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September 27, 2020

Via Electronic Mail

Honorable Members of the City Council
c/o Mayor Troy Bourne
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Re: Violation of Council Policy 011 by Means of Violation of Hatch Act

Dear Mayor Bourne and Honorable Members of the Council:

Please find enclosed for your consideration a Petition for Removal from Office in relationship to the following individuals:

- Howard Hart; Planning Commissioner
- Tami Wilhelm; Planning Commissioner and Chair
- Ted Rosenfeldt; Parks, Recreation, Youth and Senior Services, Trails and Equestrian Commissioner

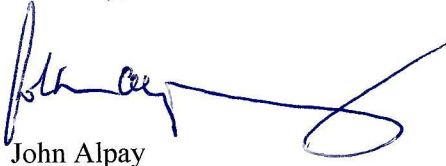
For the reasons set forth in the Petition, these individuals have undertaken actions directly or as accessories to in contravention of An Act to Prevent Pernicious Political Activities (commonly referred to as the Hatch Act of 1939).

While these actions are contrary to Federal law, they are also divergent to Council Policy 011. For this reason, I respectfully request that the Council schedule this matter for the next City Council meeting scheduled for October 6, 2020 to establish an independent inquiry and during the pendency of such inquiry the three individuals in question be temporarily relieved of their City related functions and duties.

The creation of an independent inquiry is necessary and essential given that the actions in question relate to the current Howard Hart for San Juan Capistrano City Council, District 5 election and the fact that all current members of the Council have undertaken their own affirmative actions to endorse and support the Hart campaign.

Council Policy 011 as well as the Hatch Act were created to instill public trust in the institutions of government. Failure by the Council to immediately begin an inquiry serve to undermine those efforts.

Sincerely,


John Alpay

Enclosures

1 John Alpay
2 33461 Calle Miramar
3 San Juan Capistrano, CA 92675

4 CITY COUNCIL FOR THE CITY OF SAN JUAN CAPISTRANO

6 In Re:

7 **Howard Hart**; Commissioner, Planning
8 Commission for the City of San Juan Capistrano;

9 **Tami Wilhelm**; Chair and Commissioner,
10 Planning Commission for the City of San Juan
11 Capistrano; and

12 **Ted Rosenfeldt**; Commissioner, Parks,
13 Recreation, Youth and Senior Services, Trails and
14 Equestrian Commission for the City of San Juan
15 Capistrano.

**PETITION FOR REMOVAL FROM
OFFICE**

Petition Filed: September 27, 2020

**City of San Juan Capistrano Council Policy
Number 011 (Code of Ethics) with Effective
Date May 4, 1993**

16 Petitioner John Alpay ("Petitioner"), by this petition ("Petition"), petitions this honorable
17 City Council for the City of San Juan Capistrano and alleges as follows:

VENUE AND AUTHORITY

18 1. The acts complained of which are the subject of this Petition occurred from January
19 10, 2020 to present day and continues unabated to this day within the City of San Juan Capistrano.

20 2. Council Policy 011 (Code of Ethics) (the "Policy"), was created and established by
21 the City Council and is therefore violations of the Policy are proper adjudicated before the City
22 Council.

PARTIES

23
24 3. Respondent Howard Hart is a Commissioner for the Planning Commission for the
25 City of San Juan Capistrano. In addition, as a matter outside the scope of his duties as a Planning
26 Commissioner, Howard Hart is a declared Candidate for the District 5 seat on the San Juan
27 Capistrano City Council, which is currently occupied by the Honorable Brian Maryott, who also
28 happens to currently be a candidate for Congress in California's 49th Congressional District.

4. Respondent Tami Wilhelm is a Commissioner for the Planning Commission for the City of San Juan Capistrano and also serves as its Chairman.

5. Respondent Ted Rosenfelt is a Commissioner for the Parks, Recreation, Youth and Senior Services, Trails and Equestrian Commission.

FACTUAL BACKGROUND

6. On May 4, 1993, the City Council adopted the Policy which sets forth the expected behavior of both elected and appointed City officials. The Policy is notable in that as a matter of policy, that “the public have confidence in the integrity of its government.” Policy Section 1.

7. The Policy also expects that “Public officials should conduct their official and private affairs so as to give the citizens a confidence in their performance and the public trust. Policy Section 2, Paragraph 2. The Policy further states “Public officials should not be a source of *embarrassment* to the City.” (emphasis added) Id.

8. On January 10, 2020, Respondent Howard Hart publicly announced at Coffee Chat that he was a candidate for the San Juan Capistrano City Council, District 5 seat which is scheduled to be a part of the November 3, 2020 ballot. A video of the announcement was thereafter posted on the Coffee Chat Facebook page and can still be viewed to this day.

9. On or about August 3, 2020, Respondent Howard Hart pulled the relevant papers necessary to run for San Juan Capistrano City Council District 5. In one of the forms submitted and completed, the Ballot Designation Worksheet, Respondent Howard Hart states that he is Regional Training Administrator for United States Citizenship and Immigration Services, a division of the United States Department of Homeland Security. The Department of Homeland Security is a part of the Executive Branch of the United States Government.

10. On August 4, 2020 Respondent Howard Hart submitted a Candidate Statement of Qualifications, which listed as his ballot title the position of “Homeland Security Administrator.”

11. On August 20, 2020, Mike Rainis, a resident of San Juan Capistrano District 5 sought a Writ of Mandate in the Superior Court of California for the County of Orange in the matter captioned Rainis v Kelly (Case No. 30-2020-01156257-CU-WM-CJC) challenging Respondent's Ballot Title as being an employee of the Department of Homeland Security.

1 12. On September 2, 2020, Respondent Howard Hart provided sworn testimony by
2 means of a written declaration claiming that he was indeed an employee of the Department of
3 Homeland Security, a part of the Executive Branch of the Federal Government.

4 13. Seeking to affirm trust in government and its institutions, in 1939 Congress passed
5 what is commonly referred to as the Hatch Act (5. U.S.C. §§ 7321-7326) which put restrictions on
6 the ability of Executive Branch employees (other than the President and the Vice President) to
7 engage in political activities.

8 14. As a self-proclaimed/admitted employee of the Department of Homeland Security,
9 Respondent Howard Hart is subject to the provisions of the Hatch Act.

10 15. The Hatch Act (§7323) provides the following:

11 **§ 7323. Political activity authorized; prohibitions**

12 Subject to the provisions of subsection (b), an employee may take an active part in political
13 management or in political campaigns, except an employee may not -

14 (3) run for the nomination or as a candidate for election to a partisan political office....

15 16. A “partisan political office” is expressly defined in the Hatch Act to mean “any office
16 for which any candidate is nominated or elected as representing” a political party whose candidates
17 received votes for presidential elector in the preceding presidential election. 5 U.S.C. §7322(2)

18 17. The Hatch Act restriction on being a candidate for office, bars an Executive Branch
19 employee from running for any elective public office – including a federal, state, local or county
20 office, which is filled in an election where any of the candidates in the election runs as a Democrat,
21 Republican, Libertarian or Green, or as representing any political party whose presidential electors
22 received votes in the last presidential election.

23 18. With respect to state and local elections, the laws of the state or locality will often
24 designate that the election is to be “nonpartisan,” such that candidates are not to run as representing
25 political parties. As a matter of law, such state or local laws have no bearing in the interpretation of
26 the Hatch Act. OSC File AD-09-xxxx, June 17, 2009.

27 19. On September 18, 2020, Petitioner and Respondent Howard Hart were jointly
28 interviewed at the Pacific Club in Newport Beach by the Lincoln Club of Orange County. When

1 Respondent Howard Hart was asked if he had sought the endorsement of the Republican Party of
2 Orange County, he responded that he was prohibited from doing so because of the applicability of
3 the Hatch Act to his employment.

4 20. Petitioner is a dues-paying member of the Libertarian Party of Orange County and is
5 further a Delegate with full voting privileges of the Libertarian Party of California.

6 21. Commencing as of August 1, 2020, Petitioner first sought the endorsement of the
7 Libertarian Party of Orange County. After receipt of the formal request for endorsement, the
8 Libertarian Party of Orange County elected to endorse Petitioner's candidacy for San Juan
9 Capistrano City Council, District 5.

10 22. Petitioner also sought the endorsement of the Libertarian Party of California, which
11 at their September 12, 2020 meeting in Visalia, California elected to endorse Petitioner's candidacy
12 for San Juan Capistrano City Council, District 5.

13 23. Petitioner has made prominent use of the Libertarian Party endorsements, including
14 placement of flyers on doors of voters in District 5. One such flyer was left at the doorstep of
15 Petitioner's primary residence in District 5 as recently as September 24, 2020.

16 24. Petitioner has also taken out advertisement in the September 25, 2020 issue of the
17 Capistrano Dispatch further announcing the Libertarian Party endorsement.

18 25. On September 25, 2020, Petitioner further sent via email formal correspondence
19 reminding Respondent Howard Hart of his obligations under the Hatch Act and providing a
20 reminder of Petitioner's Libertarian Party endorsements.

21 **FIRST CAUSE OF ACTION**

22 **Petition for Removal from Office**

23 **Vacate Position on Planning Commission Occupied by Howard Hart**

24 **Violation of Council Policy 011**

25 26. Petitioner re-alleges and incorporates by reference the allegations of paragraphs 1
26 through 25 as if set forth in full herein.

27 27. As of the submission of this Petition, Respondent Howard Hart remains and
28 continues to be a candidate for San Juan Capistrano City Council, District 5.

1 28. Respondent Howard Hart's continued presence in the City Council race is a knowing
2 and willful violation of the Hatch Act, an act of Congress designed to build public trust in the
3 institutions of government.

4 29. By his willful defiance of Congress, Petitioner Howard Hart is also in direct violation
5 of the Policy which was structured so as to require "Public officials should conduct their official
6 and private affairs so as to give the citizens a confidence in their performance and the public trust."
7 Policy Section 2, Paragraph 2. In addition, his actions are further contradictory to the Policy as it
8 intends that "Public officials should not be a source of *embarrassment* to the City." (emphasis
9 added) Id.

10 30. Respondent Howard Hart has not voluntarily resigned his position as Commissioner
11 for the Planning Commission, which is the Policy recommended course of action for a situation as
12 Respondent Howard Hart has created. Policy Section 12.

13 **SECOND CAUSE OF ACTION**

14 **Petition for Removal from Office**

15 **Vacate Position on Planning Commission Occupied by Tami Wilhelm**

16 **Violation of Council Policy 011**

17 31. Petitioner re-alleges and incorporates by reference the allegations of paragraphs 1
18 through 30 as if set forth in full herein.

19 32. Respondent Tami Wilhelm has actively aided and abetted Respondent Howard Hart
20 in his efforts to run a partisan political campaign directly contrary to the Hatch Act.

21 33. Respondent Tami Wilhelm has made numerous public statements in support of
22 Respondent Howard Hart's campaign and has even made financial contributions to the campaign.
23 Form 460 filed July 27, 2020, Page 4.

24 34. By virtue of her actions, Respondent Tami Wilhelm has become an accessory to what
25 is currently a knowing violation of Federal law, which calls into question the public's trust in her
26 actions in the performance of her duties as Commissioner of the Planning Commission and the
27 public trust, in addition to the fact that her actions have brought direct embarrassment to the City of
28 San Juan Capistrano.

1 **THIRD CAUSE OF ACTION**

2 **Petition for Removal from Office**

3 **Vacate Position on Parks, Recreation, Youth and**

4 **Senior Services, Trails and Equestrian Commission Occupied by Ted Rosenfeldt**

5 **Violation of Council Policy 011**

6 35. Petitioner re-alleges and incorporates by reference the allegations of paragraphs 1
7 through 34 as if set forth in full herein.

8 36. Respondent Ted Rosenfeldt, since at least January 10, 2020 and continuing to the
9 date of this petition, has served as the Campaign Manager for the partisan political campaign of
10 Respondent Howard Hart, has actively and systematically undertaken efforts to assist Respondent
11 Howard Hart in his efforts to run a partisan political campaign directly contrary to the Hatch Act.

12 37. Respondent Ted Rosenfeldt has made numerous public statements in support of
13 Respondent Howard Hart's campaign.

14 38. By virtue of his actions, Respondent Ted Rosenfeldt has made himself an
15 indispensable an accessory to what is currently a knowing violation of Federal law, which calls into
16 question the public's trust in any and all of his actions and whether he can act in the best interests
17 of the public trust given his stewardship of a partisan political campaign that has brought direct
18 embarrassment to the City of San Juan Capistrano.

19
20 WHEREFORE, Petitioner prays that this Honorable City Council:

21 39. Pursuant to Policy Section 12, in the event that Respondent Howard Hart does not
22 submit his voluntary resignation as Commissioner in response to his direct violation of Federal law
23 in a local election (an action that takes some unique skill), the Council immediately remove him
24 from his appointed position on the Planning Commission.

25 40. Pursuant to Policy Section 12, in the event that Respondent Tami Wilhelm does not
26 submit her voluntary resignation as Commissioner in response to her role as accessory to a direct
27 violation of Federal law in a local election, the Council immediately remove her from her appointed
28 position on the Planning Commission.

1 41. Pursuant to Policy Section 12, in the event that Respondent Ted Rosenfeldt does not
2 submit his voluntary resignation as Commissioner in response to his role as accessory to a direct
3 violation of Federal law in a local election, the Council immediately remove him from his
4 appointed position on the Parks, Recreation, Youth and Senior Services, Trails and Equestrian
5 Commission.

6
7 Dated: September 27, 2020

Respectfully submitted,

8
9
10 By: _____

John Alpay

CITY OF SAN JUAN CAPISTRANO

COUNCIL POLICY

Subject:	Page	Effective Date	Policy Number
CODE OF ETHICS	1 of 4	5/4/93	011

Section 1. Policy

The proper operation of municipal government requires that public officials be independent, impartial and responsible to the people, that governmental decisions and policy be made in the proper channels of the governmental structure, that public office not be used for personal gain, and that the public have confidence in the integrity of its government.

Section 2. Responsibilities of Public Office

Public officials are all elected and appointed officials of the City of San Juan Capistrano.

Public officials of the City of San Juan Capistrano are sworn to uphold the Constitution of the United States and the Constitution of the State of California and to carry out the laws of the nation, state and city. Public officials are bound to observe the highest standards of morality and to discharge faithfully the duties of their offices regardless of personal consideration.

Public officials should conduct their official and private affairs so as to give the citizens a confidence in their performance and the public trust. There should never be a reasonable basis for the impression that any public official can be improperly influenced in the performance of their public duties. Public officials should not be a source of embarrassment to the City and should avoid even the appearance of conflict between their public duties and private interests.

Section 3. Dedicated Service

All officials of the City of San Juan Capistrano should be loyal to the political objectives expressed by the electorate and the programs developed to attain those objectives. Officials should not exceed their authority or breach the law or ask others to do so. Full cooperation with other public officials is necessary for the proper operation of the municipality, unless prohibited from so doing by law or by officially recognized confidentiality of their work.

CITY OF SAN JUAN CAPISTRANO

COUNCIL POLICY

Subject:	Page	Effective Date	Policy Number
CODE OF ETHICS	2 of 4	5/4/93	011

Section 4. Obligation for Fair and Equal Treatment

Preferential consideration of the request or petition of any individual citizen or group of citizens shall not be given. No person shall receive any special consideration, treatment, or advantage beyond that which is available to any other citizen.

Section 5. Use of Public Property and Employees

No public official of the City of San Juan Capistrano shall request or permit the use of City equipment, materials or property for personal benefit or profit, except when such services are available to the general public. No public official shall request or use the time of any City employee during working hours for personal benefit or profit.

Section 6. Confidential Information

No public official of the City of San Juan Capistrano shall use confidential information acquired by virtue of his or her position for such official's private gain or advantage or the private gain or advantage of another.

No public official of the City of San Juan Capistrano shall, without proper legal authorization, disclose confidential information concerning the property, government, or affairs of the City. Nor shall any public official use such information to advance the financial or other private interest of himself or others.

Section 7. Ex Parte Communications

All interested parties to any matter shall have equal opportunity to express and represent their interests. Any written ex parte communication received by an official in matters where all interested parties should have an equal opportunity for a hearing shall be made a part of the record by the recipient. A written communication concerning only that status of a pending matter shall not be regarded as an ex parte communication.

CITY OF SAN JUAN CAPISTRANO

COUNCIL POLICY

Subject:	Page	Effective Date	Policy Number
CODE OF ETHICS	3 of 4	5/4/93	011

Section 8. Gifts

No public official of the City of San Juan Capistrano shall knowingly receive or accept any gift, including money, service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the City, whose activities are regulated or controlled by the City, under circumstances from which it reasonably could be inferred that the gift was intended to influence the official in their official duties or was intended as a reward for any official action on their part. Travel and meal expenses provided by other public agencies to which a public official of the City is appointed in his or her official capacity shall not be deemed ~~Agifts~~ for purposes of this section.

Section 9. Conflict of Interest

No public official of the City of San Juan Capistrano shall engage in any business or transaction or shall have a financial interest, direct or indirect, which is incompatible with the proper discharge of his official duties or would tend to impair his independence of judgment or action in the performance of his official duties.

Any public official who has a substantial financial interest in any business, transaction, or contract with the City, or in the sale of real estate, materials, supplies, or services to the City, shall make publicly known such interest in any matter on which they may be called to act in their official capacity. The official shall refrain from voting upon or otherwise participating in the transaction or the making of such contract or sale.

The City Council of San Juan Capistrano shall establish and maintain a list of all public officials of the City of San Juan Capistrano who shall be required to conform to rules and procedures as established by the City for disclosing income and conflict of interest matters.

No public official of the City of San Juan Capistrano shall appear on behalf of private interests, other than his or her own, before any agency of the City. Nor shall any public official represent private interests in any action or proceeding against the interests of the City in any litigation to which the City is a party.

CITY OF SAN JUAN CAPISTRANO

COUNCIL POLICY

Subject:	Page	Effective Date	Policy Number
CODE OF ETHICS	4 of 4	5/4/93	011

Section 10. Political Activity

No public official shall promise an appointment to any City position as a reward for any political activity.

Section 11. Applicability of Code

When doubt arises as to the applicability of a provision of this Code to a particular situation, the public official should request an advisory opinion of the City Council or City Attorney as appropriate and be guided by that opinion. This Code shall be operative in all instances covered by its provisions except when superseded by an applicable law or direction of the City Council, or when the law or direction is discretionary but determined to be more appropriate.

Section 12. Sanctions

Violation of any provisions of this Code should raise conscientious questions for the public official concerned as to whether voluntary resignation or other action is indicated to promote the best interest of the City. Violation may constitute a cause for censure, suspension, removal from office or other disciplinary action, pursuant to law.

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Attorneys for Petitioner

MICHAEL RAINIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

MICHAEL RAINIS, an individual,

Petitioner,

v.

NEAL KELLEY, REGISTRAR OF VOTERS
OF THE COUNTY OF ORANGE; and DOES 1
through 10, inclusive

Respondents

HOWARD HART, an individual; and DOES 1
through 20, inclusive,

Real Party In Interest

Case No. 30-2020-01156257-CU-WM-CJC

**AMENDED VERIFIED PETITION FOR
WRIT OF MANDATE**

ELECTION MATTER PRIORITY
[Election Code § 13314(a)(3)]

Petition Filed: August 20, 2020

**[Code of Civil Procedure §§ 1084-1088.5;
Election Code §§ 13103, 13107, 13307,
13313, 13314]**

1 Petitioner MICHAEL RAINIS ("Petitioner"), by this verified petition ("Petition"),
2 petitions this honorable Court for a Writ of Mandate directed to Respondent NEAL KELLEY
3 ("Respondent") and HOWARD HART, as real party in interest, and alleges as follows:

4 VENUE AND PRIORITY

5 1. The acts complained of which are the subject of this Petition occurred within the
6 statutory time period in which to bring this Petition in the County of Orange, State of California,
7 therefore, venue for this action is properly in this court in the County of Orange.

8 2. Pursuant to Election Code § 13314(a) (3), this Petition "shall have priority over all
9 other civil matters."

10 PARTIES

11 3. Petitioner is, and at all relevant times was, a registered voter and elector residing
12 within the San Juan Capistrano City Council District No. 5 in the County of Orange, State of
13 California, and is authorized under California Code of Civil Procedure § 1084-1088.5 and
14 California Election Code §§ 13103, 13107, 13307, 13313, and 13314 to bring this action.

15 4. Respondent NEAL KELLEY is the Registrar of Voters ("Registrar") and Election
16 official of the County of Orange. Respondent is charged with overseeing the voter pamphlet and
17 materials in Orange County and is required by the Election Code to be the Respondent in this
18 action.

19 5. Real Party in Interest HOWARD HART ("Mr. Hart") is a candidate for the position
20 of San Juan Capistrano City Council District No. 5 in the election scheduled for November 3,
21 2020. Mr. Hart is the real party in interest in this matter pursuant to Election Code section 13307
22 and 13313.

23 6. The true names, identities and capacities of Respondent and Real Party DOES 1 to
24 20, inclusive, are unknown to Petitioner who therefore bring this Petition against DOES 1 to 20,
25 inclusive, by such fictitious names, and will seek leave of this Petition to show the true names,
26 identities and capacities when they have been determined. Petitioner is informed and believes, and
27 on that basis alleges, that each DOE respondent is responsible in some manner for the events and
28 happenings set forth in this Petition and proximately caused the injury complained of by the

Petitioner as alleged in this Petition.

STANDARD OF REVIEW

7. Pursuant to California Election Code sections 13107 and 13313, each candidate for City Council, has an option to prepare and submit to the Registrar a proposed candidate's Statement of Qualifications, of not more than 200 words, expressing the candidate's education and qualifications (a "Candidate Statement"). Election Code section 13107(a)(3) separately authorizes that the candidate "may use no more than three words" designating the "current principal professions, vocations, or occupations of the candidate" (hereinafter a "Statement of Occupation"). The Candidate Statement and the Statement of Occupation is used for the sample ballot materials and the Statement of Occupation typically appears on the ballot itself, usually under the candidate's name.

8. The legal bases for removing/striking improper material from a Candidate Statement, including the Statement of Occupation, consist of:

- a. The material in the Candidate Statement must be limited to the candidate's education and qualifications. (Election Code § 13307(a)(1).);
- b. The material in the Candidate Statement cannot make reference, in any way, to another candidate's qualifications, character or activities. (Election Code § 13308.);
- c. The material in the Candidate Statement cannot be false, misleading or inconsistent with the Election Code. (Election Code § 13313(b)(2).)
- d. In addition to the above, Section 13107(e), with respect to the Statement of Occupation, states, "the Secretary of State and other elections official shall not accept a designation of which any of the following would be true: (a) it would mislead the voter."

9. In accordance with Election Code section 13314, a writ should issue because (1) the misrepresentation as set forth in this Petition (specifics provided below), does, in fact, "mislead the voter" and violates the Election Code, specifically and without limitation, at sections 13107 and 13313, and/or the Constitution; (2) because the issuance of the writ will not

1 substantially interfere with the conduct of the election; and (3) because the Respondent currently
2 has ample time to correct and print the sample ballots and ballot pamphlets.

3 **FIRST CAUSE OF ACTION**

4 **Petition for Writ of Mandate -**

5 **Howard Hart's Candidate Statement of Qualifications**

6 **Specifically including The Statement of Occupation**

7 **- Violation of Election Code § 13107 and 13313**

8 **[Against Respondent and Real Party-In-Interest]**

9 10. Petitioner re-alleges and incorporates by reference the allegations of paragraphs 1
10 through 9 as if set forth in full herein.

11 11. Petitioner is informed and believes, and thereon alleges, that on or about August 4,
12 2020, Mr. Hart submitted a Candidate Statement of Qualifications to Respondent, for inclusion by
13 Respondent in the voter pamphlet to be printed and mailed to all voters prior to the November 3,
14 2020 election, as well as on the ballot itself. The Voter Statement of Qualifications included a
15 Statement of Occupation, that is also included separately on the ballot, that was and is
16 "misleading" within the meaning of statute. *See* the Candidate Statement of Qualifications at
17 Rainis Decl., Ex. "A" thereto, submitted in support of this Petition.

18 12. California Election Code § 13313(b)(2) requires that Candidate Statements cannot
19 contain any material that is false, misleading, or inconsistent with the requirements of this chapter.
20 California Election Code § 13107(e)(a) separately requires that the Statement of Occupation in the
21 Candidate Statement (and ballot) cannot be misleading.

22 13. Mr. Hart's Candidate Statement (as also reflected in the underlying "Ballot Title
23 Worksheet") contains the following statement that has been submitted to the election authorities
24 for inclusion on his Candidate Statement and on the ballot:

25 **"OCCUPATION: HOMELAND SECURITY ADMINISTRATOR"**

26 14. This Statement of Occupation violates Election Code Sections 13107 and
27 13313(b)(2) in that it misrepresents Mr. Hart's qualifications. Specifically, Mr. Hart's description
28 in the Statement of Occupation is false and/or misleading within the meaning of statute in that Mr.

Hart himself more accurately describes his occupation in his linkedin.com posting as “Regional Training Administrator at USCIS.” See <https://www.linkedin.com/in/howarddhart/>. Petitioner is informed and believes, and based thereon alleges, that the acronym USCIS stands for the United States Citizenship & Immigration Service. See <https://www.uscis.gov/>.¹ The distinction between what Mr. Hart says he does in his Statement of Occupation and what Mr. Hart *actually does* in real life is neither minor nor trifling. It is a prejudicial and misleading statement for the reasons set forth below.

15. First of all, in his Ballot Designation Worksheet submitted August 4, 2020, Mr. Hart lists alternative occupation descriptions as “Homeland Security Trainer” (1st alternative) and DHS Program Administrator” (2nd Alternative). See Ballot Designation Worksheet at Rainis Decl., Ex. “B” thereto, submitted in support of this Petition.

16. In fact, although Citizenship & Immigration Service is a bureaucracy within the Federal Department of Homeland Security, it is not, of itself, the Department of Homeland Security. Indeed, Mr. Hart admits as much in the Ballot Designation Worksheet in the section entitled “Justification for use of proposed ballot designation.” In that section, he admits, “I am employed *within* the Department of Homeland Security as a Regional Administrator for US Citizenship and Immigration Services” (emphasis added). Mr. Hart further lists his “Current of [sic] Most Recent Job Title” as “Regional Trainer” – not as the much grander-sounding Homeland Security Administrator. *Id.*

17. In the same Ballot Designation Worksheet, under the sections justifying the *alternative* occupational name choices, Mr. Hart is even more candid. There he clearly admits what his *actual* occupation is: “I administer the training program for the Western Region of USCIS...” *Id.*

18. Being a regional training administrator for a regional government bureaucracy is a fine and respectable job. Nothing in this Petition is intended to denigrate Mr. Hart’s job or the

¹ Petitioner seeks judicial notice of both the referenced .com and .gov World Wide Web addresses as public sources of information “not reasonably subject to dispute” within the meaning of Cal. Evid. Code Section 452.

1 service that Mr. Hart undoubtedly provides to the best of his abilities.

2 19. That said, a regional administrator tasked with training other regional trainers is a
3 far cry from being the "Homeland Security Administrator" that Mr. Hart proposes to include on
4 the November 3, 2020 ballot and Candidate Statement. To call himself a "Homeland Security
5 Administrator" implies that he has an upper-level advisory role in the Federal Department of
6 Homeland Security. The title even suggests to an average voter that he may be a high-level
7 official working directly in the federal Department of Homeland Security in Washington, D.C. for
8 the present Acting Secretary of Homeland Security, Chad Wolf, who himself is a member of
9 President Trump's Presidential Cabinet. In short, regardless of whether Mr. Hart's occupational
10 description is false, there is clear and convincing proof that it is, without question, "misleading"
11 within the meaning of the Elections Code.

12 20. For these reasons, Petitioner respectfully request the Court strike this occupational
13 description from Mr. Hart's Candidate Statement and the Statement of Occupation and not allow it
14 to be printed on the ballot. To that end, pursuant to Election Code section 13313 Petitioner is
15 entitled to a peremptory writ of mandate ordering Respondent to strike the foregoing statement
16 from Mr. Hart's Candidate Statement before the voter pamphlet (or ballot) is printed and
17 distributed.

18 21. Petitioner does not have a plain, speedy or adequate remedy, in the ordinary course
19 of law because the voter ballot pamphlet and ballot is to be printed in the very near future.

20 22. Petitioners are entitled to judicial review, and this procedure for a writ of mandate
21 is the appropriate procedure for obtaining judicial review.

22 WHEREFORE, Petitioner prays that this Honorable Court:

23 1. Issue an alternative writ of mandate directing Respondent to remove the Statement
24 of Occupation from the Real Party's Candidate Statement of Qualifications (and not allow it to go
25 forward by being printed on the ballot and/or ballot materials) insofar as the Statement of
26 Occupation violates Election Code section 13107 and/or Elections Code section 13313, or to show
27 cause before this Court at a time and place specified by this Court why Respondent has not done
28 so and why a peremptory writ should not issue;

2. After hearing on this Petition, or without hearing, issue a peremptory writ commanding Respondent to remove the Statement of Occupation as presently constructed from the Real Party's Candidate Statement of Qualifications in that it violates Election Code section 13107 and 13313;

3. Require a return to this Petition, and set this matter for a hearing at the earliest available dates, so that the issuance of the writ will not substantially interfere in the printing and distribution of the ballot and voter pamphlet;

4. Award Petitioner his attorneys' fees and costs reasonably incurred in this action under Code of Civil Procedure section 1021.5 and other applicable provisions of law; and

5. Grant Petitioner any other and further relief as may be just and proper.

Dated: August 21, 2020

Respectfully submitted,

WEINTRAUB TOBIN LAW CORPORATION
DAVID R. GABOR

By: _____

David R. Gabor

Attorneys for Petitioner, Michael Rainis

VERIFICATION

I have read the foregoing Petition for Writ of Mandate and know its contents. I am a party to this action. The matters stated in the Writ of Mandate are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed on August ²⁰~~19~~, 2020, at SAN JUAN, California.
CAPISTRANO


Michael Rainis

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I, Howard Hart, declare as follows:

1. I am the real party in interest in this case. I have personal knowledge of the facts set forth herein and, if called as a witness, could testify competently thereto. I am a candidate for the city council in San Juan Capistrano.

2. I work for the federal Department of Homeland Security (DHS) as an administrator. My ballot title does not suggest that I am the *only* administrator. The person who presides over DHS is the Secretary, as in a cabinet secretary.

3. DHS is a shell organization in the sense that it operates through its divisions. One of those divisions is the United States Citizenship and Immigration Services (USCIS). USCIS administers the nation's legal immigration process – people who apply to enter the United States, including those who seek citizenship. (This is contrasted with ICE, that administers programs dealing with people who attempt to enter the country without documentation.) USCIS safeguards the integrity and promise of the legal immigration system by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring American values. An important function within USCIS is to determine which applicants are legitimate and eligible for entry and/or citizenship, and which applicants are not.

4. I am the Administrator for the program to teach USCIS agents how to conduct the examination and interview process. I am also responsible for training fraud detection and national security officers. These officers conduct field investigations involving matters of national security concerns and immigration fraud. It is vital to be able to screen applicants for fraud and other disqualifying factors. The USCIS is divided into four regions. My region stretches from Guam to Montana. I administer a training program for over 1,600 professionals who work in 25 regional districts and field offices. I routinely coordinate with senior executive service-level regional and district directors. I also coordinate the efforts of seven GS-13 level District Training Officers to further regional and field operations directorate-wide strategic goals.

5. My professional background is significant. I was in the United States Navy for thirty years. I completed my service in July of 2017 as a Navy Intelligence Captain. From 2011 to 2014, I was the Director of Intelligence for the Joint Interagency Task Force West, where I was responsible

1 for the planning, manning, coordination, and execution of all Department of Defense counter-drug
2 intelligence operations in the U.S. Pacific Command Area of Responsibility. I leveraged
3 methodologies used to collect and analyze criminal drug networks, and I authored United States
4 Pacific Command's Intelligence Strategy to identify and track foreign fighters from the region
5 heading to support jihadist elements in Syria. From 2011 to 2017, I was also Secretary of the Navy
6 Council of Review Boards in Washington D.C., one of three voting members for the Department of
7 Navy's final board of appeals for personnel security matters. I was also Executive Officer, Center for
8 Naval Intelligence, from 2009 to 2011, and have served during his career in Washington, Hawaii,
9 Virginia, aboard the USS Theodore Roosevelt, Bahrain, and elsewhere.

10 6. Now I have returned to Orange County, where I graduated from high school at Dana Hills
11 High School and received my bachelors of arts from the University of California at Irvine. My
12 current position allows me to use my extensive security training to work with applicants in the
13 Department of Homeland Security.

14 I declare under penalty of perjury the foregoing is true and correct. Executed this 2nd day of
15 September, 2020, at San Juan Capistrano, California.

16
17 
HOWARD HART

September 25, 2020

Via Electronic Mail (hhart@yahoo.com)

Howard Hart
27735 Paseo Azalea
San Juan Capistrano, CA 92675

Re: Regional Training Administrator Howard Hart for San Juan Capistrano City Council

Dear Howard:

I congratulate you on your successful efforts to secure the endorsement of the Lincoln Club of Orange County, an organization closely aligned with the Republican Party of Orange County, in connection with the upcoming November election for the San Juan Capistrano City Council (District 5).

As you recall, both you and I jointly participated in the September 18, 2020 Lincoln Club of Orange County endorsement interview process at the Pacific Club in Newport Beach. I personally found your comments to be enlightening, especially with respect to your employment with the Department of Homeland Security as Regional Training Administrator and your unsolicited acknowledgement/admission that the Hatch Act of 1939 (5 U.S.C. §§ 7321-7326) was applicable to the race for San Juan Capistrano City Council.

After researching the Hatch Act in greater detail, I think it appropriate to inform you that I am a dues-paying member of the Libertarian Party of Orange County as well as a Delegate with full voting privileges of the Libertarian Party of California. It is in this spirit that commencing as of August 1, 2020, I sought the official endorsement of the Libertarian Party of Orange County, which I have since secured. In addition, the Libertarian Party of California endorsed my candidacy for the San Juan Capistrano City Council on September 12, 2020.

As a result of the Libertarian Party endorsements, I have received financial support from Libertarian affiliates as well as a commitment from the Libertarian Party to utilize party assets and receive voluntary labor support.

I have also undertaken efforts to advertise the Libertarian Party endorsement. Enclosed is a copy of a recent political campaign material distributed in San Juan Capistrano City Council District 5. Also attached are images of this very flyer deposited at your doorstep at 27735 Paseo Azalea on September 24, 2020.

In addition, attached is a "page tear" from the September 25, 2020 issue of the Capistrano Dispatch, the local newspaper in San Juan Capistrano. Please note the quarter page political advertisement touting the political endorsement from the Libertarian Party. There will be other prominent displays and uses of use of the Libertarian Party endorsements in the coming weeks.

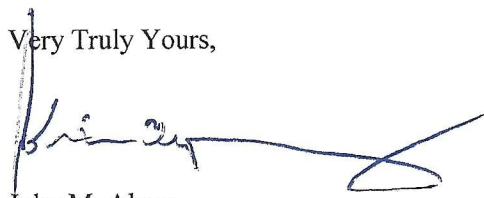
Howard Hart
September 25, 2020
Page 2 of 2

As you acknowledged on September 18, 2020, Federal employees subject to the Hatch Act are prohibited from running for office in a partisan election as such term is defined in 5 U.S.C. §7322(2) and 5 C.F.R. §734.101. If ANY candidate on the ballot chooses to run for election as a representative of a political party, the election is deemed partisan for purposes of the Hatch Act. Further, if partisanship is injected into a race, as through solicitations, statements, or advertisements, that race is also then considered partisan.

The Hatch Act permits the United States Office of Personnel Management to designate localities in which Federal employees subject to the Act can run for office as independent candidates for election to partisan political offices. The Office of Personnel Management has specifically designated a variety of locations within Virginia and Maryland, along with twelve other areas as exceptions. As I am sure you are aware, the City of San Juan Capistrano is not one of those other areas.

Given your status as an employee of the Executive Branch of the Federal Government and your participation in the partisan San Juan Capistrano City Council (District 5) election, it may be appropriate for you to consult with legal counsel regarding the legality of your candidacy. You have proclaimed to me on multiple occasions that you are a "rule follower" and it is my sincere hope that you remain true to your word. To that end, I respectfully request a formal response from you by no later than 5:00 PM, Sunday, September 27, 2020.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "John M. Alpay", with a long horizontal flourish extending to the right.

John M. Alpay

Enclosures



The Key TO CARING FOR A LOVED ONE THROUGH COVID-19

Join us for a **FREE** educational webinar by world-renowned dementia care expert, **Teepa Snow**.

Caring for your loved one with unique needs is a challenging role that requires empathy, patience and constant dedication, especially today, while we all manage through the COVID-19 pandemic.

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- » Coping with changing needs of a loved one
- » Timing is everything – when is it the right time for a change?
- » The benefits of memory care



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District 5

JOHN ALPAY

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