

No. _____

In the
Supreme Court of the United States

Raji Rab,

Petitioner,

v.

Superior Courts of Sacramento County,
Respondent;

Alex Padilla, as Secretary of State, etc., et al,

Real Parties in Interest

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

**APPENDIX TO THE PETITION
FOR A WRIT OF CERTIORARI**

VOLUME 1 OF 2

Raji Rab
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**APPENDIX TO PETITION FOR WRIT
OF CERTIORARI**

Volume 1 of 2

(Page Nos. 1a – 28f)

TABLE OF CONTENTS

1. Order of the California Supreme Court denying review, issued September 12, 2018.....	1a
2. Order of the Court of Appeals, Third Appellate District, denying the petition for writ of mandate, issued August 29, 2018	2a
3. Notice of Entry of Judgment or Order, issued August 30, 2018.....	3a
4. Order Denying Petition For Writ of Mandate, Election Contest, And All Other Claims issued August 30, 2018	4a
5. U.S. Constitution, 14 th Amendment Section 1.....	1b
6. California Elections Code § 13107.....	2b
7. California Code of Regulations § 20716 (a), (c) and (d).....	8b
8. California Elections Code § 13111.....	9b
9. California Elections Code § 13112.....	12b
10. California Elections Code § 16100.....	16b
11. California Assembly Bill 1090.....	17b

12. Equal Protection Clause under the 14 th Amendment.....	1c
13. California Constitution, Art. VI, Section13.....	1d
14. Partial Text of Davis v. Wechsler 262 U.S. 22.....	1e
15. Reporter's Transcript of Proceedings.....	1f – 28f

1a

Court of Appeal, Third Appellate District - No. C087805

S251004

IN THE SUPREME COURT OF CALIFORNIA

En Banc

RAJI RAB, Petitioner,

v.

SUPERIOR COURT OF SACRAMENTO COUNTY,
Respondent;

ALEX PADILLA, as Secretary of State, etc., et al,

Real Parties in Interest.

The petition for review and application for stay are denied.

s/ CANTIL-SAKAUYE

Chief Justice

Supreme Court
FILED

Sep 12 2018

Jorge Navarrete Clerk

Deputy

2a

IN THE
COURT OF APPEAL OF THE
STATE OF CALIFORNIA

IN AND FOR THE THIRD APPELLATE DISTRICT

RAJI RAB,
Petitioner,

v.

THE SUPREME COURT
OF SACRAMENTO COUNTY,

Respondent;

ALEX PADILLA, as Secretary of State, etc., et al.,
Real Parties in Interest

C087805
Sacramento County
No. 34201880002924

BY THE COURT:

The petition for writ of mandate with request for stay is denied.

s/ Raye
RAYE, P.J.

Court of Appeal, Third Appellate District
Andrea K. Wallin-Rohmann, Clerk
Electronically FILED on 8/29/2018 by
T.Eyster. Deputy Clerk

cc: See Mailing List

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ATTORNEY FOR (Name): Defendant, Secretary of State,
Alex Padilla

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
Sacramento
Street Address: 720 Ninth Street
City and Zip Code: Sacramento CA 95814
Branch Name: Gordon Schaber Courthouse

Plaintiff/Petitioner: Raji Rab
Defendant/Respondent: Secretary of State, et al

Case Number: 34-2018-80002924

**NOTICE OF ENTRY OF JUDGMENT
OR ORDER**

(Check one): **UNLIMITED CASE**
(Amount demanded
Exceeded \$25,000)

LIMITED CASE
(Amount demanded
Exceeded \$25,000 or less)

TO ALL PARTIES:

1. A judgment, decree, or order was entered in this action on (date): August 30, 2018
2. A copy of the judgment, decree, or order is attached to this notice.

Date: September 10, 2018

George Waters
(Type of Print Name of

s/ George Waters
(SIGNATURE)

Attorney

Party without
Without Attorney)

5a

ATTACHMENT

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MARK R. BECKINGTON
Supervising Deputy Attorney General
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Attorneys for Defendant Alex Padilla, California
Secretary of State

FILED / ENDORSED
AUG 30 2018
s/ E. Gonzalez
By E. Gonzalez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

RAJI RAB,
Plaintiff,

v.

SECRETARY OF STATE OF
CALIFORNIA; ALEX PADILLA;
DEAN C. LOGAN LOS ANGELES
COUNTY REGISTRAR-
RECORDER/COUNTY CLERK; LOS
ANGELES COUNTY BOARD OF
SUPERVISORS; MARK REED; BRAD
SHERMAN; DOES 1-100

Defendants.

Case No. 34-2018-80002924

JUDGMENT

Dept: 28

Judge: Hon Richard K. Sueyoshi

Action Filed: July 9, 2018

For the reasons set forth in the Court's Order
Denying Petition for Writ of Mandate, Election Contest,
and All Other Claims,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
that:

1. Judgment is entered in favor of Respondents/ Defendants entered in favor of Respondents/Defendants Alex Padilla, California Secretary of State; Dean Logan, Los Angeles County Registrar- Recorder/County Clerk; Los Angeles County Board of Supervisors; Mark Reed; and Brad Sherman.
2. Petitioner/Plaintiff Raji Rab shall take nothing by this action.
3. Fees and/or costs, if any, shall be sought pursuant to Cal. Civ. Proc. Code and Cal. Rules of Court.

Dated: August 30, 2018

Superior Court of California
County of Sacramento

s/ Richard K. Sueyoshi

Hon. Richard K. Sueyoshi

Judge of the Superior Court

SA2018102119

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E-mail Address (Optional): george.waters@doj.ca.gov
ATTORNEY FOR (Name): Defendant, Secretary of State,
Alex Padilla

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
Sacramento
Street Address: 720 Ninth Street
City and Zip Code: Sacramento CA 95814
Branch Name: Gordon Schaber Courthouse

Plaintiff/Petitioner: Raji Rab
Defendant/Respondent: Secretary of State, et al

Case Number: 34-2018-80002924

**NOTICE OF ENTRY OF JUDGMENT
OR ORDER**

(Check one): **UNLIMITED CASE**
(Amount demanded
Exceeded \$25,000)

LIMITED CASE
(Amount demanded
Exceeded \$25,000 or less)

TO ALL PARTIES:

1. A judgment, decree, or order was entered in this action on (date): August 30, 2018
2. A copy of the judgment, decree, or order is attached to this notice.

Date: September 10, 2018

George Waters
(Type of Print Name of

s/ George Waters
(SIGNATURE)

Attorney

Party without
Without Attorney)

10a

ATTACHMENT

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Attorneys for Defendant Alex Padilla, California
Secretary of State

FILED / ENDORSED
AUG 30 2018
s/ E. Gonzalez
By E. Gonzalez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

RAJI RAB,
Plaintiff,

v.

SECRETARY OF STATE OF
CALIFORNIA; ALEX PADILLA;
DEAN C. LOGAN LOS ANGELES
COUNTY REGISTRAR-
RECORDER/COUNTY CLERK; LOS
ANGELES COUNTY BOARD OF
SUPERVISORS; MARK REED; BRAD
SHERMAN; DOES 1-100

Defendants.

Case No. 34-2018-80002924

**ORDER DENYING PETITION FOR WRIT OF
MANDATE, ELECTION CONTEST, AND ALL OTHER
CLAIMS**

Dept: 28
Judge: Hon Richard K. Sueyoshi
Action Filed: July 9, 2018

The petition for writ of mandate, election contest, and other claims came on for hearing on August 14, 2018 at 1:30 p.m. Petitioner Raji Rab appeared in pro per. George Waters, Esq., appeared on behalf of Respondent California Secretary of State. Gary Winuk, Esq., appeared on behalf of Respondent Brad Sherman. Gina Eachus, Esq., appeared on behalf of Respondents Los Angeles County Board of Supervisors and Dean Logan, Los Angeles County Registrar-Recorder/County Clerk. Mark Reed appeared in pro per.

Having reviewed the arguments and papers submitted by the parties, and the cause having been argued and submitted for decision,

IT IS ORDERED that:

1. The amended petition for writ of mandamus, election contest, and other claims are DENIED.
2. The Court's RULING AFTER HEARING ON PETITION FOR WRIT OF MANDATE, attached as Exhibit A, is incorporated in this order.

Dated: August 30, 2018

Superior Court of California
County of Sacramento

s/ Richard K. Sueyoshi
Hon. Richard K. Sueyoshi
Judge of the Superior Court

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME AUGUST 15, 2018
JUDGE HON. RICHARD K. SUEYOSHI

DEPT. NO 28
CLERK E. GONZALEZ

CASE No.: 34-2018-80002924

RAJI RAB,

Petitioner,

v.

SECRETARY OF STATE, ALEX PADILLA,
CALIFORNIA SECRETARY OF STATE; DEAN C.
LOGAN, LOGS ANGELES COUNTY REGISTRAR-
RECORDER/COUNTY CLERK; BOARD OF
SUPERVISORS; BRAD SHERMAN; MARK REED,

Respondents.

Nature of Proceedings: RULING AFTER HEARING ON
 PETITION FOR WRIT OF
 MANDATE

Pursuant to the Court's July 31, 2018 order which, by stipulation, shortened time for the merits hearing and briefing of this matter, the parties appeared at the hearing scheduled for August 14, 2018 at 1:30 p.m. Petitioner Raji Rab appeared in pro per. George Waters, Esq., appeared on behalf of Respondent Secretary of State. Gary Winuk, Esq., appeared on behalf of Respondent Brad Sherman. Gina Eachus, Esq., appeared on behalf of Respondents Los Angeles County Board of Supervisors and Registrar Dean Logan. Mark Reed appeared in pro per. The parties presented oral argument after which the Court took the matter under submission. The Court now issues its ruling on submitted matter.

The Court notes that California Rules of Court rule 3.1113, subdivision (a), a party must "serve and file a supporting memorandum. The court may construe the absence of a memorandum as an admission that the motion or special demurrer is not meritorious and cause for its denial..." Here, Petitioner filed a memorandum in connection with his amended verified petition on July 27, 2018. Petitioner then filed a "Supplemental Memorandum of Points and Authorities" on August 3, 2018. Neither of these memoranda addresses the entirety of issues raised in Petitioner's amended petition.

Petitioner is contesting the results of the primary election that occurred on June 5, 2018. Petitioner, who finished third in the race for the 30th Congressional District, claims the results of the subject race are invalid such that he should be placed as a candidate on the ballot for the upcoming November 6, 2018 general election.

Pursuant to Elections Code section 16100, any elector may contest "any election held therein, for any of the following causes:

- (a) That the precinct board or any member thereof was guilty of misconduct.
- (b) That the person who has been declared elected to an office was not, at the time of the election, eligible to that office.
- (c) That the defendant has given to any elector or member of a precinct board any bribe or reward, or has offered any bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise defined in Division 18 (commencing with Section 18000).
- (d) That illegal votes were cast.
- (e) That eligible voters who attempted to Vote in accordance with the laws of the state were denied their right to vote,
- (f) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the

result of be election as to any person who has been declared elected.

(g) That there was an error in the vote—counting programs or summation of ballot counts.”

Pursuant to Elections Code section 16101, a candidate at a primary election may contest the right of another candidate to nomination to the same office by filing an affidavit alleging any of the following grounds, that:

- (a) The defendant is not eligible to the office in dispute.
- (b) The defendant has committed any offense against the elective franchise defined in Division 18 (commencing with Section 18000).
- (c) A sufficient number of votes were illegal, fraudulent, forged, or otherwise improper, and that had those votes not been counted, the defendant would not have received as many votes as the contestant.
- (d) A sufficient number of eligible voters who attempted to vote in accordance with the laws of the state were denied their right to vote, and that had those voters been permitted to vote, the defendant would not have received as many votes as the contestant.
- (e) Due to mistake, error, or misconduct the votes in any precinct were so incorrectly counted as to change the result.”

In election contests, it is the duty of the court to validate the election if possible. "That is to say; the election must be held valid unless plainly illegal." (Wilks v. Mouton (1986) 42 Cal.3d 400, 404.) The party challenging the election results (in this case, Petitioner) has the "burden of proving the defect...by clear and convincing evidence." (Gooch v. Hendrix (1993) 5 Cal.4th 266, 279.) Clear and convincing evidence "requires a finding of high probability...the evidence must be 'so clear as to leave no substantial doubt'; 'sufficiently strong to command the unhesitating assent of every reasonable mind.'" (In re Angelia (1981) 28 Cal.3d 908, 918 (citations omitted; emphasis added) (superseded by statute on unrelated grounds).) To be clear, this standard of proof of higher and thereby requires Petitioner to offer stronger proof than the minimum proof required to meet the preponderance of the evidence standard which is the standard applied in common civil cases. If Petitioner fails to satisfy his burden of proof of clear and convincing evidence, Petitioner cannot obtain relief as a matter of law. In this case, Petitioner makes numerous allegations in his amended petition including, but not limited to: negligence in the "recount procedure;" a failure to certify the "MTS" (Microcomputer Tally System); failure to inform Petitioner that his ballot punch number on the primary election ballot would change from the sample ballot sent to him; names missing from the voter roster; and that Respondent Reed fraudulently and improperly used the ballot designation of "Realtor" despite not being a Realtor and despite the fact that it is a trademark in violation of

2 CCR § 20716, subdivision (d). The Court is aware that Petitioner makes a number of other allegations which are set forth in his amended petition.

The majority of Petitioner's memoranda, however, focus on his contention that Mark Reed fraudulently used the ballot designation of "Realtor" for the primary election. Petitioner contends that Respondent Reed is not a Realtor, and was not a Realtor at the time he filed his application for ballot designation before the primary election.

As evident from the hearing on this matter, Petitioner believes that Reed's ballot designation for the primary election was improper and that Petitioner is entitled to challenge that designation now, well after the primary election has concluded. As apparent from the hearing, Petitioner argues that if he demonstrates a violation of election law (whether that violation is "big" or "small"), he is entitled to his requested relief and it is irrelevant what the law equally requires of him regarding the applicable procedure for his contest or what the law equally requires of him in proving the other prerequisites to relief. This is not so. As the Court attempted to explain to Petitioner at the hearing, including through the Court's attempted questions, there are multiple laws which coexist and equally apply to the resolution of Petitioner's election contest. In order to succeed in an election contest such as this one, Petitioner must follow all of the applicable laws, and not only argue that certain election code provisions were violated. As it applies to his contest against Reed regarding

his primary ballot designation, Petitioner was required under law to bring a timely election contest -- meaning one that is not too late according to the law. Petitioner has clearly failed to comply with this threshold requirement. That is, Petitioner did not contest Respondent Reed's primary election ballot designation until after the primary election had concluded. Elections Code section 13314(a) (1) specifically provides that "[a]n elector may seem a writ of mandate alleging that an error or omission has occurred, or is about to occur, in placing of a name on, or in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter, or that any neglect of duty has occurred or is about to occur." Thus, if Petitioner believed that Reed's ballot designation was improper, Petitioner had a remedy available to him prior to the primary election. Most importantly, the law clearly states that "one *cannot* pass up a preelection remedy in favor of a postelection challenge." (*McKinney v. Superior Court* (2004) 124 Cal.App.4th 951, 957 (emphasis added).) Yet that is exactly what Petitioner is attempting to do. Whether Petitioner did not know of Reed's ballot designation and/or did not check Reed's publicly-filed ballot designation paperwork is inapposite and does not somehow change the applicable law. There is no evidence that Petitioner filed a timely contest to Reed's primary election ballot designation prior to the primary election, but instead, only evidence to the contrary. Additionally, Petitioner argued at the hearing that he had no responsibility to raise any objection to Reed's ballot designation request prior to the primary election. Instead, Petitioner argued that the Secretary of State was responsible to investigate and reject Reed's requested

designation. This argument is unpersuasive. First, it does nothing to absolve Petitioner from the fact that he had available to him a preelection remedy if he disagreed with Reed's ballot designation but failed to pursue it prior to the primary election. This fact alone renders the argument without merit. Second, Petitioner presents no legal authority in support of the contention that the Secretary of State has a duty to investigate the propriety of individual ballot designations beyond a review of the paperwork provided by the candidate to the Secretary of State's office.

Accordingly, the Court finds that Petitioner's challenge to Respondent Reed's use of "Realtor" in connection with the June 5, 2018 primary election is untimely. As a matter of law, Petitioner cannot obtain relief on an untimely election contest.

Petitioner has not challenged Respondent Reed's use of "Realtor" as part of the general election. His requested remedy is that the Court "GRANT REMEDY, BY HOWEVER MEANS IT FEELS NECESSARY TO PUT [Petitioner] ON THE BALLOT FOR THE UPCOMING NOV. 6TH, 2018 FOR THE 30TH CONGRESSIONAL DISTRICT." (Amend. Pet., p. 34) (emphasis in original.) As the petition does not challenge Respondent Reed's ballot designation for purposes of the upcoming general election, the Court makes no finding as to the propriety of "Realtor" for Respondent Reed's ballot designation in the November 6, 2018 election.

With regard to the remainder of Petitioner's claims, the Court finds he had failed to prove by the applicable legal standard of *clear and convincing evidence* any of the circumstances identified by Elections Code section 16100, which would serve as a basis for a valid election contest. While Petitioner makes many allegations as to various improprieties, not only has he failed to satisfy adequately his burden in proving these alleged violations, but even if he had, he has not established all of the prerequisites for entitlement to relief in an elections contest as required by law and as raised in the oppositions filed by Respondents Secretary of State and Los Angeles County Board of Supervisors, Petitioner has failed to satisfy by clear and convincing evidence any of his claims against Respondent Secretary of State, Respondent Logan, Respondent Los Angeles County Registrar-Recorder/County Clerk, and Respondent Los Angeles County Board of Supervisors. With regard to Respondents Reed and Sherman, the Court finds Petitioner has failed to prove by clear and convincing evidence any of the circumstances identified by Elections Code section 16101, which would serve as a basis for a valid candidate challenge.

The petition for writ of mandate is DENIED.

||||||||||||||||||||||||||||||||||||||||||||||||||||

Counsel for Respondents shall determine which party will prepare the following documents: an order incorporating this ruling as an exhibit to the order, and a judgment; non- preparing counsel (including Petitioner)

23a

shall receive a copy for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit it to the Court for signature and entry in accordance with Rule of Court 3.1312(b).