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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

JENNIFER BEALL, an individual, and  
THOMAS RUSSELL, an individual,

Petitioners,

vs.

NEAL KELLEY, REGISTRAR OF VOTERS OF  
THE COUNTY OF ORANGE; THE BOARD OF  
SUPERVISORS OF THE COUNTY OF  
ORANGE and DOES 1 to 10, inclusive,

Respondent.

MARLENE DRAPER, SHEILA BENECKE and  
DOES 1 to 10, inclusive,

Real Parties in Interest.

Case No.: 30-2008-00105653  
Assigned to Judge Steven L. Perk  
Dept.: C32

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PETITION FOR ALTERNATIVE  
AND PEREMPTORY WRIT OF  
MANDATE

DATE: April 28, 2008  
TIME: 8:30 a.m.  
DEPT.: C-32

**Petition Filed:** April 21, 2008

PETITIONERS, Jennifer Beall and Thomas Russell, through undersigned counsel, submit  
this Memorandum of Points and Authorities in support of their Petition for Alternative and  
Peremptory Writ of Mandate.

1 **1. BACKGROUND**

2 Real Parties in Interest, Marlene Draper (“Draper”) and Sheila Benecke (“Benecke”) are  
3 currently members of the Board of Trustees for the Capistrano Unified School District (“CUSD”)  
4 that has its headquarters in San Juan Capistrano, CA. Pursuant to *Elections Code*<sup>1</sup> §§ 11000, et seq.  
5 separate petitions to recall Draper and Benecke were submitted to Neal Kelley, the Orange County  
6 Registrar of Voters (“Registrar”), on August 20, 2007. In the recall petition for each, the reasons for  
7 recalling Draper and Benecke were stated. Draper and Benecke each availed themselves of the right  
8 to file an answer of not more than 200 words to the reasons stated for their proposed recall  
9 (“Answer”). (§ 11023.) On May 10, 2008, the Draper and Benecke recall petitions were certified  
10 by the Registrar. Thereafter, the CUSD Board of Trustees set a Special Recall Election for June 24,  
11 2008 (“Recall Election”).

12 Pursuant to § 13307(a)(1), Draper and Benecke availed themselves of the option to submit  
13 to the Registrar a candidate’s statement, of not more than 200 words, expressing the education and  
14 qualifications of each. On April 11, 2008, Draper and Benecke each filed a candidate’s statement  
15 with the Registrar.  
16

17 **2. LEGAL AUTHORITY FOR THE PETITION FOR ALTERNATIVE AND**  
18 **PEREMPTORY WRIT OF MANDATE**

19 The authority for the Petition for Alternative and Peremptory Writ of Mandate at issue is set  
20 forth in § 13313 as follows:

21 (a) The elections official shall make a copy of the material referred  
22 to in § 13307 available for public examination in the elections official’s office  
23 for a period of 10 calendar days immediately following the filing deadline for  
24 submission of those documents. Any person may obtain a copy of the  
25

26 \_\_\_\_\_  
27 <sup>1</sup> All future references are to the *Elections Code* unless otherwise indicated.

1 candidate's statements from the elections official for use outside of the elections  
2 official's office. . .

3 (b)(1) During the 10-calendar-day public examination period provided  
4 by this section, any voter of the jurisdiction in which the election is being held,  
5 or the elections official, himself or herself, may seek a writ of mandate or an  
6 injunction requiring any or all of the material in the candidates statement to be  
7 amended or deleted. The writ of mandate or injunction request shall be filed no  
8 later than the end of the 10-calendar-day public examination period.

9 (2) A peremptory writ of mandate or an injunction shall issue only  
10 upon clear and convincing proof that the material in question is false,  
11 misleading, or inconsistent with the requirements of this chapter, and that  
12 issuance of the writ or injunction will not substantially interfere with the  
13 printing or distribution of official election materials as provided by law.

14 (3) The elections official shall be named as respondent and the  
15 candidate who authored the material in question shall be named as the real party  
16 in interest.

17  
18 **3. THE PURPOSE OF A CANDIDATE'S STATEMENT**

19 Unlike an answer to the reasons stated for the proposed recall, a candidate's statement is  
20 considered a nonpublic forum. It is settled that in such a forum "the State may reserve the forum for  
21 its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable  
22 and not an effort to suppress expression merely because public officials oppose the speaker's view."  
23 (citation omitted.) "Implicit in the concept of the nonpublic forum is the right to make distinctions  
24 in access on the basis of subject matter and speaker identity." (citation omitted.) Specifically, "a  
25 speaker may be excluded from a nonpublic forum if he wishes to address a topic not encompassed  
26 within the purpose of the forum, or if he is not a member of the class of speakers for whose special  
27

1 benefit the forum was created." (citation omitted.) "These distinctions may be impermissible in a  
2 public forum but are inherent and inescapable in the process of limiting a nonpublic forum to  
3 activities compatible with the intended purpose of the property." (citation omitted.) The primary  
4 purpose of a candidate's statement is to give voters at least a minimum amount - 200 words worth  
5 of basic information about the background and qualifications of little known candidates. The  
6 statement should not be used by the candidate as a partisan campaign device to attack their  
7 opponents. (*Clark v. Burleigh* (1999) 4 Cal.4th 474.)  
8

9 **4. THE LEGAL BASES FOR REMOVING/STRIKING THE CONTESTED MATERIAL**  
10 **IN DRAPER AND BENECKE'S CANDIDATE STATEMENTS**

11 The legal bases for removing/striking the contested material from the candidate statements of  
12 Draper and Benecke are straightforward and consist of:  
13

- 14 • The material in the candidate's statement must be limited to the candidate's  
15 education and qualifications. (§13307(a)(1))
- 16 • The material in the candidate's statement cannot make reference, in any way, to  
17 the other candidate's qualifications, character or activities. (§13308)
- 18 • The material in the candidate's statement cannot be false, misleading or  
19 inconsistent with the requirements contained in this chapter [*Elections Code*]  
20  
21 (§13313(b)(2))  
22

23 **5. IMPROPER MATERIAL IN DRAPER'S CANDIDATE STATEMENT**

24 The following materials in Draper's candidate's statement (which are single space and in bold)  
25 are in violation of various provisions of the *Elections Code* and should be stricken for the reasons  
26 noted.  
27

1                   **The recall is lead by people who did not like decisions made**  
2                   **by your school board.**

3           On its face, this material violates § 13307(1) in that it does not pertain at all to Draper’s  
4 education or qualifications. The material also violates § 13308 because it improperly makes  
5 reference to the qualification, character and/or activities of the candidates opposing Draper and  
6 Benecke in the Recall Election. Likewise, the material is also false and misleading in violation of  
7 §13313(b)(2) because it was made with the obvious intent to mislead voters into believing that  
8 every candidate opposing Draper and Benecke in the Recall Election was a leader in the highly  
9 controversial recall campaign.  
10

11                   **They have cost CUSD and taxpayers millions of dollars.**  
12                   **They were not happy with the location of SJH High School**  
13                   **or the Boundaries, so they sued the school district.**

14           This material, on its face, violates § 13307(a)(1) because it does not pertain at all to Draper’s  
15 education or qualifications. The material also violates §13308 because it improperly makes  
16 reference to the qualifications, character and/or activities of the candidates who are seeking the  
17 seats held by Draper and Benecke. Further, this statement is false and misleading in violation of  
18 §13313(b)(2) for multiple reasons. (1) Draper fails to identify or define who “They” are, with the  
19 obvious intent to mislead the voters into believing that the candidates seeking the seats held by  
20 Draper and Benecke are in fact the “They.” None of the candidates opposing Draper or Benecke  
21 in the Recall Election have sued CUSD over SJH High School (properly known as San Juan Hills  
22 High School) or the boundaries. (2) The recall campaign has been lead by a group of concerned  
23 parents known as the CUSD Recall Committee. The CUSD Recall Committee has never sued  
24 CUSD over SJH High School, the boundaries or any other issue. In fact, CUSD Recall  
25 Committee has issued numerous public statements over the last several years confirming that it  
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1 did not challenge school boundary decisions made by Draper and Benecke. The material in  
2 question is nothing more than an attack against the opponents of Draper and Benecke with the  
3 obvious intent of turning the voters against the opponents. (3) The claim that the “They” have  
4 “cost CUSD and tax payers millions of dollars” is patently unfounded and untrue, and also  
5 designed to turn the voters against the opponents of Draper and Benecke in the upcoming Recall  
6 Election.  
7

8 **They even sued the Registrar of Voters after their first failed**  
9 **recall effort. Now they are costing the school district nearly**  
10 **\$800,000 for a special election when they could have simply**  
11 **waited for voters to choose school trustees in the November**  
12 **election.**

12 This material, on its face, violates §13307(a)(1) because it does not pertain at all to Draper’s  
13 education or qualifications. This material also violates §13308 because it improperly makes  
14 reference to the qualifications, character and/or activities of Draper’s political opponents. The  
15 material is also false and misleading in violation of §13313(b)(2) for multiple reasons. (1) Draper  
16 fails to identify or define who “They” are -- with the obvious intent to mislead the voters into  
17 believing that the candidates Draper and Benecke are running against are in fact the “They.”  
18 None of the candidates opposing Draper or Benecke in the Recall Election have sued the  
19 Registrar. (2) The CUSD Recall Committee has never sued the Registrar – a fact the Registrar has  
20 acknowledged and the press has confirmed on numerous occasions. (3) When the voters of CUSD  
21 signed more than 33,000 petitions calling for the recall and removal of Draper and Benecke from  
22 office, the voters chose not to wait for next November’s election, and the voters exercised their  
23 constitutional right to demand an early recall election. Whatever costs may be incurred in  
24 connection with holding a recall election are simply the costs related to protecting the  
25 constitutional rights of the voters who demanded the recall election. As a result, it is clear that  
26  
27

1 neither the candidates running in the Recall Election nor the CUSD Recall Committee are  
2 “costing the school district” a penny, let alone \$800,000. Draper’s attacks are inflammatory and  
3 bombastic with the intended purpose of turning voters against the other candidates running in the  
4 Recall Election. Draper already exercised her legal right to respond to the reasons stated for her  
5 proposed recall when she filed her Answer – it is impermissible for Draper to continue such  
6 arguments in her candidate’s statement.  
7

8 **Issues before the school board are challenging and difficult,**  
9 **but I stand behind my decisions, all of which were made on**  
10 **behalf of children, teachers and the community.**

11 This material violates §13307(a)(1) because it does not pertain at all to Draper’s education  
12 or qualifications. Instead, this material is nothing more than an impermissible continuation of  
13 Draper’s Answer to the reasons stated for her proposed recall. The material is also false and  
14 misleading in violation of §13313(b)(2) for multiple reasons. Numerous decisions and actions  
15 taken by Draper while in office demonstrate that she was not acting “on behalf” of the best  
16 interests of her constituents at all times, including but not limited to, the following examples. (1)  
17 A 1991 Orange County Grand Jury Report criticized political corruption at CUSD, and rebuked  
18 Draper and the CUSD leadership for an improper relationship with a political action committee  
19 led by Benecke. (2) CUSD officials sent one or more “moles” into a private home to spy on  
20 Draper’s constituents. The “intelligence” gathered by the moles was then set forth in a school  
21 district memo that CUSD’s former superintendent, James Fleming, distributed to Draper and  
22 Benecke, among others, which they illegally discussed in closed session and then implemented  
23 strategies to thwart their political enemies. (3) Draper and Benecke had repeatedly denied that  
24 CUSD personnel used scarce district resources to create unlawful lists of their political “enemies”  
25 -- including children. The existence of those enemies lists has now been confirmed. CUSD  
26  
27

1 officials have admitted under oath to the Orange County Grand Jury that CUSD personnel  
2 improperly used school district resources and confidential school district database information to  
3 create these lists – lists that were provided to Draper and Benecke. As a result of the creation of  
4 these lists of Draper’s and Benecke’s political enemies, CUSD’s former superintendent, James  
5 Fleming, has been indicted for multiple felonies and CUSD is facing several lawsuits. (4) In 2007,  
6 the Orange County District Attorney published an investigative report demonstrating that Draper  
7 and Benecke had for years systematically violated the Brown Act by engaging in illegal secret  
8 meetings – and Draper accepted these findings, admitted she had committed all of the violations  
9 described therein and promised not to violated the Brown Act again. (5) Just weeks after  
10 promising not to violate the Brown Act again, Draper and Benecke did so by approving several  
11 multi-million dollar construction projects without providing prior notice to the public (as  
12 confirmed in the Orange County District Attorney’s letter to CUSD Superintendent Carter dated  
13 March 13, 2008). (6) Draper also repeatedly misled the public regarding the sources of funding  
14 for the massive new \$52,000,000 CUSD administration building, and the alleged savings to be  
15 realized from its construction.  
16  
17

18 **For example, owning the new Administration building rather**  
19 **than renting saves over \$ 1 million annually, which goes**  
20 **directly towards the education of children. It was a sound and**  
21 **good business decision.**

22 This material violates §13307(a)(1) because it does not pertain at all to Draper’s education  
23 or qualifications. The material is also false and misleading in violation of §13313(b)(2) for  
24 multiple reasons. (1) The construction and operation of the massive \$52,000,000 administration  
25 office building has not saved CUSD a single penny – let alone “over \$1 million annually.” (2)  
26 Prior to constructing the new \$52,000,000 administration building, CUSD paid approximately  
27

1 \$550,000 per year in rent. CUSD financed the construction of the massive new administration  
2 building and now is burdened with an annual debt service payment of approximately \$1.2 million  
3 per year, plus increased costs for the maintenance and upkeep of the newer, much bigger  
4 administration building - resulting in a net increased annual cost to CUSD (rather than any  
5 alleged savings). (3) Since there are no savings, there is no additional money to go “directly  
6 towards the education of children.” (4) Approximately one third of the building remains unused  
7 and unoccupied demonstrating that CUSD spent scarce district resources constructing a building  
8 that was much larger than needed. For all of these reasons, it is obvious that construction of the  
9 new \$52,000,000 administration building was anything but a “sound and good business decision.”

10  
11 Draper already exercised her legal right to respond to the reasons stated for her proposed recall  
12 when she filed her Answer – it is impermissible for Draper to continue such arguments in her  
13 candidate’s statement.  
14

15 **Vote no on the recall. Make an informed decision in**  
16 **November for a new school trustee. Fight the school yard**  
17 **bullies who want to control our schools for their own special**  
18 **interests.**

19 This material violates §13307(a)(1) because it does not pertain at all to Draper’s education  
20 or qualifications. This material also violates §13308 because it improperly makes reference to the  
21 qualifications, character and/or activities of Draper’s political opponents. For example, Draper  
22 labels offensively her political opponents as “school yard bullies.” Similarly, by suggesting that a  
23 voter must vote “no on the recall” in order to “make an informed decision” – Draper is stating that  
24 the other candidates running in the Recall Election (and those voters who support them and intend  
25 to vote for them) are uninformed. The material is also false and misleading in violation of  
26 §13313(b)(2). The term “school yard bullies” is not defined or identified, with the obvious intent  
27 to mislead the voters into believing that the other candidates running in the Recall Election are in  
28

1 fact the “school yard bullies.” The claims in the material are inflammatory and bombastic with  
2 the intended purpose of turning the voters against the candidates facing Draper and Benecke, and  
3 constitute impermissible attacks on those candidates. Draper already exercised her legal right to  
4 respond to the reasons stated for her proposed recall when she filed her Answer – it is  
5 impermissible for Draper to continue such arguments in her candidate’s statement.  
6

7 **Your schools and our children deserve more.**

8 This material violates §13307(a)(1) because it does not pertain at all to Draper’s education  
9 and/or qualifications. This material also violates §13308 because it improperly makes reference to  
10 the qualifications, character and/or activities of Draper’s political opponents by suggesting that  
11 the Recall election voters demanded is bad for the schools and children in CUSD. The material  
12 also violates §13313(b)(2) because it is false and misleading in that Draper implies she has  
13 children attending school in CUSD when that clearly is not true. The material also violates  
14 §13308 because it constitutes another attack on the candidates facing Draper and Benecke because  
15 Draper is implying the other candidates could not be a worthwhile trustee, deserving of the  
16 public’s vote and confidence. Draper already exercised her legal right to respond to the reasons  
17 stated for her proposed recall when she filed her Answer – it is impermissible for Draper to  
18 continue such arguments in her candidate’s statement.  
19  
20

21 **6. IMPROPER MATERIAL IN BENECKE’S CANDIDATE STATEMENT**

22 The following materials in Benecke’s candidate’s statement (which are single space and in  
23 bold) are in violation of various provisions of the *Elections Code* and should be stricken for the  
24 reasons noted.  
25

26 **It’s time to put the focus back on our children and leave political agendas behind.**  
27

1 This material violates §13307(a)(1) because it does not pertain at all to Benecke’s education  
2 or qualifications. This material also violates §13308 because it improperly makes reference to the  
3 qualifications, character and/or activities of Benecke’s political opponents. The material also  
4 violates §13313(b)(2) because it is false and misleading in that Benecke implies the candidates  
5 facing her have an improper “focus” and an undesirable and insidious political agenda, and thus  
6 constitute an attack on the candidates in violation of §13308. Benecke already exercised her  
7 legal right to respond to the reasons stated for her proposed recall when she filed her Answer – it  
8 is impermissible for Benecke to continue such arguments in her candidate’s statement.  
9

10 **Don’t be fooled. Recall activists accepted large donations**  
11 **from outside interest groups in 2006 furthering their political**  
12 **agenda by electing candidates who never had children in our**  
13 **schools.**

14 This material violates §13307(a)(1) because it does not pertain at all to Benecke’s education  
15 or qualifications. This material also violates §13308 because it improperly makes reference to  
16 the qualifications, character and/or activities of Benecke’s political opponents; and §13313(b)(2)  
17 because Benecke is asserting that the candidates running against her and Draper are controlled by  
18 recall activists, who elected candidates who never had children in CUSD schools. These  
19 assertions are patently false and misleading. The public elects candidates, not  
20 undefined/unidentified recall activists, unless Benecke is making the astonishing claim that all  
21 members of the voting public are recall activists. Likewise, whether or not any particular  
22 candidate has or ever had children attend school in CUSD is entirely irrelevant since it is not a  
23 required qualification for a CUSD trustee. It also is irrelevant who donated money to school board  
24 candidates in the 2006 general election, or to imply that recall supporters, whoever they maybe,  
25 availed themselves of a constitutionally prescribed process, had a special political agenda. It is  
26 obvious these unfounded assertions were made to create ill will against the candidates seeking the  
27

1 seats held by Benecke and Draper. Benecke already exercised her legal right to respond to  
2 reasons stated for her proposed recall when she filed her Answer – it is impermissible for Benecke  
3 to continue such arguments in her candidate’s statement.  
4

5 **As a parent, teacher, community leader and school board**  
6 **member, I base my decision on what is best for students.**

7 This material is also false and misleading in violation of §13313(b)(2) for multiple reasons.  
8 Numerous decisions and actions taken by Benecke while in office demonstrate that she was not  
9 basing her decisions “on what is best for students,” including, but not limited to the following  
10 examples. (1) A 1991 Orange County Grand Jury Report criticized political corruption at CUSD  
11 and rebuked the CUSD leadership for an improper relationship with a political action committee  
12 led by Benecke. (2) CUSD officials sent one or more “moles” into a private home to spy on  
13 Benecke’s constituents. The “intelligence” gathered by the moles was then set forth in a school  
14 district memo that CUSD’s former superintendent, James Fleming, distributed to Benecke and  
15 Draper, among others, which they illegally discussed in closed session and then implemented  
16 strategies to thwart their political enemies. (3) Benecke and Draper had repeatedly denied that  
17 school district personnel used scarce district resources to create unlawful lists of their political  
18 “enemies” -- including children. The existence of those enemies lists has now been confirmed.  
19 CUSD officials have admitted under oath to the Orange County Grand Jury that CUSD personnel  
20 improperly used school district resources and confidential school district database information to  
21 create these lists – lists that were provided to Benecke and Draper. As a result of the creation of  
22 these lists of Benecke and Draper’s political enemies, CUSD’s former superintendent, James  
23 Fleming, has been indicted for multiple felonies and CUSD is facing several lawsuits. (4) In 2007,  
24 the Orange County District Attorney published an investigative report demonstrating that Benecke  
25 and Draper had for years systematically violated the Brown Act by engaging in illegal secret  
26  
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1 meetings – and Benecke accepted these findings, admitted she had committed all of the violations  
2 described therein and promised not to violated the Brown Act again. (5) Just weeks after  
3 promising not to violate the Brown Act again, Benecke and Draper did so by approving several  
4 multi-million dollar construction projects without providing prior notice to the public (as  
5 confirmed in the Orange County District Attorney’s letter to CUSD Superintendent Carter dated  
6 March 13, 2008). (6) Benecke also repeatedly misled the public regarding the sources of funding  
7 for the massive new \$52,000,000 CUSD administration building, and the alleged savings to be  
8 realized from its construction. Benecke already exercised her legal right to respond to the reasons  
9 stated for her proposed recall when she filed her Answer – it is impermissible for Benecke to  
10 continue such arguments in her candidate’s statement.  
11

12  
13 **CUSD student achievement soared to the highest state ranking.**

14 This material violates *§13313(b)(2)* because it is false and misleading in several respects. (1)  
15 CUSD student achievement is not the highest in the County of Orange – let alone the entire State  
16 of California. By virtually every measure (e.g. SAT scores, high school graduation rates, number  
17 of students accepted into four-year colleges and universities, numbers of National Blue Ribbon  
18 Schools and California Distinguished Schools, etc.) there are numerous school districts ranked  
19 higher than CUSD. (2) Benecke fails to define what she means by “highest state ranking.” This  
20 type of general claim is so vague and nebulous it is completely misleading.  
21

22 **41 California Distinguished School winners.**

23 The material violates *§13307(a)(1)* because it does not pertain to Benecke’s education or  
24 qualifications. This material also violates *§13313(b)(2)* because it is false and misleading for  
25 several reasons. (1) If a school is designated as a “California Distinguished School” that award  
26 has a term of just four years. Upon expiration of the four-year term, the school is no longer  
27

1 considered a California Distinguished School (unless it has reapplied and received the award  
2 again). In CUSD there currently are only 12 California Distinguished Schools. (2) This statement  
3 is contradicted by the statements made in Benecke’s Answer and Draper’s Answer to the reasons  
4 stated for their proposed recall.  
5

6 **11 National Blue Ribbon School winners.**

7 The material violates §13307(a)(1) because it does not pertain to Benecke’s education or  
8 qualifications. The material also violates §13313(b)(2) because it is false and misleading.  
9 Benecke implies that she was responsible for the “National Blue Ribbon School winners” when in  
10 fact she had nothing to do with the schools that won this award.  
11

12 **Today, California school districts face a serious state budget**  
13 **crisis. We need honest school board members with proven**  
14 **leadership who put children first. I bring expertise and integrity**  
15 **to the job.**

16 This material violates §13308 because it improperly makes reference to the qualifications,  
17 character and/or activities of the candidates seeking the seats held by Benecke and Draper because  
18 Benecke is implying that those candidates are not honest, lack leadership, expertise and integrity,  
19 and will not “put children first.” This statement is also false and misleading in violation of  
20 §13313(b)(2) for multiple reasons. Numerous decisions and actions taken by Benecke while in  
21 office demonstrate that she lacks expertise and integrity, has not been honest, has not  
22 demonstrated proven leadership or “put children first,” including but not limited to, the following  
23 examples. (1) A 1991 Orange County Grand Jury Report criticized political corruption at CUSD  
24 and rebuked the CUSD leadership for an improper relationship with a political action committee  
25 led by Benecke. (2) CUSD officials sent one or more “moles” into a private home to spy on  
26 Benecke’s constituents. The “intelligence” gathered by the moles was then set forth in a school  
27

1 district memo that CUSD’s former superintendent, James Fleming, distributed to Benecke and  
2 Draper, among others, which they illegally discussed in closed session and then implemented  
3 strategies to thwart their political enemies. (3) Benecke and Draper had repeatedly denied that  
4 CUSD personnel used scarce district resources to create unlawful lists of their political “enemies”  
5 -- including children. The existence of those enemies lists has now been confirmed. CUSD  
6 officials have admitted under oath to the Orange County Grand Jury that CUSD personnel  
7 improperly used school district resources and confidential school district database information to  
8 create these lists – lists that were provided to Benecke and Draper. As a result of the creation of  
9 these lists of Benecke and Draper’s political enemies, CUSD’s former superintendent, James  
10 Fleming, has been indicted for multiple felonies and CUSD is facing several lawsuits. (4) In 2007  
11 the Orange County District Attorney published an investigative report demonstrating that Benecke  
12 and Draper had that for years systematically violated the Brown Act by engaging in illegal secret  
13 meetings – and Benecke accepted these findings, admitted she had committed all of the violations  
14 described therein and promised not to violated the Brown Act again. (5) Just weeks after  
15 promising not to violate the Brown Act again, Benecke and Draper did so by approving several  
16 multi-million dollar construction projects without providing prior notice to the public (as  
17 confirmed in the Orange County District Attorney’s letter to CUSD Superintendent Carter dated  
18 March 13, 2008). (6) Benecke also repeatedly misled the public regarding the sources of funding  
19 for the massive new \$52,000,000 CUSD administration building, and the alleged savings to be  
20 realized from its construction. Benecke already exercised her legal right to respond to the  
21 allegations made against her in the Grounds for Recall Against Benecke when she filed her  
22 Answer – it is impermissible for Benecke to continue such arguments in her candidate statement.  
23  
24  
25

26 **Vote “No” on the recall.**  
27

1 This material violates §13307(a)(1) because it does not pertain to Benecke’s education or  
2 qualifications. The material is also a covert attack on her opponents, the voters and the entire  
3 recall process, a constitutionally protected right subscribed to by 33,000 voters, in violation of  
4 §13308. Benecke already exercised her legal right to respond to the reasons stated for her  
5 proposed recall when she filed her Answer – it is impermissible for Benecke to continue such  
6 arguments in her candidate’s statement.  
7

8 **7. CONCLUSION**

9 Based on the facts, reasons and documents submitted in support of the Petition for Alternative  
10 and Peremptory Writ of Mandate, the requested writ should be issued directing the Registrar to  
11 strike/remove the contested material in the candidate’s statements of Draper and Benecke, and  
12 instructing the Registrar not to include the removed/stricken material from the candidate’s  
13 statements of Draper and Benecke in the ballot and voter pamphlet for the Recall Election.  
14 Additionally, Petitioners should be awarded the costs and attorney’s fees they have incurred in  
15 bring this action pursuant to *Code of Civil Procedure* § 1021.5. In bringing this action, Petitioners  
16 are seeking to vindicate an important public right or interest, i.e. to ensure that only proper and  
17 appropriate candidate’s statements are printed in the ballot and voter pamphlet for the Recall  
18 Election.  
19  
20

21 Dated: April 25, 2008

Respectfully submitted,

22  
23  
24 \_\_\_\_\_  
25 WAYNE P. TATE, ESQ.  
26 Attorney for Petitioners  
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1 WPT/rm  
2 Memo fo P&As.2.wpd (042508)

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1 RE : Jennifer Beall & Thomas Russell v. Neal Kelley, Registrar of Voters and Board of  
2 Supervisors of Orange County  
3 Court No. : 30-2008-00105653  
4 File No. : Beall v. Kelley, et al.

5 PROOF OF SERVICE BY MAIL  
6 (C.C.P. §1013A(3), §2015.5)

7  
8 STATE OF CALIFORNIA, COUNTY OF ORANGE

9 I am employed in the County of Orange, State of California. I am over the age of eighteen  
10 and not a party to the within action. My business address is Ostendorf, Tate, Barnett & Wells,  
11 LLP, 29883 Santa Margarita Parkway, Suite 200, Rancho Santa Margarita, California 92688.

12 On **April 24, 2008**, I served the foregoing document described as follows:

13 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT PETITION FOR  
14 ALTERNATIVE (WRIT OF MANDATE)

15 - By Facsimile

16 I caused said document to be transmitted via facsimile to: See Service List  
17 and received a verification that transmission was complete.

18 - By Email as to Marlene Draper and Sheila Benicke Only

19  
20 - By Mail

21 SEE ATTACHED SERVICE LIST  
22

23 I am “readily familiar” with the firm’s practice of collection and processing  
24 correspondence for mailing. Under that practice it would be deposited with U.S. postal  
25 service on that same day with the postage thereon fully prepaid at Rancho Santa  
26 Margarita, California in the ordinary course of business. I am aware that on motion  
27 of the party served, service is presumed invalid if the postal cancellation date or  
28 postage meter date is more than one day after the day of deposit for mailing in  
affidavit.

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct and that this declaration was executed on **April 24, 2008**, at  
3 Rancho Santa Margarita, California.

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6 Regina F. Meyer  
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Board of Supervisors of Orange County

2 Court No. : 30-2008-00105653

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9 Board of Supervisors for County of  
10 Orange c/o Jennifer Phillips, Esq. Office  
of County Counsel  
11 333 W. Santa Ana, 3<sup>rd</sup> Floor  
Santa Ana, CA 90702  
12 Fax No.: (714) 834-2359

Neal Kelley, Registrar of Voters c/o  
Jennifer Phillips, Esq. Office of County  
Counsel  
333 W. Santa Ana, 3<sup>rd</sup> Floor  
Santa Ana, CA 90702  
Fax No.: (714) 834-2359

13  
14 Marlene Draper  
31141 Via Crystal  
15 San Juan Capistrano, CA 92675  
16 and  
17 Capistrano Unified School District  
33122 Valle Road  
18 San Juan Capistrano, Ca 92675

Sheila Benicke  
23952 Eiden Court  
Laguna Niguel, CA 92677  
and  
Capistrano Unified School District  
33122 Valle Road  
San Juan Capistrano, Ca 92675

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