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1 GREGORY G. LUKE (SBN 225373)
2 FREDRIC D. WOOCHEER (SBN 96689)
3 STRUMWASSER & WOOCHEER LLP
4 10940 Wilshire Boulevard, Suite 2000
5 Los Angeles, California 90024
6 Telephone: (310) 576-1233
7 Facsimile: (310) 319-0156
8 E-mail: fwoocher@strumwooch.com

9 *Attorneys for Petitioner*
10 *Thomas C. Kunde*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN DIEGO

13 THOMAS C. KUNDE,
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Petitioner,

CASE NO. 37-2010-00089266-CU-WM-CTL

v.

13 DEBORAH SEILER, in her official capacity as
14 San Diego County Registrar of Voters; DOES 1-
15 50,
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Respondents.

VERIFIED PETITION FOR
WRIT OF MANDATE
(Elec. Code, § 13314)

**Election Matter:
Immediate Action Required**

17 CENTRAL COMMITTEE OF THE
18 REPUBLICAN PARTY OF SAN DIEGO
19 COUNTY,
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Real Party in Interest.

BY FAX

1 Comes now Petitioner THOMAS C. KUNDE and alleges as follows:

2 INTRODUCTION

3 1. This Petition is brought pursuant to Elections Code sections 13305 and 13314
4 to prevent the illegal misuse of party contribution solicitations as a vehicle for electioneering
5 by Real Party in Interest County Central Committee of the Republican Party of San Diego
6 County (the “Committee”).

7 2. Pursuant to Elections Code section 13305, county central committees of
8 qualified political parties are entitled to submit to the Respondent San Diego County
9 Registrar of Voters (the “Registrar”) a “party contributor envelope or one-page letter” for
10 inclusion in the official sample-ballot materials that are mailed by the Registrar to voters of
11 that party in connection with an impending election. (Elec. Code, § 13305, subd. (a).) The
12 services performed by the Registrar under this law are exclusively designed to facilitate the
13 solicitation of financial support for qualified political parties. To that end, section 13305
14 mandates that each such letter or envelope “shall contain a space for the name and address
15 of the contributor, and . . . language which informs the contributor of the manner in which
16 the money received shall be spent.” (Elec. Code, § 13305, subd. (b).) Nowhere does the
17 Elections Code authorize the use of these party contributor envelopes or one-page letters —
18 which are mailed directly to voters by the county elections official — as vehicles for express
19 advocacy in favor of particular candidates for public office or in favor of certain positions
20 on ballot measures.

21 3. Despite the absence of any authorization of electioneering in such party
22 contributor solicitations, the Real Party Committee submitted a one-page letter to Respondent
23 Registrar that expressly advocates the election of eleven Republican candidates to eleven
24 nonpartisan offices that will appear on the June 8, 2010 ballot in San Diego County.
25 Evidently believing that it can freely transform its privileged access to a government-run
26 printing and mailing service into an unfettered forum for partisan advocacy, the Real Party
27 Committee’s one-page letter directly contravenes the express requirements and expressly
28 limited purpose of “party contributor” solicitations under Elections Code section 13305.

1 also Respondent Seiler's duty to reject any proposed party contributor envelopes or letters
2 that violate the specifications and restrictions contained in Elections Code section 13305.

3 8. Real Party in Interest COUNTY CENTRAL COMMITTEE OF THE
4 REPUBLICAN PARTY OF SAN DIEGO COUNTY ("Real Party" or "Real Party
5 Committee") is a party central committee constituted pursuant to the provisions of the
6 Elections Code governing party committee elections. The present Chairman of the Real
7 Party Committee is Tony Krvaric, whose name appears on the proposed party contributor
8 letter that is the subject of this petition, attached to this Petition as Exhibit A.

9 JURISDICTION AND VENUE

10 9. This petition for writ of mandate is brought pursuant to Elections Code
11 section 13314, in that an error or omission and neglect of duty have occurred or will occur
12 if Respondent Seiler includes the illegal party contributor letter proffered by Real Party in
13 the sample ballot materials mailed to voters in San Diego County in connection with the June
14 8, 2010 direct primary election. Venue is proper in San Diego County in accordance with
15 Code of Civil Procedure section 394 and Elections Code section 13314, in that Respondent
16 is a government entity and agent of the County of San Diego.

17 FIRST CAUSE OF ACTION

18 10. Pursuant to Elections Code section 13305, the central committee of a qualified
19 political party may submit a "party contributor" solicitation to be included in the official
20 sample ballot package that is sent to voters who have registered as members of that party.
21 Section 13305, subdivision (a), provides in pertinent part:

22 "(a) In each county, the county central committee of each qualified
23 political party may supply to its county elections official, not less than 83 days
24 prior to the direct primary election, a *party contributor envelope or a one-page*
25 *letter*, in which both sides may be utilized, to be included in the mailing of the
26 sample ballot to each of that political party's registered voters in the county.
27 In lieu of supplying the elections official with a sufficient number of copies of
28 the one-page letter, a county central committee may supply the elections
official, not less than 83 days before the direct primary election, with the text
of the letter and request the elections official to print, or cause to be printed,
a sufficient number of copies of the letter to accommodate the mailing. The
elections official shall notify the respective county committee of, and the
committee shall reimburse the county for, any actual costs incurred by the
inclusion or printing, or both. The elections official may, prior to acting

1 pursuant to this subdivision, require the county committee to post a bond to
2 ensure the reimbursement.” (Elec. Code, § 13107, subd. (a) [emphasis
added].)

3 11. All such “party contributor” solicitations must comply with certain formal
4 specifications, which are required precisely to ensure that the solicitation letters or envelopes
5 hew to their limited function of fundraising. Elections Code section 13305, subdivision (b),
6 specifically admonishes:

7 “(b) Each envelope or letter shall contain a space for the name and
8 address of the contributor, and shall contain language which informs the
9 contributor of the manner in which the money received shall be spent. The
language on the envelope or letter shall not contain words critical of any other
political party.” (Elec. Code, § 13305, subd. (b).)

10 12. Further limitation on the function of “party contributor” solicitations is found
11 in the express provisions that govern the accounting of monies received in response to the
12 solicitations. Elections Code section 13305, subdivision (c), specifically requires:

13 “(c) All funds received by the return of the party contributor envelopes
14 or in response to the letters shall be kept separate from all other funds and shall
15 be kept in a fund (account) to be established in each county. Any funds which
16 are prohibited under federal law from being used for candidates for federal
office shall be further segregated and any portion allocated to candidates shall
be disbursed only to candidates for state office.” (Elec. Code, § 13305,
subd. (c).)

17 13. The party contributor letter submitted by Real Party Committee expressly
18 advocates the election of eleven specific candidates for public, nonpartisan office on the
19 June 8, 2010 ballot; it also presents classic electioneering regarding local ballot measures on
20 that ballot. The letter opens under a large, red white and blue banner reading “The
21 Republican Party of San Diego County,” as follows:

22 “The Republican Party of San Diego County supports the candidates
23 and ballot measures featured inside. Each is committed to protecting taxpayers
24 and stabilizing the finances of local government. . . . *Your vote for these*
25 *candidates and ballot measures* can help get San Diego Back on Track.”
(Proposed Party Contributor Letter, attached to this Petition as Exhibit A
[emphasis added].)

26 14. The party contributor letter then further expressly advocates for five candidates
27 for countywide, nonpartisan offices in San Diego County, as follows:

28 **“Supervisor District 4: Ron Roberts**
Under Ron’s leadership, the County has a high credit rating, prudent reserves

1 and 'consistently strong financial management,' according to Standard &
2 Poor's. As a result, County roads and facilities are well maintained and basic
services have been preserved, all without raising taxes.

3 **Supervisor District 5: Bill Horn**

4 Bill helped guide the County from near-bankruptcy to recognition as one of the
5 best-run local governments in America. His leadership has enabled the County
to improve public safety services, reduce traffic congestion and preserve open
spaces.

6 **District Attorney: Bonnie Dumanis**

7 Under Bonnie's leadership, the DA's Office has a 94% conviction rate – one
8 of the highest in California. Bonnie helped write and pass Proposition 83,
'Jessica's Law' to protect children from child molesters and sexually violent
predators.

9 **Treasurer-Tax Collector: Dan McAllister**

10 Dan has safeguarded public funds and helped the County earn S&P's highest
11 ratings on its investment pool. He initiated a local banking program that has
reinvested \$100 million in local communities since 2006.

12 **Assessor-Recorder: Jeff Olson**

13 As Chief of Assessment Services for the Assessor's Office, Jeff has helped
14 San Diego County homeowners save millions of dollars through property tax
reductions. Endorsed by Howard Jarvis Taxpayers Association for opposing
tax increases and out of control spending." (Exh. A.)

15 15. The party contributor letter then further expressly advocates for one candidate
16 for local, nonpartisan office on board of the San Diego Unified School District, as follows:

17 **"District C: Scott Barnett**

18 SCOTT HAS THE FISCAL EXPERIENCE FOR TOUGH ECONOMIC
19 TIMES As former Executive Director, S. D. County Taxpayers Association;
20 a past PTA President, and current President, San Diego Taxpayers Advocate,
21 Scott Barnett will cut bureaucratic waste and put more money into classrooms.
See: www.BarnettForSchoolBoard.org." (Exh. A.)

22 16. The party contributor letter then further expressly advocates for one candidate
23 for municipal, nonpartisan office in the City of San Diego, as follows:

24 **"City Council District 6: Lorie Zapf**

25 Lorie Zapf will control spending at City Hall and protect taxpayers by
26 reforming the pension system and balancing the city budget. A successful
27 businesswoman and regional director of Citizens Against Lawsuit Abuse,
28 Lorie will demand accountability by requiring independent performance audits
of all city departments. www.LorieZapf.com" (Exh. A.)

17. The party contributor letter then further expressly advocates for three
candidates for municipal, nonpartisan offices in the City of Chula Vista, as follows:

"Mayor: Cheryl Cox

Cheryl inherited a city in deep financial trouble. Through budget discipline

1 she's getting the city's finances back on track. Chula Vista is now positioned
2 to attract and retain businesses, put people to work, and continue moving
forward.

3 **City Attorney: Glen Googins**

4 Glen is the only candidate for City Attorney who lives and works in Chula
5 Vista. As the city's first elected City Attorney, he will provide high quality,
unbiased legal advice, protect taxpayers and ensure the City itself complies
with the law.

6 **City Council: Larry Breitfelder**

7 The ONLY Republican running for Chula Vista City Council. Chair of the
8 Chula Vista Taxpayers Association. Led the successful campaign to stop a
sales tax increase in Chula Vista last year. Stands up for rate payers as our
elected representative on the Otay Water Board." (Exh. A.)

9 18. The party contributor letter then further expressly advocates for one candidate
10 for municipal, nonpartisan office in the City of Oceanside, as follows:

11 **"City Council: Lloyd Prosser**

12 Lloyd's business experience gives him the skill set desperately needed in
13 Oceanside. An Oceanside native, Lloyd understands the delicate balance
between the business community and neighborhood preservation and places
high value on working together to find a solution." (Exh. A.)

14 19. Finally, the party contributor letter presents a "Voter Guide For Local
15 Propositions" advocating the passage or defeat of three municipal measures, one county
16 measure, and one statewide measure on the June 8, 2010 ballot, as follows:

17 **"San Diego County – No on B**

18 Term limits made the state legislature dysfunctional. Don't repeat the mistake
in San Diego.

19 **City of San Diego – Yes on D**

20 Demand accountability, checks and balances at City Hall! Don't go back to the
system that created the City's financial problems.

21 **Visit www.AccountabilityAtCityHall.com.**

22 **City of Chula Vista – Yes on G**

23 Fair and open competition for all qualified firms in public construction saves
your tax dollars! **Visit www.FairnessForChulaVista.com.**

24 **City of Oceanside – Yes on K**

25 Pass the Oceanside Charter - More Local Control. Endorsed by Howard Jarvis
Taxpayers Assoc. **Visit www.PassTheCharter.com.**

26 **State of California – No on 14**

27 Closes the door on voter choice, conceals party affiliation and limits your
ability to affiliate with and vote for Republican candidates. **Visit**
www.StopProp14.com." (Exh. A. [emphasis original].)

28 20. The party contributor letter submitted by Real Party Committee formally

1 violates subdivision (b) of Elections Code section 13305 because it contains no “space for
2 the name and address of the contributor.” (Elec. Code, § 13305, subd. (a).) This formal
3 violation further unmask the letter as naked electioneering.

4 21. On information and belief, pursuant to Elections Code section 13305,
5 subdivision (c), Respondent Seiler only charges party central committees who submit party
6 contributor envelopes or letters for inclusion in a sample ballot mailing for the costs
7 associated with printing and translation; Respondent does not pass any of the marginal or
8 proportional costs of mailing the additional materials on to party central committees.

9 22. Because the forum provided by Respondent for the inclusion of electioneering
10 materials in the official sample ballot packages that are mailed to voters is only open to
11 qualified political parties, it confers a distinct financial and operational benefit, as well as the
12 imprimatur of official government support, upon a select class of voters and political
13 organizations in San Diego County. It likewise disfavors the broad and discrete class of
14 voters and political organizations who are not affiliated with qualified political parties. This
15 governmental favoritism and support is acutely egregious in the context of nonpartisan
16 elections.

17 23. Real Party Committee has the burden of establishing that the proposed party
18 contributor letter that it has submitted complies with all provisions of Elections Code
19 section 13305 and the laws of California. Respondent Registrar Seiler has the duty to reject
20 any proposed party contributor letter that would violate section 13305 or the California
21 Constitution. (Elec. Code, §§ 13305, subds. (b) & (c).)

22 24. Petitioner is informed and believes, and on that basis alleges, that Respondent
23 Seiler undertook no independent analysis of the legality of the party contributor letter
24 submitted by Real Party Committee, but instead presumed the letter to be legal when placing
25 the letter on the website of the San Diego Registrar for public examination. Petitioner is also
26 informed and believes, and on that basis alleges, the Respondent Seiler has disclaimed any
27 intention to reject or otherwise oppose the inclusion of the letter in its present form unless
28 ordered to do so by a court of law.

1 25. As the Supreme Court of California observed: “A fundamental precept of this
2 nation’s democratic electoral process is that the government may not ‘take sides’ in election
3 contests or bestow an unfair advantage on one of several competing factions. A principal
4 danger feared by our country’s founders lay in the possibility that the holders of
5 governmental authority would use official power improperly to perpetuate themselves, or
6 their allies, in office (see, e.g., Madison, *The Federalist Papers*, Nos. 52, 53; 10 Richardson,
7 *Messages and Papers of the Presidents* (1899) pp. 98-99 (President Jefferson)); the selective
8 use of public funds in election campaigns, of course, raises the specter of just such an
9 improper distortion of the democratic electoral process.” (*Stanson v. Mott* (1976) 17 Cal.3d
10 206, at p. 217.)

11 26. Inclusion of the party contributor letter in its present form would plainly violate
12 Elections Code section 13305. It would also violate the constitutional guarantees of equal
13 protection of the law and freedom of speech, by entangling the government in the direct
14 support of partisan electioneering and electoral favoritism towards certain individuals and
15 political organizations. It would also undermine the policy guaranteeing local nonpartisan
16 elections that is expressed in Elections Code section 334 and article II, section 6(b) of the
17 California Constitution.

18 27. Petitioner has no plain, speedy and adequate remedy in the ordinary course of
19 law, in that no damages or other legal remedy could compensate for the harm that he and the
20 other electors of the San Diego County would suffer if Real Party Committee’s proposed
21 electioneering slate mailer masquerading as a party contributor letter were to be included in
22 the sample ballot materials mailed out under official seal in connection with the June 8, 2010,
23 primary election sample ballot materials. Petitioner has a direct and beneficial interest in the
24 petition herein. He brings this action as a private attorney general pursuant to Code of Civil
25 Procedure section 1021.5 to vindicate his own interests, and those of the electors of San
26 Diego County and the State of California, in the proper implementation of the provisions of
27 the California Elections Code and in the conduct of a fair election.

28 28. For the reasons set forth above, Respondent Registrar Seiler has a clear,

1 present, and ministerial duty to reject Real Party Committee's illegal proposed party
2 contributor letter and not to include that letter in the official sample ballot materials that will
3 be distributed in San Diego County in connection with the June 8, 2010, statewide primary
4 election.

5 29. The filing of the instant petition is timely pursuant to Elections Code section
6 13313, and issuance of the writ of mandate requested herein will not substantially interfere
7 with the conduct of the June 8, 2010, primary election.

8 PRAYER FOR RELIEF

9 WHEREFORE, Petitioner prays for judgment as follows:

10 1. That this Court issue a peremptory writ of mandate commanding Respondent
11 Registrar of Voters Deborah Seiler to reject the proposed party contributor solicitation letter
12 submitted by Real Party in Interest Central Committee of the Republican Party of San Diego
13 County for inclusion in the ballot materials distributed in connection with the June 8, 2010
14 primary election or, in the alternative, to excise therefrom all electioneering references to
15 specific candidates and ballot measure issues on the June 8, 2010 ballot;

16 2. That this Court grant Petitioner his costs, including out-of-pocket expenses,
17 and reasonable attorneys' fees; and

18 3. That this Court grant such other, further or different relief as the Court may
19 deem just and proper.

20 Date: April 5, 2010

Respectfully Submitted,

21 STRUMWASSER & WOOCHELL LLP
22 Gregory G. Luke
23 Fredric D. Woocher

24 By 
Gregory G. Luke

25 *Attorneys for Petitioner*
26 *Thomas C. Kunde*

VERIFICATION


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I, THOMAS C. KUNDE, declare:

I am Thomas C. Kunde, Petitioner in this action. I have read the foregoing PETITION FOR PEREMPTORY WRIT OF MANDATE and know the contents thereof to be true, except as to those matters that are stated on information and belief, and as to those matters, I believe them to be true.

Executed this 5th day of April, 2010, at El Cajon, California.

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



Thomas C. Kunde

EXHIBIT A

REPUBLICAN PARTY SAMPLE BALLOT INSERT

(as allowed by E.C. Section 13305)

The following pages will be included in the Republican Party sample ballots in portions of San Diego County that include the 1st, 4th, and 5th Board of Supervisor districts. This material is now on public display (ending April 5).

State law provides for a "public review period" of this material before printing the Sample Ballot and Voter Information Pamphlet.

During this period, any voter who believes any portion of these materials to be false, misleading, or inconsistent with state law may seek a writ of mandate or injunction requiring any or all of the material to be amended or deleted.

[Scroll down to View document](#)

The Republican Party of San Diego County



★ Voter Guide ★ For Local Propositions

San Diego County – No on B

Term limits made the state legislature dysfunctional. Don't repeat the mistake in San Diego.

City of San Diego – Yes on D

Demand accountability, checks and balances at City Hall! Don't go back to the system that created the City's financial problems. Visit www.AccountabilityAtCityHall.com.

City of Chula Vista – Yes on G

Fair and open competition for all qualified firms in public construction saves your tax dollars! Visit www.FairnessForChulaVista.com.

City of Oceanside – Yes on K

Pass the Oceanside Charter - More Local Control. Endorsed by Howard Jarvis Taxpayers Assoc. Visit www.PassTheCharter.com.

State of California – No on 14

Closes the door on voter choice, conceals party affiliation and limits your ability to affiliate with and vote for Republican candidates. Visit www.StopProp14.com.

YES, I will help support the Party by donating online at www.sandiegorepublicans.org or calling (858) 450-4600.

The Republican Party of San Diego County



Protect taxpayers. Get local government back on track.

Dear Neighbor,

The Republican Party of San Diego County supports the candidates and ballot measures featured inside. Each is committed to protecting taxpayers and stabilizing the finances of local government.

Gold-plated public employee pensions and misplaced budget priorities have nearly bankrupted state and local government, resulting in reduced services and threats of higher taxes.

Your vote for these candidates and ballot measures can help get San Diego back on track.

Your Contribution can make a difference

Your contribution to the Republican Party of San Diego County supports voter registration activities, Republican candidates for local and state office, voter education and member communication programs.

Please consider making a donation of \$25, \$50 or \$100 online by visiting www.sandiegorepublicans.org or call us directly at (858) 450-4600.

Sincerely,

Chairman Tony Krvaric,
Republican Party of San Diego County

Authorized by CA Elections Code Section 13305 and Paid for by the
Republican Party of San Diego County • 5703 Oberlin Drive #107
San Diego, CA 92121 • (858) 450-4600 • (858) 450-4454 Fax

Vote to protect taxpayers and get local government back on track.

San Diego County

Supervisor District 4: Ron Roberts

Under Ron's leadership, the County has a high credit rating, prudent reserves and "consistently strong financial management," according to Standard & Poor's. As a result, County roads and facilities are well maintained and basic services have been preserved, all without raising taxes.

Supervisor District 5: Bill Horn

Bill helped guide the County from near-bankruptcy to recognition as one of the best-run local governments in America. His leadership has enabled the County to improve public safety services, reduce traffic congestion and preserve open spaces.

District Attorney: Bonnie Dumanis

Under Bonnie's leadership, the DA's Office has a 94% conviction rate – one of the highest in California. Bonnie helped write and pass Proposition 83, "Jessica's Law" to protect children from child molesters and sexually violent predators.

Treasurer-Tax Collector: Dan McAllister

Dan has safeguarded public funds and helped the County earn S&P's highest ratings on its investment pool. He initiated a local banking program that has reinvested \$100 million in local communities since 2006.

Assessor-Recorder: Jeff Olson

As Chief of Assessment Services for the Assessor's Office, Jeff has helped San Diego County homeowners save millions of dollars through property tax reductions. Endorsed by Howard Jarvis Taxpayers Association for opposing tax increases and out of control spending.

San Diego Unified School District

District C: Scott Barnett

SCOTT HAS THE FISCAL EXPERIENCE FOR TOUGH ECONOMIC TIMES. As former Executive Director, S. D. County Taxpayers Association; a past PTA President, and current President, San Diego Taxpayers Advocate, Scott Barnett will cut bureaucratic waste and put more money into classrooms. See: www.BarnettForSchoolBoard.org

City of San Diego

City Council District 6: Lorie Zapf

Lorie Zapf will control spending at City Hall and protect taxpayers by reforming the pension system and balancing the city budget. A successful businesswoman and regional director of Citizens Against Lawsuit Abuse, Lorie will demand accountability by requiring independent performance audits of all city departments. www.LorieZapf.com

City of Chula Vista

Mayor: Cheryl Cox

Cheryl inherited a city in deep financial trouble. Through budget discipline she's getting the city's finances back on track. Chula Vista is now positioned to attract and retain businesses, put people to work, and continue moving forward.

City Attorney: Glen Googins

Glen is the only candidate for City Attorney who lives and works in Chula Vista. As the city's first elected City Attorney, he will provide high quality, unbiased legal advice, protect taxpayers and ensure the City itself complies with the law.

City Council: Larry Breittfelder

The ONLY Republican running for Chula Vista City Council. Chair of the Chula Vista Taxpayers Association. Led the successful campaign to stop a sales tax increase in Chula Vista last year. Stands up for rate payers as our elected representative on the Otay Water Board.

City of Oceanside

City Council: Lloyd Prosser

Lloyd's business experience gives him the skill set desperately needed in Oceanside. An Oceanside native, Lloyd understands the delicate balance between the business community and neighborhood preservation and places high value on working together to find a solution.

Paid for by the Republican Party of San Diego County authorized by CA Elections Code 13305. If you would have any questions or would like to donate please call (858) 450-4600.