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Petitioner, *in pro per*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - CENTRAL DIVISION (UNLIMITED)

THERESA McKENNA,

Petitioner,

v.

COUNTY OF SAN DIEGO;  
MICHAEL VU, in his official capacity as  
Registrar of Voters for the County of  
San Diego,

Respondent.

WILLIAM A. KIEL, an individual,

Real Party in Interest.

Case No.: 37-2018-00041199-CU-WM-CTL

Action Filed: August 17, 2018

VERIFIED PETITION FOR WRIT OF  
MANDATE TO DELETE OR AMEND FALSE  
AND MISLEADING CANDIDATE BALLOT  
STATEMENT

ELECTION MATTER - CALENDAR  
PREFERENCE REQUIRED BY STATUTE  
[Elec. Code §13314(A)(3)]

Petitioner Theresa McKenna, an elector and voter in the County of San Diego, State of California ("Petitioner"), hereby petitions this Court for a peremptory writ of mandated directed to Respondent Michael Vu, Registrar of the County, of the County of San Diego, State of California, and the County of San Diego, and alleges as follows:

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## INTRODUCTION

1  
2 1. Petitioner brings this action because candidate William A. Kiel, (hereinafter referred  
3 to as "Kiel Jr." for clarity), has written, executed and submitted a Ballot Statement that is  
4 materially false and misleading to the public in violation of the California Elections Code.  
5 Judicial relief is required to: 1) protect the voters from Kiel Jr.'s fraud and deception upon the  
6 voters; and 2) protect the voters and the integrity of the electoral process.

7 2. First, Kiel Jr.'s Ballot Statement intentionally fails to differentiate him (a 22-year-old  
8 alleged employee of Smart & Final), from his father, also "William A. Kiel", a 62-year-old  
9 (hereinafter "Kiel Sr."). This distinction is **critical** for voters because Kiel Sr. is currently serving  
10 a 4-year term as an elected Board Member for the *exact same* Fire District Board Kiel Jr. seeks  
11 appointment, (i.e., San Miguel Consolidated Fire Protection District ("Fire District")). Given this  
12 **unprecedented political nepotism** facing the District's Board, it is imperative that voters know  
13 these are two different people. As currently written, Kiel Jr.'s ballot statement is highly misleading  
14 and voters will believe they are considering an Incumbent Board member, and not Kiel Jr. A true  
15 and correct copy of Kiel Jr.'s *Candidate Statement of Qualifications* obtained by Petitioner from  
16 the San Diego County Registrar of Voters office is attached hereto as Exhibit 1.

17 3. To add to the intentional confusion placed on the voters, Kiel Jr lists his father as  
18 authorized to "act" in his behalf, writing "William A. Kiel" on his *Ballot Designation Worksheet*;  
19 making sure he included all of Kiel Sr's personal contact information (cell phone, email, etc.) and  
20 their shared Fax number. One could reasonably conclude that by placing "William A. Kiel" as  
21 being authorized to act, the intended goal was to mislead and confuse voters. Not only is using  
22 both names without a distinct differentiation between the two deceptive, this maneuver reeks of  
23 politics at its worst; together they have conspired to allow Kiel Sr to stand in his Son's shoes in a  
24 blatant effort to mislead and confuse voters. (*Not to mention it gives Kiel Sr. the opportunity to*  
25 *continue to push his own personal agenda under the guise of Kiel Jr.*) A true and correct copy of  
26 Kiel Jr's *Ballot Designation Worksheet* is attached hereto and contained within Exhibit 2.

27 4. Second, Kiel Jr's Statement is in violation of the Elections Code section 13308 in that  
28 it refers to other candidates and their character or activities in a derogatory manner.

1 The only other candidates in this election besides Kiel Jr. include three (3) Incumbents: Petitioner  
2 Theresa McKenna, Jim Ek, and Mike Vacio. (A true and correct copy of the County of San Diego  
3 – Registrar of Voters Candidate List dated 8/14/18 is attached hereto as Exhibit 3.) McKenna, Ek,  
4 and Vacio are members of “[t]he current Board” criticized in his statement. Kiel Jr.  
5 inappropriately states:

6 “The prior Board invested over \$700,000.00 on a new permanent fire station that  
7 would have cost another \$1,300,000.00 to complete. Instead of moving forward  
8 with that project, on a 4-3 vote, the current Board abandoned the project. Instead,  
9 they decided to rent a temporary facility (costing over \$650,000 to construct plus  
10 rent of \$30,000/yr) with the intension (sic) of purchasing a new \$3,000,000 to  
\$5,000,000 facility. As a fiscal conservative I would never waste your money in  
such a reckless manner.”

11 As written, Kiel Jr’s statement regarding the Incumbent candidates’ activities (i.e., “abandon[ing]”  
12 the “fire station” “project”, etc.), and their character (“such a reckless manner”), is in direct  
13 violation of the Election Code and should be amended to remove derogatory comments regarding  
14 other candidates’ activities and character from the Ballot Statement.

15 5. Third, Kiel Jr’s falsely states, *“I have the experience, education, desire and ability to*  
16 *reverse this trend of automatic tax increases coupled with reckless and wasteful spending.”* This  
17 sentence is categorically false and highly misleading.

18 6. There are no “automatic tax increases” within the District but rather Special Benefit  
19 Tax laws previously voted into place by the Citizens of the District which *require* the District’s  
20 Board of Directors (“BOD”) to review and vote on the assessment rate annually. Based upon the  
21 vote of the BOD, the rate may or may not increase. In order to help ensure revenues grow in line  
22 with inflation to ensure adequate funding for emergency service protection, the voters provided  
23 that the tax rate *may* be adjusted each year but only by majority vote of the BOD – they are not  
24 “automatic”. For example, the *Fire Protection and Emergency Medical Services Special Benefit*  
25 *Tax* for the Bostonia area was established after a consolidated special election on June 3, 1997 and  
26 approved by 95.44% of the voters. No “one” person has the “ability to reverse” Kiel Jr’s  
27 wrongly alleged “automatic tax increases”; not even him. Given the falsity of the sentence, it  
28 should be stricken from the ballot statement.

1           7. Kiel Jr states, "*Together, we can once again put the San Miguel Consolidated Fire*  
2 *Protection District on sound financial footing.*" This statement misleads voters and falsely  
3 insinuates that the District is *not* on sound financial footing when, in fact, the opposite is true. The  
4 District ended FY2017-18 with more than \$5.3 million in Revenue over Expenditure which is  
5 unprecedented in the history of the District. The District's Cash Balance on July 1, 2018 was  
6 \$8,577,982. (A true and correct copy of the San Miguel Fire District Reserve Fund Cash Balances  
7 document distributed at the District's Board meeting on August 8, 2018, is attached hereto as  
8 Exhibit 4.)

9           8. On his *Declaration of Candidacy*, Kiel Jr. lists his Ballot Designation as  
10 "Buisnessman" (sic); however, his Ballot Designation Worksheet (Exhibit 2) identifies his current  
11 or most recent Job Title is "Sales Associate" and his employer as "Smart and Final".

12           9. On August 16, 2018, a licensed private investigator, Michael Singleton ("Singleton"),  
13 spoke to the individual named on Keil Jr's Worksheet as being able to verify his employer  
14 information, Mr. Pat Wiggins. Based on the accompanying Declaration of Michael Singleton in  
15 Support of Petition for Writ of Mandate, page 2, ¶3, Kiel Jr. is currently employed by Smart &  
16 Final as a part-time Flex Associate in the capacity of a cashier or for stocking.

17           10. Holding himself out as a "Businessman" is quite a stretch from Kiel's actual Job Title  
18 as "Flex Associate" at Smart & Final; intentionally misleading voters. Pursuant to Elections Code  
19 section 13107, Kiel Jr's ballot designation must be rejected because it does not comply with the  
20 law.

21           11. Petitioner also brings this action because Respondent has accepted and will submit for  
22 publication in the official ballot pamphlet for the County of San Diego, Kiel Jr's false and  
23 fraudulent ballot statement even though it contains material falsehoods included solely for  
24 electoral gain. The County of San Diego's official ballot pamphlet will be furnished to all  
25 registered voters in advance of the November 6, 2018 election. In doing so, Respondent has  
26 committed, or is about to commit, an error, omission and/or neglect of duty, further requiring  
27 judicial relief. Petitioner therefore requests that this Court issue a writ of mandate to delete and/or  
28 amend such false and misleading ballot statement so that the voters called upon to elect honest

1 elected officials, will be able to make fully and truthfully informed decisions with respect to an  
2 important elected position on the Board of the San Miguel Consolidated Fire Protection District.

3 **JURISDICTION AND VENUE**

4 12. This Court has jurisdiction over this matter pursuant to Elections Code sections 9092  
5 and 13314 and California Code of Civil Procedure 1085, et. seq.

6 13. The acts complained of herein occurred in the County of San Diego, State of  
7 California, and venue is thus proper in the Superior Court of the State of California in and for the  
8 County of San Diego.

9 **PRIORITY MATTER**

10 14. Pursuant to Elections Code section 13314(a)(3), as an election law writ petition, this  
11 matter shall have priority over all other civil matters. Time is of the essence in this proceeding  
12 because of Respondent's impending submission for publication of all matters Respondent has  
13 accepted from all candidates, including Kiel Jr. This matter is timely because it is brought and  
14 filed less than ten days after the ballot statement was made available for public examination by  
15 Respondent, well within the statute of limitations period provided by law.

16 **PARTIES**

17 15. Petitioner Theresa McKenna is a resident and registered elector and voter in the County  
18 of San Diego, State of California, and has standing to bring this action pursuant to Elections Code  
19 Sections 9092 and 13314, as well as Code of Civil Procedure Section 1085, et seq. Petitioner is  
20 beneficially interested in this matter because she is a candidate for the election to the San Miguel  
21 Consolidated Fire Protection District, is an elector in San Diego County, State of California, and  
22 wants the voters to be presented with accurate and true information that is neither false nor  
23 misleads the voters, so they can make fully informed decisions and vote on accurate, complete and  
24 true information.

25 16. Respondent Michael Vu ("Vu"), the official Registrar of Voters for the County of San  
26 Diego, is thus charged with organizing and conducting elections in and for said County, and for  
27 ensuring that the voters of San Diego and, specifically those in the San Miguel Consolidated Fire  
28 Protection District, are furnished with true and accurate information regarding candidates for

1 election to the San Miguel Consolidated Fire Protection District. Vu is also charged with  
2 accepting and submitting for publication, candidate ballot statements, and for disseminating same  
3 among all registered voters in the County of San Diego and in the San Miguel Consolidated Fire  
4 Protection District. (See Elections Code sections 9081, 9082, 9084, 13307, 13308, 13313 and  
5 13314.) Vu acts on behalf of Respondent County of San Diego.

6 17. Real Party in Interest William A. Kiel (the 22-year-old) is a self-nominated candidate  
7 for the office of Board Member to the San Miguel Consolidated Fire Protection District. Kiel Jr.  
8 resides in the unincorporated area of Jamul, County of San Diego, State of California.

9 **FACTUAL AND LEGAL BACKGROUND**

10 18. California Election Code section 9295 provides: "A peremptory writ of mandate or an  
11 injunction shall be issued only upon clear and convincing proof that the material in question is  
12 false, misleading, or inconsistent with the requirements of this chapter."

13 **A. CANDIDATE'S NAME AS WRITTEN ON BALLOT STATEMENT MISLEADS**  
14 **VOTERS AND WARRANTS CLARIFICATION PER ELECTION CODE §9092.**

15 19. Kiel Jr. is a self-nominated candidate for the San Miguel Consolidated Fire Protection  
16 District and, in that capacity, submitted to Respondent a *Candidate Statement of Qualifications*  
17 ("Statement"), *Declaration of Candidacy* ("Declaration"), and *Ballot Designation Worksheet*  
18 ("Worksheet"). (A true and correct copy of the *Declaration of Candidacy* is attached hereto as  
19 Exhibit 5.)

20 20. Kiel Jr. identifies himself as "William A. Kiel" on his Statement. Conspicuously  
21 missing from his Statement (albeit optional), is his age, 22, or any other designation indicating he  
22 is Junior to, and *not*, his father, also "William A. Kiel", a current Fire District Board member  
23 appointed to the District's Board through December 2020.

24 21. Kiel Jr. knows full well that his father (with whom he resides per his Worksheet), is  
25 currently serving a 4-year term in office on the San Miguel Consolidated Fire Protection District  
26 Board. Without any differentiation between the two men, Kiel Jr.'s statement implies that he is the  
27 Incumbent of this public office when such is not the case.  
28

1           22. Most compelling of the orchestrated effort to deceive voters is the fact that, on his  
2 Worksheet, Kiel Jr. authorizes "William A. Kiel" as the person authorized to "act" in his behalf  
3 and lists all of Kiel Sr's personal contact information along with their shared Fax number.  
4 Petitioner believes and hereupon alleges that Kiel Jr. and Kiel Sr. have conspired with one another  
5 in their effort to deceive voters, misleading voters to think Kiel Jr. is an Incumbent. This  
6 intentional act allows Kiel Sr. to stand in the shoes of his Son at any time, in a blatant effort to  
7 mislead and confuse voters (and the media), should they have a desire to contact the Candidate.  
8 Based on her personal conversations and knowledge of statements made by Kiel Sr. at public  
9 Board meetings, (echoed almost verbatim in Kiel Jr's Statement), Petitioner believes, in all  
10 likelihood, Kiel Sr. is the true author of the Kiel Jr's Statement. Certainly, a father has the right to  
11 assist and act for a son in this situation, but the "wrong" here is that by using identical names  
12 without any clarifying distinction or disclosure or transparency, voters are being deceived.

13           23. In order for the Court to more fully understand the magnitude of the conspiracy and  
14 intentional effort to mislead voters, one need look no further than the official Minutes of the Fire  
15 District's Board meetings for the **motive** behind the duo's shenanigans.

16           24. For example, on July 6, 2016, perhaps one of the most contentious San Miguel Fire  
17 District Board meetings in nearly 6 years took place. At that meeting, the Board voted 4-3 "for the  
18 District to take the necessary measures to return to a Stand-Alone District" and cancel its Contract  
19 for fire service through the State of California, (CalFire), and hire its own firefighters. Kiel Sr was  
20 perhaps the most outspoken Board member *against* returning to a Stand-alone agency, and found  
21 himself on the losing end of the 4-3 vote. (A true and correct copy of the San Miguel Fire District  
22 Board Meeting Minutes for July 6, 2016, [see Item 5], is attached hereto as Exhibit 6.)

23           25. On March 8, 2017, the "4-3 vote" referenced in Kiel Jr's Statement -- regarding the fire  
24 station project -- took place with Kiel Sr *again* on the losing end of the vote to "abandon" the site  
25 location and reconsider alternate locations for the fire station project. (A true and correct copy of  
26 the San Miguel Fire District Board Meeting Minutes for March 8, 2017, [see Item 11], is attached  
27 hereto as Exhibit 7.)

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1           26. On October 20, 2017, the "temporary [fire station] facility" and "rent of \$30,000/yr"  
2 referenced in Kiel Jr's Statement was voted on with Kiel Sr., yet *again*, on the losing end of the  
3 vote (Vote Count: 6-1). (A true and correct copy of the San Miguel Fire District Board Meeting  
4 Minutes for October 20, 2017, [see *Item 2*], is attached hereto as Exhibit 8.)

5           27. As one can see, by these three examples of voting outcomes, there is a common theme  
6 here and a motive for the Kiels to do whatever they can to gain a distinct advantage in this  
7 election. Kiel Sr needs Kiel Jr's votes to help him steer the control of Board to align with his own  
8 personal agenda.

9           28. Petitioner believes and hereupon alleges, that Kiel Jr and Kiel Sr have conspired to  
10 and, Kiel Jr will succeed at, misleading voters if the exact same name "William A. Kiel" is used  
11 on the November 6, 2018 Voter Ballot without clear distinction being made between these two  
12 individuals.

13           29. California Elections Code Section 18350 states:

14  
15           (a) **A person is guilty of a misdemeanor who, with intent to mislead the**  
16 **voters in connection with his or her campaign for nomination or election to a**  
17 **public office, or in connection with the campaign of another person for**  
**nomination or election to a public office, does either of the following acts:**

18           (1) **Assumes, pretends, or implies, by his or her statements, conduct, or**  
19 **campaign materials, that he or she is the incumbent of a public office**  
20 **when that is not the case.**

21           (2) **Assumes, pretends, or implies, by his or her statements, conduct, or**  
22 **campaign materials, that he or she is or has been acting in the capacity of**  
23 **a public officer when that is not the case.**

24           (b) A violation of this section may be enjoined in a civil action brought by a  
25 candidate for the public office involved. [Emphasis added.]

26           30. To further validate the scale of deception, a side-by-side comparison of campaign  
27 documents filed by Kiel Jr. on August 10, 2018, and those filed by Kiel Sr. during his run for  
28 election in 2016, provide clear and compelling evidence to support this trickery on voters. For  
example, on California Form 501 (*Candidate Intention Statement*), filed by each of the Kiels, the



1 candidate name listed is identical: "William A. Kiel". Although Kiel Jr's California Form 470  
2 (*Officeholder and Candidate Campaign Statement – Short Form*) and California Form 700  
3 (*Statement of Economic Interest*), list his name as "William Kiel" and "William Albert Kiel",  
4 respectively, Kiel Sr's 2016 documents all list his name as "William A. Kiel"; exactly as it is  
5 slated to appear on the November 6, 2018 ballot unless this Court intervenes. Attached hereto and  
6 incorporated herewith are true and correct copies of aforementioned Forms obtained by Petitioner  
7 from the County of San Diego, Registrar of Voters, [www.sdvote.com](http://www.sdvote.com) Public Access Portal,  
8 <https://www.sdvote.com/content/rov/en/EFDS.html>. Kiel Jr documents are Exhibit 9; Kiel Sr  
9 documents are Exhibit 10.

10 31. Using the exact name as his father (i.e. William A. Kiel) on his Statement, even if  
11 remotely unintentional, misleads voters in that it fails to differentiate Candidate Kiel Jr. (a 22-  
12 year-old), from current Board member Kiel Sr., (a 62-year old). Given the identical names  
13 utilized, a voter will be misled to believe that it is the 62-year old, Kiel Sr as Incumbent, who they  
14 are considering in this election; not the 22-year-old Kiel Jr. Certainly, the Kiels knew their tactic  
15 would confuse voters and will most certainly continue their charade unless this Court makes  
16 crystal clear for voters, it is NOT the Incumbent they are considering when they vote in  
17 November.

18 32. Kiel Jr. could have, and should have, included his age and provided voters with at least  
19 some other designation (i.e., Jr.), in an effort to ensure he was being open, honest, and truthful  
20 with voters about who he really is. Failing to include his age further lends weight to the notion the  
21 Kiels conspired with the intent to deceive voters.

22 33. Pursuant to Elections Code section 9092, "...a peremptory writ of mandate shall issue  
23 only upon clear and convincing proof that the copy in question is false, misleading, or inconsistent  
24 with the requirements of this code...." Given that the use of identical names will mislead voters in  
25 this unprecedented political nepotism situation involving a father and son potentially serving on  
26 the same Fire Board at the same time, Petitioner respectfully requests this Court direct Respondent  
27 to: 1) add Kiel Jr's age of 22 (twenty-two) to the Statement; 2) add "Jr." at the end of his name;  
28 and 3) add a clarifying descriptor such as, "*Candidate William A. Kiel is not the same William A.*

1 Kiel currently serving on the San Miguel Consolidated Fire Protection District Board of  
2 Directors, but rather his son." to the Statement. Voters deserve the truth.

3  
4 **A. KIEL JR's BALLOT STATEMENT VIOLATES ELECTION CODE SECTION 13308.**

5 34. Kiel's Ballot Statement is in violation of the Elections Code section 13308 in that it  
6 refers to other candidates and their character and activities. The only candidates in this District  
7 Board election besides Kiel Jr. include Incumbents Petitioner Theresa McKenna, Jim Ek, and  
8 Mike Vacio, who are members of "[t]he current Board" referred in a derogatory manner in Kiel  
9 Jr's Statement. (please see Exhibits 1 and 2)

10 35. Kiel Jr inappropriately makes reference to the other candidates for office stating:

11 "The prior Board invested over \$700,000.00 on a new permanent fire station  
12 that would have cost another \$1,300,000.00 to complete. Instead of moving  
13 forward with that project, on a 4-3 vote, the current Board abandoned the  
14 project. Instead, they decided to rent a temporary facility (costing over  
15 \$650,000 to construct plus rent of \$30,000/yr) with the intension (sic) of  
16 purchasing a new \$3,000,000 to \$5,000,000 facility. As a fiscal conservative I  
17 would never waste your money in such a reckless manner." [Emphasis added.]

18 California Election Code Section 13308 states, in pertinent part:

19 ".....any candidate's statement submitted pursuant to Section 13307 shall be  
20 limited to a recitation of the candidate's own personal background and  
21 qualifications, and shall not in any way make reference to other candidates  
22 for that office or to another candidate's qualifications, character, or activities.  
23 The elections official shall not cause to be printed, posted on an Internet Web  
24 site, or circulated any statement that the elections official determines is not so  
25 limited or that includes any reference prohibited by this section." [Emphasis  
26 added.]

27 As currently written, Kiel Jr's statements regarding the Incumbent Candidates' activities  
28 (regarding the fire station), and their character ("such a reckless manner"), is in direct violation of  
the Election Code §13308 and should be stricken from the Ballot Statement.

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1 **B. KIEL Jr. MISLEADS VOTERS BY FALSELY STATING HIS "ABILITY TO**  
2 **REVERSE" ALLEGED "AUTOMATIC TAX INCREASES".**

3 36. Kiel Jr's statement is materially false and intended to mislead the voters when he  
4 writes, "*I have the experience, education, desire and ability to reverse this trend of automatic tax*  
5 *increases coupled with reckless and wasteful spending.*"

6 37. No one person has the "ability" to circumvent the vote of the People related to the  
7 District's Special Benefit Taxes. Special Benefit Tax increases are not "automatic" as Kiel Jr  
8 alleges, but are, by law, reviewed and voted upon annually by the District's BOD. Increases are  
9 allowed by law, however, are limited based upon each assessment voted into law.

10 38. Election Code section 18351 states:

11 "Any candidate in an election or incumbent in a recall election who  
12 knowingly makes a false statement of a material fact in a candidate's  
13 statement, prepared pursuant to Section 11327 or 13307, with the intent to  
14 mislead the voters in connection with his or her campaign for nomination or  
15 election to a nonpartisan office is punishable by a fine not to exceed one  
16 thousand dollars (\$1,000)."

16 39. Publicly available is the *San Miguel Consolidated Fire Protection District's Combined*  
17 *Tax Report, Fiscal Year 2016-17*, ("Tax Report"). The Tax Report clearly spells out the annual,  
18 legally authorized considerations to be given the benefit assessment fees by the Board. In  
19 summary, the Crest Special Benefit Tax is fixed at \$10.00 per benefit unit; the Bostonia Special  
20 Benefit Tax and Paramedic Special Benefit Tax *may be adjusted each year* based on the  
21 consumer price index for the San Diego County Area as determined by the United States  
22 Department of Labor ("CPI"), (a maximum of 1.9% in FY 2017-18); and the Proposition E  
23 Special Tax which "*may be increased in future years by an annual amount not to exceed 3.00%*".  
24 Clearly, the evidence presented proves NONE of the taxes levied on District residents are  
25 "automatic[ally]" increased and Kiel Jr's statement is unequivocally false and misleading. A true  
26 and correct copy of the Tax Report is attached hereto and incorporated herein as Exhibit 11.

27 40. Kiel Jr's statement misleads voters and thereby should be deleted or otherwise  
28 amended to ensure a true, accurate statement is placed before the voters of the District.

**C. KIEL Jr. MISLEADS VOTERS BY FALSELY IMPLYING THE DISTRICT IS *NOT* ON "SOUND FINANCIAL FOOTING"**

41. Kiel Jr's statement is implicitly false and intended to mislead voters when he writes, "*Together, we can once again put the San Miguel Consolidated Fire Protection District on sound financial footing.*"

42. See, Election Code section 18351, *Id.*

43. Kiel Jr's statement falsely misleads voters by inferring the District is *not* "on sound financial footing" when the exact opposite is true as evidenced by the fact the District ended FY2017-18 \$5.3 million under budget and with a cash balance of \$8,577,982 as of July 1, 2018. (Exhibit 4)

44. Kiel Jr's sentence is false, intentionally misleading, and should be deleted.

**D. KIEL Jr's PROPOSED BALLOT DESIGNATION OF "BUSINESSMAN" IS IN VIOLATION OF CALIFORNIA CODE OF REGULATIONS 20714.**

45. On his *Declaration of Candidacy*, Kiel Jr. lists his Ballot Designation as "Buisnessman" (sic); however, his *Ballot Designation Worksheet* identifies his current or most recent Job Title is "Sales Associate", and his employer as "Smart and Final". (Exhibits 5 and 2)

46. California Code of Regulations Section 20714 provides, in pertinent part:

"Proposed ballot designations submitted pursuant to Elections Code § 13107, subdivision (a)(3), shall be subject to the following provisions:

(a) The terms "profession," "vocation," or "occupation," as those terms are used in Elections Code § 13107, subdivision (a)(3), are defined as follows:

(1) "Profession" means a field of employment requiring special education or skill and requiring knowledge of a particular discipline. The labor and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual. Recognized professions generally include, but are not limited to, law, medicine, education, engineering, accountancy, and journalism. Examples of an acceptable designation of a "profession," as defined in Elections Code § 13107, subdivision (a)(3), include, but are not limited to, "attorney," "physician," "accountant," "architect," and "teacher."

(2).....

1 (3) "Occupation" means the employment in which one regularly engages or follows as  
2 the means of making a livelihood. Examples of an acceptable designation of an  
3 "occupation," as defined in Elections Code § 13107, subdivision (a)(3), include, but are  
4 not limited to, "rancher," "restaurateur," "retail salesperson," "manual laborer,"  
"construction worker," "computer manufacturing executive," "military pilot,"  
"secretary," and "police officer."

5 Based upon the provisions of California Code of Regulations section 20714, holding himself out  
6 as a "Businessman" is a real stretch from Kiel Jr.'s alleged Job Title as "Sales Associate" (*Flex*  
7 *Associate per Singleton*, Decl. ¶3) at Smart & Final. Use of the word "Businessman" as a Ballot  
8 Designation is in violation of the Regulations.

9 47. Simply providing Respondent with a copy of a direct deposit pay stub from his part-  
10 time employment with Smart & Final dated January 5, 2018, does not even come close to meeting  
11 the requirements necessary under Cal. Code Regs., section 20714(a)(3) and, as such, the Ballot  
12 designation "Businessman" should be removed from his statement.

13 **APPLICABLE SUBSTANTIVE LAW**

14 48. Candidates for non-partisan office may submit for publication ballot statements of their  
15 qualifications pursuant to California Elections Code section 13307 and 13308. Said statements are  
16 required to be truthful.

17 **APPLICABLE PROCEDURAL LAW**

18 49. The ballot statement of a candidate may be challenged if the statement is materially  
19 false. California Elections Code Section 13313. The challenge must be filed in Superior Court  
20 within 10 days of the posting of the candidate's ballot statement. *Id.*

21 **EQUITABLE RELIEF IS APPROPRIATE AND JUSTIFIED**

22 50. The issuance of the requested writ of mandate will not substantially interfere with the  
23 conduct of the election since there is sufficient time prior to submission for publication for the  
24 parties to brief the matter and for the writ to issue from this Court.

25 51. Should the requested writ not issue, the voters of the San Miguel Consolidated Fire  
26 Protection District will be materially misled by Kiel Jr's Ballot Statement and: 1) will believe that  
27 22-year-old Kiel Jr. is the same person as his father, 62-year-old Kiel, (currently serving the  
28 District's Board); 2) will think they are considering an Incumbent; 3) will believe Kiel Jr. has the

1 ability "reverse" tax increases and that these increases are "automatic"; 4) will believe the District  
2 is *not* on sound financial footing; and 5) will believe Kiel is a Businessman instead of his stated  
3 Job Title of "Sales Associate", thus suggesting that Kiel is more qualified for the position he seeks  
4 than Petitioner; a proposition that is false.

5 52. Petitioner is entitled to prompt judicial review of this matter and this procedure for a  
6 writ of mandate is the appropriate procedure for obtaining that review.

7 **FIRST CAUSE OF ACTION**

8 (Petition for Writ of Mandate – Elections Code 13313)  
9 (Against Respondent and Real Party in Interest)

10 53. Petitioner refers to all matters contained in paragraphs 1 through 52, inclusive herein,  
11 and realleges all matters contained therein as though fully set forth here.

12 54. Based on the foregoing, Petitioner is entitled to a writ of mandate pursuant to Elections  
13 Code sections 13307, 13308, 13313, 13314, 18350 and 18351, ordering the deletions, additions,  
14 and/or revisions to Kiel Jr's ballot statement as follows:

15 **a) Add Kiel's Age:** "22" in the area available for the candidate's age.

16 **b) Add the Descriptor:** "Jr." after the name "William A. Kiel"

17 **c) Add a Clarifying Sentence:** "*Candidate William A. Kiel is not the same William A.  
18 Kiel currently serving on the San Miguel Consolidated Fire Protection District Board  
of Directors but rather his son.*"

19 **d) Delete the Sentence:** "*I have the experience, education, desire and ability to reverse  
20 this trend of automatic tax increases coupled with reckless and wasteful spending.*"

21 **e) Delete the Sentence:** "*Together, we can once again put the San Miguel Consolidated  
22 Fire Protection District on sound financial footing.*"

23 **f) Amend the following Paragraph as edited (additions in *italics*):**

24 "~~The~~ *A* prior Board invested over \$700,000.00 on a new permanent fire station  
25 that would have cost another \$1,300,000.00 to complete. Instead of moving  
26 forward with that project, on a 4-3 vote, ~~the current Board abandoned~~ the project  
27 *was abandoned*. Instead, ~~they decided to rent~~ a temporary facility *was rented*  
28 (costing over \$650,000 to construct plus rent of \$30,000/yr) with the intension  
[(sic)] of purchasing a new \$3,000,000 to \$5,000,000 facility. As a fiscal  
conservative I would never waste your money in ~~such a reckless manner.~~"

**g) Change Ballot Designation:** Change "Buisnessman" (sic) to "Sales Associate"

1 The requested changes are necessary to ensure voters are not mislead and allow them to make a  
2 fully informed decision with respect to the candidates for the office for which Kiel Jr is running.

3 WHEREFORE, Petitioner prays:

4 55. That this Court issue a peremptory writ of mandate ordering Respondent and all parties  
5 acting pursuant to his direction and control, to:

- 6
- 7 a. **Add Kiel's Age:** "22" in the area available for the candidate's age.
- 8 b. **Add the Descriptor:** "Jr." after "William A. Kiel"
- 9 c. **Add a Clarifying Sentence:** "*Candidate William A. Kiel is not the same William*  
10 *A. Kiel currently serving on the San Miguel Consolidated Fire Protection District*  
11 *Board of Directors but rather his son.*"
- 12 d. **Delete the Sentence:** "*I have the experience, education, desire and ability to*  
13 *reverse this trend of automatic tax increases coupled with reckless and wasteful*  
14 *spending.*"
- 15 e. **Delete the Sentence:** "*Together, we can once again put the San Miguel*  
16 *Consolidated Fire Protection District on sound financial footing.*"
- 17 f. **Amend Paragraph to Read:**
- 18 *"A prior Board invested over \$700,000.00 on a new permanent fire*  
19 *station that would have cost another \$1,300,000.00 to complete. Instead*  
20 *of moving forward with that project, on a 4-3 vote, the project was*  
21 *abandoned. Instead, a temporary facility was rented (costing over*  
22 *\$650,000 to construct plus rent of \$30,000/yr) with the intension of*  
23 *purchasing a new \$3,000,000 to \$5,000,000 facility. As a fiscal*  
24 *conservative I would never waste your money."*
- 25 g. **Change Ballot Designation:** Change "Buisnessman" (sic) to "Sales Associate."

26 Said changes to be made prior to printing the ballot pamphlet published by the County of San  
27 Diego for the election scheduled for November 6, 2018, and to any ballot or other publication.

28 ////

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1           56. That the Court find Real Party in Interest in violation of Election Code sections 18350  
2 and 18351;

3           57. That the Court award Petitioner her costs of suit; and

4           58. Any such other and further relief as the Court may deem just and proper.  
5

6 Dated: August 16, 2018


Respectfully submitted,

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10 THERESA McKENNA  
11 Petitioner  
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed this 16th of August, 2018 in the County of San Diego, California.

  
Theresa McKenna  
Petitioner/Declarant