduct of the election, as this writ is being sought well in advance of the
3 election and removing an unqualified insurrectionist only serves to protect the
4 people of California.

5 30. Thus, a Writ of Mandate shall issue. See Cal. Elec. Code § 13314.

6 31. The fact that the U.S. House of Representatives itself has authority to
7 exclude Waters, if re-elected, does not deprive the sovereign state of California of
8 the power and obligation to protect the integrity of its own ballots. The power of the
9 House attaches after an election. *Cf. Barry v. United States ex rel. Cunningham*, 279
10 U.S. 597, 614 (1929) (suggesting the power attaches when a member-elect presents
11 their credentials to the relevant body). But states are given broad powers to
12 regulate pre-election conduct of congressional races under the “Elections Clause.”
13 U.S. Const. art. I, § 4, cl. 1. For nearly one hundred years, the Supreme Court has
14 affirmed that the power granted by that clause “embrace[s an] authority to provide
15 a complete code for congressional elections.” *Smiley v. Holm*, 285 U.S. 355, 366
16 (1932); accord *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8– 9 (2013);
17 *Roudebush v. Hartke*, 405 U.S. 15, 24–25 (1972). That includes verifying the
18 eligibility of congressional candidates.

19 32. Once a state has determined a candidate is disqualified under Section
20 Three, it has a duty to ensure that the unqualified candidate is not listed on the
21 ballot. Just as California should exclude an eighteen-year-old candidate from the
22 primary for a congressional race,¹³ it should also exclude one who engaged in an
23 insurrection against the United States.
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¹³ <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/statewide-direct-primary-election-june-3-2014/qualifications-running-office/summary-qualifications-and-requirements-office-united-states-representative-congress-53-districts#fn1> (“Every candidate shall be at least 25 years of age, a U.S. citizen for seven years, and a resident of California on January 3, 2015, the date he or she would be sworn into office if elected.”).

1 33. The violent BLM riots surrounding the federal Chauvin trial¹⁴
2 constituted an “insurrection” or “rebellion” under Section Three of the Fourteenth
3 Amendment.

4 34. First, the insurrectionists defied the authority of the United States.
5 *See In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894) (defining
6 insurrection as an uprising “so formidable as for the time being to defy the
7 authority of the United States”); *Insurrection*, Worcester’s Dictionary (1835)
8 (leading pre-1868 dictionary defining “insurrection” to mean “[a] seditious rising
9 against government”);¹⁵ *see also Allegheny Cty. v. Gibson*, 90 Pa. 397, 417 (1879)
10 (applying a similar definition); 4 Wm. Blackstone, *Commentaries on the Laws of*
11 *England*, *81–82 (distinguishing riots from violence against the state). During the
12 protests, insurrectionists were violent, caused unrest, attacked the police, and
13 improperly attempted to influence judicial process. Law enforcement were injured
14 as a result.

15 35. Second, the insurrectionists’ goal was to prevent law enforcement,
16 including federal law enforcement, from performing their duties and improperly
17 influence and obstruct the judiciary’s core functions. *See Pan Am. World Airways,*
18 *Inc. v. Aetna Cas. & Sur. Co.*, 505 F.2d 989, 1005 (2d Cir. 1974) (insurrection
19 requires “an intent to overthrow a lawfully constituted regime”); *Home Ins. Co. of*
20 *N.Y. v. Davila*, 212 F.2d 731, 736 (1st Cir. 1954) (insurrectionary action must be
21 “specifically intended to overthrow the constituted government and to take
22 possession of the inherent powers thereof”).

23 36. This was an attack on the United States. A criminal defendant’s right
24 to an impartial jury trial is a guarantee of the United States Constitution and the
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26 ¹⁴ Improper attempts to influence the Chauvin verdict constitute insurrection against the federal
27 government, as the trial was held in federal district court.

28 ¹⁵ Most legal authority defining “insurrection” pertains to insurrections against any government.
Under Section Three, the violent uprising must be against the United States, rather than state or
local government. See U.S. Const. amend. XIV, § 3 (applying to a person who previously swore “to
support the Constitution of the United States” but engaged in insurrection “against the same”).

1 insurrectionists’ attempt to disrupt the jury trial in federal district court in the
2 Chauvin case, particularly through violence, is an attack on our country itself.

3 37. This was no mere riot; it was an attempt to disrupt an essential
4 constitutional function and illegally influence the Chauvin case. Further, an attack
5 on public authority need not be likely to succeed in order to constitute an
6 insurrection, *see Davila*, 212 F.2d at 736 (“An insurrection aimed to accomplish the
7 overthrow of the constituted government is no less an insurrection because the
8 chances of success are forlorn.”).

9 38. To “engage” in insurrection or rebellion, one must voluntarily and
10 knowingly aid the insurrection by providing it with something useful or necessary.

11 39. The Disqualification Clause does not require that one personally
12 commit acts of violence or open defiance to have “engaged” in an insurrection. Nor
13 does it require that they be charged with criminal offenses. In the leading national
14 case on the standard for “engaging” in insurrection under Section Three— a case
15 where the disqualified candidate had not been charged with any crimes
16 whatsoever—the North Carolina Supreme Court interpreted the word “engage” to
17 mean “[v]oluntarily aiding the rebellion, by personal service, or by contributions,
18 other than charitable, of any thing that was useful or necessary” to it. *Worthy*, 63
19 N.C. at 203; *see also United States v. Powell*, 65 N.C. 709 (C.C.D.N.C. 1871) (holding
20 that “engage” merely required “a voluntary effort to assist the Insurrection . . . and
21 to bring it to a successful [from insurrectionists’ perspective] termination”). For
22 example, voluntary efforts to help transport combatants to the site of conflict can
23 qualify as “engaging” in insurrection. *See Martin v. Wallace*, 40 Ga. 52, 54–55 (1869)
24 (in tort case, finding no recovery for injury incurred while transporting Confederate
25 soldiers to front, because plaintiff was “engaged” in insurrection); *Wallace v.*
26 *Cannon*, 38 Ga. 199, 204 (1868) (same).

1 knowledge that it was substantially likely to lead to violence against the United
2 States, and otherwise voluntarily aided the insurrection after taking an oath, as a
3 member of Congress to support the Constitution. Each and all of these actions
4 disqualify her from federal office under the Disqualification Clause of Section Three
5 of the Fourteenth Amendment; and, therefore, she is not qualified to seek and hold
6 the public office of United States Representative.


7 **REQUESTED RELIEF**

8 WHEREFORE, the Challengers respectfully request that:

- 9 (a) A Writ of Mandate issued to keep Maxine Waters' name off the ballot for U.S.
10 Congress.
11 (b) All other remedies the court shall deem appropriate
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13
14 Dated: July 8, 2022

15 Respectfully submitted,

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17 _____
18 Philip Mauriello Jr.
19 Attorney for the Petitioner
20 COMMITTEE TO DEFEAT
21 THE PRESIDENT
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VERIFICATION

Ted Harvey

I, _____, declare, I am the Petitioner in the above-entitled matter. I have read the foregoing Petition and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

7/12/2022

Highlands Ranch, CO

Executed on _____, 2022, at _____.

I declare under penalty of perjury that the foregoing is true and correct.

DocuSigned by:

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Petitioner

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