

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (Aviso a Acusado)

CONNOR B. McCORMACK, as
Registrar of Voters of the County of
San Diego

FOR COURT USE ONLY
SOLO PARA USO DE LA CORTE

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)

TOM CLEARY, individually, and The California
Republican Party, an Unincorporated
Association

You have **30 CALENDAR DAYS** after this sum-
mons is served on you to file a typewritten re-
sponse at this court.

A letter or phone call will not protect you; your
typewritten response must be in proper legal
form if you want the court to hear your case.

If you do not file your response on time, you may
lose the case, and your wages, money and pro-
perty may be taken without further warning from
the court.

There are other legal requirements. You may
want to call an attorney right away. If you do not
know an attorney, you may call an attorney refer-
ral service or a legal aid office (listed in the phone
book).

Después de que le entreguen esta citación judicial usted
tiene un plazo de 30 DIAS CALENDARIOS para presentar
una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá
protección; su respuesta escrita a máquina tiene que
cumplir con las formalidades legales apropiadas si usted
quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder
el caso, y le pueden quitar su salario, su dinero y otras cosas
de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera
llamar a un abogado inmediatamente. Si no conoce a un
abogado, puede llamar a un servicio de referencia de
abogados o a una oficina de ayuda legal (vea el directorio
telefónico).

CASE NUMBER: (Número del Caso)

624845

The name and address of the court is: (El nombre y dirección de la corte es)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
X 220 W. Broadway □ 1501-55 Sixth □ 325 S. Melrose □ 250 E. Main
San Diego, Ca. San Diego, Ca. Vista, Ca. El Cajon, Ca.
92101-3409 92101-1946 92083-6627 92020-3913

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

Tina M. Pivonka/William P. Morrow (619) 230-7200
SCHALL, BOUDREAU & GORE, INC.
501 West Broadway - Suite 900
San Diego, CA 92101

KENNETH E. MARTONE

ROBERT D. ZAWALNY, Clerk of the Superior Court

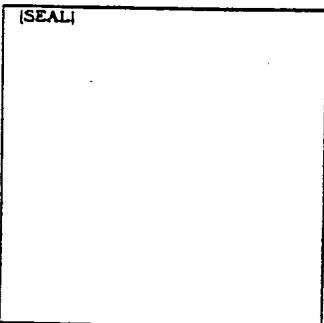
LINDA SASSO

DATE:
(Fecha)

JUN 05 1990

By _____
(Actuario)

Deputy
(Delegado)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):

- under: CCP 416.10 (corporation)
- CCP 416.20 (defunct corporation)
- CCP 416.40 (association or partnership)
- other:

- CCP 416.60 (minor)
- CCP 416.70 (conservatee)
- CCP 416.90 (individual)

- 4. by personal delivery on (date):

1 TINA M. PIVONKA
2 WILLIAM P. MORROW
3 SCHALL, BOUDREAU & GORE, INC.
4 501 West Broadway, Suite 900
5 San Diego, California 92101
6 (619) 230-7200

RECEIVED
JUN 5 1990
JESSO Deputy
BUSINESS

Attorneys for Plaintiffs, Tom Cleary, individually, and the
California Republican Party, an unincorporated
association

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

Tom Cleary, Individually, and The)
California Republican Party, an)
Unincorporated Association,)
Plaintiffs,)
vs.)
Conny B. McCormack, as Registrar of)
Voters of the County of San Diego,)
Defendant.)

Case No. 634845

COMPLAINT FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY AND
PERMANENT INJUNCTIONS,
AND DECLARATORY
RELIEF

Tom Cleary, individually and the California Republican
Party, an Unincorporated Association, for cause of action
against Defendant, allege as follows:

FIRST CAUSE OF ACTION

Temporary Restraining Order,
Preliminary and Permanent Injunctions

1. Plaintiff Tom Cleary is, and at all times herein
mentioned was, a United States citizen, eighteen years of age, a
resident and duly registered voter in the County of San Diego,
State of California.

1 2. Plaintiff California Republican Party (hereinafter
2 "CRP") is, and at all times herein mentioned was, an
3 unincorporated association for the California State Republican
4 Central Committee, the official state organization of the
5 Republican Political Party recognized under the Elections Code.

6 3. Plaintiff Tom Cleary as a citizen registered to vote
7 in San Diego County, and the CRP as the official state
8 organization of the Republican political party, have a First
9 Amendment right to a fair and impartial vote of the electorate,
10 and have further interest in the procedures of the San Diego
11 County Registrar's Office in conducting state and county
12 elections in such a manner as to insure the accuracy and
13 integrity of elections, and protect their First Amendment
14 rights.

15 4. Plaintiffs are informed and believe, and based thereon
16 allege that Defendant is now, and at all times mentioned herein
17 was, the duly appointed, qualified and acting Registrar of
18 Voters of the County of San Diego. As the chief election
19 official of that County, the Defendant has the duty to insure
20 that the state election laws are fully and faithfully enforced.
21 Elections Code §§1013 and 1017 set forth certain strict and
22 specific requirements for the return of ballots to the
23 Registrar's Office by absentee voters, or by third persons on
24 behalf of absent voters. Section 1013 requires that an absent
25 voter who, because of illness or other physical disability, is
26 unable to return the ballot, may designate specified persons
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1 including his or her spouse, child, parent, grandparent,
2 grandchild, brother or sister to return the ballot to the County
3 Registrar's Office or to the precinct board at any polling place
4 within the County's jurisdiction. Section 1017 provides for
5 emergency procedures in instances where a voter is unable to go
6 to the polls because of illness, disability, or physical
7 handicap. Such a voter may request in a written statement,
8 signed under penalty of perjury, that a ballot be delivered to
9 him or her, even though the period allowed to obtain absentee
10 ballots by mail may have expired. Under such circumstances, the
11 ballot shall be delivered by election officials to any
12 authorized representative of the voter who presents this written
13 statement to the official. Section 1017 further requires that
14 the voter shall return the ballot, personally or through the
15 authorized representative, to either the elections official or
16 any polling place within the jurisdiction.

17 5. Plaintiffs are informed and believe and based thereon
18 allege that Defendant has refused and continues to refuse to
19 fully enforce Election Code §§1013 and 1017 by failing to
20 institute and supervise a proper verification procedure to
21 prohibit the unauthorized personal return of absent voters'
22 ballots, at the Election Department Office, and at precinct and
23 polling places, in upcoming primary and special elections in San
24 Diego County. This failure and refusal to comply and fully
25 enforce §§1013 and 1017 of the Elections Code could result in
26 the illegal return of absent voters' ballots by unauthorized
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1 persons, and it could effect both election outcomes and the
2 integrity of the elections process.

3 6. On or about June 3, 1990, the CRP demanded that
4 Defendant fully comply with Elections Code §§1013 and 1017 and
5 take appropriate steps to insure that absent voter ballots are
6 returned only by authorized persons. The procedures demanded
7 were to log the name of the person returning the ballot, his or
8 her relationship to the voter, whether the cause for the third
9 party return is illness or disability of the voter, or whether
10 the ballot is returned under the Elections Code §1017 emergency
11 procedures. Defendant has refused and still refuses to take
12 such steps or other steps as are appropriate and necessary to
13 enforce the provisions of Election Code §§1013 and 1017, and to
14 otherwise fully insure that only authorized persons return
15 absent voters' ballots.

16 7. Defendants continued failure and refusal to fully
17 comply and enforce §§1013 and 1017, unless and until enjoined
18 and restrained by order of this Court, will cause great and
19 irreparable injury to Plaintiffs in that the illegal return of
20 absent voters' ballots by unauthorized persons could occur which
21 could also affect both election outcomes and the integrity of
22 the elections process.

23 8. Plaintiffs have no adequate remedy at law for the
24 injuries which are threatened in that it will be impossible for
25 Plaintiffs to determine the precise amount of monetary damages,
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1 if any, which they will suffer if the integrity of the elections
2 process or the outcome of such elections are adversely affected.

3 SECOND CAUSE OF ACTION

4 Declaratory Relief

5 9. Plaintiffs hereby incorporate by this reference
6 paragraphs 1 through 8, inclusive, as though fully set forth
7 herein.

8 10. Plaintiffs are informed and believe and thereon allege
9 that an actual controversy has arisen and now exists between
10 Plaintiffs and Defendant concerning their respective rights and
11 obligations under Election Code §§1013 and 1017 in that
12 Plaintiff contends that Defendant is required to ascertain the
13 identity of all persons delivering absent ballots on behalf of
14 absent voters, to ascertain the relationship of such persons to
15 the absent voter and whether the cause for third party returns
16 is illness or disability of the voter, and to verify their
17 authorized representative capacity to deliver such ballots on
18 behalf of the absent voter in accordance with the emergency
19 procedures of §1017. Whereas Defendant disputes these
20 contentions and contends that the election officials are not
21 required under §§1013 and 1017 to ascertain and record the
22 relationship between an absent voter and persons delivering
23 absent ballots on their behalf, or to verify that such persons
24 delivering an absent ballot is the authorized representative on
25 whose behalf the voter initially obtained the ballot. Defendant
26 further contends that merely logging the name of the person
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1 returning the ballot, without requiring proof of identification
2 is sufficient to enforce §§1013 and 1017.

3 11. Plaintiffs desire a judicial determination of their
4 rights and duties, and a declaration as to which parties'
5 interpretation of Election Code §§1013 and 1017 is correct.

6 12. A judicial declaration is necessary and appropriate at
7 this time under the circumstances in order that Plaintiffs may
8 ascertain their rights under Election Code §§1013 and 1017.
9 Until such a declaration is rendered, Plaintiffs cannot be
10 confident in the integrity of the election process or the
11 accuracy of election outcomes.

12 13. Plaintiffs have demanded that Defendant take such
13 steps as are necessary and adequate to verify the authorized
14 status of each person delivering absent ballots on behalf of
15 absent voters. Defendant has refused to take such steps beyond
16 merely recording the name of persons delivering ballots to the
17 Registrar's Office and/or polling places on election day.
18 Defendant has refused and continues to refuse to take
19 additional steps to obtain further information relating to such
20 person's relationship to the absent voter and whether such
21 persons were the authorized representative on whose behalf the
22 voter previously obtained the ballot from the election
23 officials.

24 WHEREFORE Plaintiffs pray judgment as follows:

25 1. AS TO THE FIRST CAUSE OF ACTION:
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SCHELL-BOUDREAU-GORE
A PROFESSIONAL CORPORATION
501 W BROADWAY SUITE 200 SAN DIEGO, CA 92101
TEL 619-230-7200 FAX 619-231-9754

1 A. For an order requiring Defendant to show cause,
2 if any she has, why she should not be enjoined as hereinafter
3 set forth, during the pendency of this action;

4 B. For a Temporary Restraining Order, a Preliminary
5 Injunction, and a Permanent Injunction, all enjoining Defendant
6 and her agents, servants, and employees, and all persons acting
7 under, in concert with, or for Defendant:

8 (1) To institute and enforce a verification
9 procedure at her office and at all San Diego County precinct
10 polling places, with respect to all absent voters' ballots
11 returned in person to the County Election Department and all
12 precinct polling locations in San Diego County, with such
13 procedures to include requesting and recording the following
14 information: the name and identity of the person delivering the
15 absent voter; the relationship, if any, such person has to the
16 absent voter, including whether they are his or her spouse,
17 child, parent, grandparent, grandchild, brother or sister;
18 whether they are designated by the absent voter to return the
19 ballot because the voter is unable to do so by reason of illness
20 or physical disability; or whether the ballot is returned under
21 Elections Code §1017 emergency procedures; and

22 (2) To hold all absent voters ballots returned
23 to her office or to precinct polling locations in San Diego
24 County which do not contain postmarks, and counting the same
25 only after verifying compliance with Elections Code §§1013 and
26 1017.

1 C. For costs of suit and attorneys fees in
2 accordance with Code of Civil Procedure §1021.5; and

3 D. For such other and further relief as the Court
4 deems proper.

5 2. AS TO THE SECOND CAUSE OF ACTION:

6 A. For a declaration that:

7 (1) Elections Code §§1013 and 1017 require
8 Defendant to enforce such provisions by instituting a
9 verification procedure at her office and at all San Diego County
10 precinct polling places, with respect to all absent voters
11 ballots returned in person to the County Elections Department
12 and all precinct polling locations in San Diego County, with
13 such procedures to include requesting and recording the identity
14 of persons delivering absent ballots on behalf of an absent
15 voter, and their relationship to such voter including whether
16 they are the voter's spouse, child, parent, grandparent,
17 grandchild, brother or sister, whether they are returning the
18 ballot on behalf of the absent voter by reason of the voter's
19 illness or other physical disability, and whether the ballot is
20 returned under the Elections Code §1017 emergency procedures.

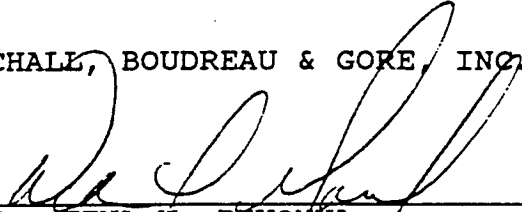
21 (2) Defendant shall hold all absent voters'
22 ballots returned to her office or to precinct polling locations
23 in San Diego County which do not contain postmarks, and count
24 the same only after verifying compliance with Elections Code
25 §§1013 and 1017.

1 B. For costs and attorneys fees in this proceeding
2 in accordance with Code of Civil Procedure §1021.5; and

3 C. For such other and further relief as the Court
4 may deem proper.

5 Dated: June 5, 1990

SCHALL, BOUDREAU & GORE, INC.

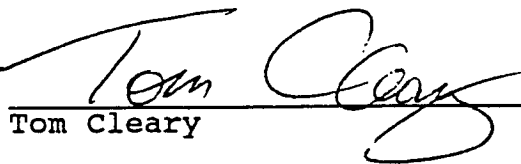
6
7
8 BY: 
9 TINA M. PIVONKA
10 WILLIAM P. MORROW
11 Attorneys for Plaintiffs Tom
12 Cleary, individually, and The
13 California Republican Party,
14 an unincorporated association

15 VERIFICATION

16 I, Tom Cleary, am a Plaintiff in the above-entitled action.
17 I have read the foregoing Complaint and know the contents
18 thereof. The same is true of my own knowledge except as to
19 those matters which are therein alleged on information and
20 belief, and as to those matters, I believe it to be true.

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

23 Dated: June 5, 1990

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28 
Tom Cleary


**SAN DIEGO SUPERIOR COURT
PLAINTIFF'S INITIAL FILING FORM-CIVIL PROCEEDINGS**

<input checked="" type="checkbox"/> DOWNTOWN S37000	<input type="checkbox"/> NORTH COUNTY S37001	<input type="checkbox"/> EAST COUNTY S37002	<input type="checkbox"/> SOUTH BAY S37003	FOR COURT USE ONLY
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Complaint must be served ON ALL PARTIES within 60 days of filing the complaint (section 1.4 (a) - (d) Local Rules of Court). Filing of an Amended/Cross Complaint shall not extend any deadlines imposed by the local rule.


CASE CATEGORY: CHECK ONE BOX ONLY	CASE NUMBER
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NEW FILING




B51

PERSONAL INJURY,
PROPERTY DAMAGE,
WRONGFUL DEATH
- MOTOR VEHICLE




A71

PERSONAL INJURY
PROPERTY DAMAGE
WRONGFUL DEATH
- OTHER




A72

OTHER CIVIL COMPLAINTS




A60

EMINENT DOMAIN*
*TOTAL # OF PARCELS _____




A73

CIVIL PETITIONS
WRITS, CIVIL HARRASSMENT
CHG OF NAME, COMPEL ARB.
GDN AD LITEM, ETC.



A61

E N D



ZA

DEFENDANTS ONLY (Do Not List Plaintiff)

COMPLAINT FILED AGAINST:

1. <u>Conny B. McCormack, as County Clerk or Registrar</u>	d.b.a. or a.k.a.
2. _____	<u>County of San Diego</u>
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____

Additional Sheet Attached

This case will be processed under the Trial Delay Reduction Act of 1986 and pursuant to section One of the San Diego Superior Court Rules. The rules in this section apply not withstanding any other rule in the California Rules of Court. (Government Code 68612.)

ATTORNEY OF RECORD: (Change of Attorney requires written notification to the Court.)

NAME: Tina M. Pivonka/William P. Morrow **FIRM:** Schall, Boudreau & Gore

ADDRESS: 501 West Broadway - Suite 900

CITY: San Diego **ST:** CA **ZIP:** 92101 **PHONE:** (619) 230-7200

WARNING: MARKING THE WRONG BOX OR FILING A WRONG FORM MAY RESULT IN A FAILURE TO COMPLY WITH COURT RULES.