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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF TUOLUMNE**

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| ZACHARY ABERNATHY, an individual, Petitioner,v. DEBORAH BAUTISTA in her official capacity as Registrar of Voters for the COUNTY OF TUOLOMNE,  Respondent. | **|****|****|****|****|****|****|****|****|****|****|****|****|****|** | **Case No: 22CV\_\_\_\_\_\_\_\_\_\_\_\_****PETITION FOR WRIT OF MANDATE TO INCLUDE PETITIONER’S NAME ON BALLOT****Calendar Preference per CCP §35; Election Code §13314**Hearing Date: Hearing Time: Judge:  |

 COMES NOW, ZACHARY ABERNATHY [“Mr. Abernathy”] by and through his attorney of record, John J. Thyne III of THYNE TAYLOR FOX HOWARD, LLP, and in support of his Petition for Writ of Mandate to Include Petitioner’s Name on Ballot, he does allege the following:

1. April 6, 2022 is the deadline for the Tuolumne County Registrar’s office to submit an official ballot to the printer for the June 7, 2022, Statewide Direct Primary Election that will include the Office of County Superintendent of Schools for Tuolumne County.
2. Mr. Abernathy, Petitioner, submitted his declaration of candidacy for that office along with documentation including a Certificate of Eligibility for administrative services issued by the California Commission on Teacher Credentialing, but on or about March 15, 2022, following the March 11, 2022 deadline to declare candidacy, County Registrar Deborah Bautista erroneously concluded, upon the advice of County Counsel who was not yet provided with recent developments in the law including a very similar case in Santa Barbara decided on March 30, 2022, that Petitioner had not proved his qualification to run for this office.
3. While Deborah Bautista may now be willing to enter Mr. Abernathy’s name on the ballot, she cannot do so without an Order from this Honorable Court. For the reasons herein stated, Petitioner is qualified to run for the office of County Superintendent of Schools and Petitioner’s name should be ordered to be printed on the ballots for the June 7, 2022, election of that position.

**THIS CASE IS ENTITLED TO PRIORITY OVER ALL CIVIL MATTERS**

1. Pursuant to California Election Code §13314(a)(3), a Petition for Writ of Mandate seeking to correct an “error or omission … about to occur, in the placing of a name on, or in the printing of, a ballot” is entitled to “priority over all other civil matters.”

**PARTIES**

1. Petitioner Zachary Abernathy was born in Sonora in 1978. He graduated from Sonora Elementary School in 1992 and graduated from Sonora High School in 1996. In 2007 Mr. Abernathy earned his teaching credential from the State of California. Mr. Abernathy taught at Brett Harte Union High School, Linden Unified School District, and Sonora Union High School. Mr. Abernathy completed the Teacher’s College of San Joaquin program and received a Master’s Degree in educational leadership and school development which is the educational component for the administrative credential. Mr. Abernathy did his administrative internship at Sonora High School through the Teacher’s College of San Joaquin.
2. Respondent Deborah Bautista, in her capacity as Registrar of Voters for the County of Tuolumne is charged by law with accepting timely-filed papers of candidates for public office and printing the County of Tuolumne voter information pamphlet as well as other election materials according to law. Ms. Bautista is sued in her official capacity because she committed an error, omission, or neglect of duty by refusing to accept Mr. Abernathy’s candidacy papers when he is qualified to run for the office of Superintendent.

**JURISDICTION**

1. This Honorable Court has jurisdiction over this matter pursuant to California Election Code §13314 and California Code of Civil Procedure §1085, et seq.

**VENUE**

1. The acts and omissions that are the subject of this action occurred in the County of Tuolumne, California. This is a local action involving the election of a public official who will serve as an official of Tuolumne County. Consequently, the proper venue for this action is the County of Tuolumne, State of California.

**APPLICABLE PROCEDURAL LAW**

1. California Elections Code §13314(a)(a) provides that “An elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur…in the printing of, a ballot, county voter information guide, state voter information guide, or other official matter, or that any neglect of duty has occurred, or is about to occur.” Petitioner alleges that an error or omission has occurred, and is about to occur, in the printing of a ballot, county voter information guide, or other official matter, or that a neglect of duty has occurred, or is about to occur, regarding Mr. Abernathy being a candidate for County Supervisor of Schools for Tuolumne County.
2. California Code of Civil Procedure §1086 provides, relevantly, that “[t]he writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.”
3. Should the requested writ not issue, irreparable harm will occur because a qualified candidate’s name will be withheld from the ballot.
4. Petitioner is entitled to prompt review of this matter for the reasons stated above and this Petition for Writ of Mandate is the appropriate method for said review.

**THE RIGHT TO RUN FOR OFFICE IS A CONSTITUTIONALLY PROTECTED FUNDAMENTAL RIGHT**

1. “[T]he right to hold public office is a fundamental right of citizenship.” *Woo v. Superior Court* (2000) 83 Cal.App.4th 967, 977. The United States Constitution in the First Amendment and the Fourteenth Amendment apply the freedom of speech and the right to run for office to the states.

**MR. ABERNATHY IS QUALIFIED TO BE A CANDIDATE FOR SUPERINTENDENT**

1. The qualifications of a County Superintendent are set forth in California Education Code §1206, namely: “a valid credential issued by the State Board of Education of the type designated in Sections 1205 to 1212.” California Education Code §§1209-1212 have been repealed. Thus, the only credential to serve as a County Superintendent is required by California Education Code §1208, namely: “a valid certification document authorizing administrative services.”
2. According to the California Commission of Teaching Credentials, which requirements are attached to the Request for Judicial Notice, the five prerequisites to receiving the “valid certification document authorizing administrative services” required by California Education Code §1208 are as follow: (1) Possession a valid prerequisite credential [Mr. Abernathy has this]; (2) “…A one year Commission-approved administrative services intern program consisting of supervised in-service training resulting in the formal recommendation by the California college of university where the program was completed…” [Mr. Abernathy has this]; (3) Satisfy the basic skills requirement. [Mr. Abernathy has done this]; (4) Complete five years of full-time experience [Mr. Abernathy has this]; and (5) Verify employment in an administrative position on form CL-777 [Mr. Abernathy will be able to do this if elected to County Superintendent – see below].The California Commission of Teaching Credentials requirements attached to the Request for Judicial Notice go on to say “An individual who has completed requirements 1-4 above but does not have an offer of employment in an administrative position may apply for a Certificate of Eligibility, which verifies completion of all requirements for the preliminary credential ***and authorizes the holder to seek employment as an administrator.*** The Certificate of Eligibility has no expiration date. Once securing an offer of employment, the holder of a Certificate of Eligibility may apply for the preliminary credential by submitting an application (form 4104), a *Verification of Employment Form* (CL-777), and current processing fee to the Commission office.”
3. Thus, the Certificate of Eligibility confirms Mr. Abernathy possesses the necessary qualifications to serve as Superintendent, pursuant to California Education Code §1208, provided he is elected to that office and thus receives an offer of employment as an administrator. There is no such qualification required for Mr. Abernathy to run for the office.

**LOS ANGELES AND SANTA BARBARA COUNTIES PROVIDE GUIDANCE**

1. Though not binding upon this court, there are recent examples that should guide this Honorable Court in ruling. Firstly, Exhibit 2 to the Request for Judicial Notice is a 2015 job announcement for Superintendent of Schools by the Los Angeles County Office of Education. The relevant Education Code sections have not changed since its circulation. On page 2 of the brochure is a section entitled “License and Certification.” In it, the County Office of Education states that candidates for Superintendent must “[p]ossess ***or show eligibility for*** a valid California Administrative Services Credential.” Although the LA Superintendent of Schools is an appointed position, there is no distinction in the law made regarding the credential requirements between elected superintendents and appointed superintendents. Thus, the brochure from the LA Office of Education provides evidence that a candidate for superintendent need only show eligibility to run for the office. In order to serve, if appointed, or if successful in the election in Mr. Abernathy’s case, that candidate would then procure the “certification document authorizing administrative services” by filing form CL-777 with the offer of employment.
2. Meanwhile, this exact issue was decided by the Santa Barbara Superior Court on March 30, 2022, in *Culver v. County of Santa Barbara / Lozano* 22CV01113. Ms. Lozano, like Mr. Abernathy, presented her declaration of candidacy for Superintendent of Schools along with the same Certificate of Eligibility presented by Mr. Abernathy. The Santa Barbara County Registrar, Joseph Holland, accepted Ms. Lozano’s declaration and intended to include her name on the ballot. A local political activist, Mollie Culver, challenged Ms. Lozano’s candidacy claiming that the Certificate of Eligibility was not the same as a “valid certification document authorizing administrative services” but the Court disagreed. The Court apparently considered that the effect of ruling that a Certificate of Eligibility was insufficient to run for Superintendent would be equivalent to reading into the Education Code a requirement that all candidates for Superintendent have previously served in an administrative capacity, but there is no such requirement in the law or in the legislative history. Thus, based upon California Education Code §1206 and §1208, the Court ruled that Ms. Lozano was qualified to run for the office of Superintendent because the Certificate of Eligibility specifically authorizes the holder to “seek employment in administrative services.”

**FIRST CAUSE OF ACTION**

**(Petition for Writ of Mandate – California Elections Code §13314; CCP §1085)**

1. Petitioner readopts, realleges, and incorporates herein by reference, all allegations appearing in paragraphs 1-15 above, as well as all facts and allegations in the other papers filed contemporaneously herewith and all attachments thereto.
2. The Respondent is about to commit an error by leaving Mr. Abernathy’s name off the official ballot for the June 7, 2022, Statewide Direct Primary Election as a candidate for the Office of County Superintendent of Schools for Tuolumne County.
3. Petitioner is entitled to a writ of mandate directing Respondent to include Mr. Abernathy’s name on the official ballot for the June 7, 2022, Statewide Direct Primary Election as a candidate for the Office of County Superintendent of Schools for Tuolumne County.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays:

1. That this Court issue its Peremptory Writ of Mandate ordering Respondent, and all persons acting pursuant to the direction and control of Respondent, to include Mr. Abernathy’s name on the official ballot for the June 7, 2022, Statewide Direct Primary Election as a candidate for the Office of County Superintendent of Schools for Tuolumne County.
2. In the event Respondent opposes this Petition for Writ, which we do not expect because it is the legally appropriate result and will lead to a democratic election, then Petitioner prays this Honorable Court award Petitioner his costs, including attorney’s fees pursuant to California Code of Civil Procedure §1021.5 as this is a matter of public importance.
3. Any and all further relief this Honorable Court deems just and proper.

 Respectfully submitted,

 John J. Thyne III

 Attorney for Petitioner

**VERIFICATION**

I am the Petitioner herein, and I have read the foregoing ***Petition for Writ of Possession*** and I know its contents. The matters stated in this document are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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

Executed on April 1, 2022, at Santa Barbara, California.

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| Zachary Abernathy |

Proof of Service

state of California, county of SANTA BARBARA:

 I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 205 E. Carrillo Street, Suite 100, Santa Barbara, CA 93101.

 On March 29, 2022, I served [ ]  the original [x]  a true copy of the foregoing document described as: **OPPOSITION TO EX PARTE APPLICATION** which is related to the action Santa Barbara Superior Court Case No. 22CV01113, upon the interested party(ies) in said action as follows:

SARAH CARRILLO, COUNTY COUNSEL

Office of the County Counsel

County of Tuolumne

2 South Green Street

Sonora, California 95370

counsel@tuolumnecounty.ca.gov

[x]  **BY EMAIL**: I electronically served the documents to the above-referenced email addresses.

[x]  (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ]  (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 1, 2022, at Santa Barbara, California.

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John J. Thyne III