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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	FOR THE COUNTY OF SACRAMENTO	
10	UNLIMITED JURISDICTION	
11	CNERVITTE	JUNISDICTION
12	STEPHEN R. JAFFE, Candidate for) Case No.
13	United States House of Representatives,) case 110.
		VERIFIED PETITION FOR WRIT
14	Petitioner and Plaintiff,	OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND
15	v.	DECLARATORY RELIEF
16) (California Elections Code Section
17	CALIFORNIA DEMOCRATIC PARTY; and DOES 1 through 100, inclusive,	(California Elections Code Section 13314; California Code of Civil
18	and DOES I through 100, motusive,	Procedure sections 1085, 525 & 1060)
19	Defendants and)
	Respondents.) CALIFORNIA ELECTIONS CODE
20		SECTION 13314(a)(3)]
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VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT

Petitioner and Plaintiff STEPHEN R. JAFFE, Candidate for United States House of Representatives ("Petitioner" or "Jaffe"), hereby petitions this Court for a peremptory writ of mandate and seeks injunctive and declaratory relief against Respondent and Defendant CALIFORNIA DEMOCRATIC PARTY (the "CDP" or the "Party") and DOES 1 through 100, inclusive, and alleges as follows:

INTRODUCTION

- 1. This matter arises out of the CDP's unlawful, unfair, and discriminatory decision to deny Jaffe's challenge of the automatic endorsement of incumbent candidate Nancy Pelosi ("Pelosi" or the "incumbent") for the United States House of Representatives for California's 12th District.
- 2. The CDP represented to Jaffe that a fair and objective process existed in which Jaffe could challenge the automatic endorsement of Pelosi. However, the CDP actively worked to deny Jaffe the ability to utilize that process. The CDP misled Jaffe and "moved the goalposts" with respect to the requirements necessary to overcome the Party's automatic endorsement of Pelosi.
- 3. The CDP has further denied Jaffe a fair opportunity to seek the Party's endorsement and thereby to have the chance to appear on the June 5, 2018 California primary election ballot as a candidate endorsed by the CDP.
- 4. The CDP's actions have been inconsistent with its own By-Laws and have violated basic norms due process, fair play, and transparency. Moreover, the CDP has disregarded the crucial role it plays within the California election process. In doing so,

the CDP has bolstered the unfortunate public perception that it is more interested in protecting wealthy, powerful incumbents than in welcoming promising new candidates.

Priority Matter

5. Pursuant to Elections Code section 13314(a)(3), as an election law writ petition, this matter shall have priority over all other civil matters. Time is of the essence in this proceeding because of CDPs' impending State Convention beginning on February 23, 2018. This matter is timely brought because on February 15, 2018, the CDP made clear that it would be denying Jaffe a hearing on his February 13, 2018 appeal until after the CDP State Convention, and Jaffe is filing this action only a few court days after such denial.

Parties

- 6. Petitioner and Plaintiff STEPHEN R. JAFFE is a resident of, and an elector and voter duly registered in, the City and County of San Francisco, State of California, and is authorized by California Elections Code section 13314 and Code of Civil Procedure sections 525, 1060, and 1085 to bring this action. Jaffe is a candidate for United States House of Representatives, in California's 12th Congressional District, in the June 5, 2018 California primary election, and thus is beneficially interested in the outcome of this matter.
- 7. Respondent and Defendant CALIFORNIA DEMOCRATIC PARTY (aka the Democratic Party of California pursuant to Part 2 of Division 7 of the California Elections Code, and specifically Election Code section 7050) is a California political party headquartered in the City of Sacramento, County of Sacramento, State of California,

with the ability to sue and be sued for its actions or inactions in connection with candidates and others such as Jaffe. The true and correct capacities of Respondents and Defendants DOES 1 through 100, and each of them, are unknown to Jaffe at this time, and Jaffe therefore sues them bu fictitious names. Jaffe will file DOES amendments and/or seek leave of Court to amend this Petition and Complaint to assert the true names and capacities of these Respondents and Defendants when they have been ascertained. Jaffe is informed and believes, and based thereon alleges, that each Respondent and Defendant herein designated as a DOE was and is in some manner responsible for the wrongdoing alleged herein.

Jurisdiction

8. This Court has jurisdiction over this matter pursuant to California Elections Code section 13314 and Code of Civil Procedure sections 525, 1060, and 1085, et seq.

Venue

9. The proper venue for this action is the County of Sacramento, given that the CDP is headquartered in Sacramento and the CDP's wrongful conduct occurred in Sacramento.

STATEMENT OF FACTS

Jaffe Timely Challenged the Automatic Endorsement of Incumbent Pelosi

10. The CDP automatically endorses incumbent candidates such as Pelosi, who are seeking reelection, by placing their names on the consent calendar for the Party's endorsing convention. (CDP By-Laws, Article VIII, Section 3(g)(12).)

- 11. In order to challenge the automatic endorsement of an incumbent such as Pelosi and require an incumbent to undergo the CDP's regular endorsement process, a challenger must acquire the signatures of twenty percent (20%) of Pre-Endorsing Conference eligible voters for the district in which they are seeking office.
- 12. On or about January 2, 2018, Jaffe timely filed his 2018 Candidate
 Registration Form with the CDP along with a \$350 filing fee. A true and correct copy of
 the Form (with personal information such as Jaffe's credit card number redacted) is
 attached hereto as Exhibit 1 and incorporated herein by this reference.
- 13. On or about January 5, 2018, the CDP staff provided Jaffe with the Pre-Endorsing Conference Eligible Voter List for CA-12, which contained the names of 182 eligible voters (the "182-voter list"). The 182-voter list was transmitted to Jaffe along with a disclaimer from the Party that the list was current "as of November 30, 2017, the deadline to make changes to said list per CDP Rules. No additional changes may be made to this list past that deadline." Jaffe reasonably relied on the 182-voter list in calculating the twenty percent (20%) figure and gathering the needed signatures.
- 14. Jaffe gathered the signatures of 41 voters whose names were listed on the 182-voter list, four more than the 37 signatures necessary to reach the twenty percent (20%) threshold.
- 15. On January 17, 2018, the day on which challenges to the automatic endorsement of incumbents such as Pelosi were due pursuant to the CDP rules, Jaffe submitted the 41 signatures on a petition to the CDP challenging Pelosi's automatic endorsement.

The CDP Staff Rejected Jaffe's Challenge Based on an Unjustified Rejection of Voter Signatures and an Undisclosed Voter List

- 16. On January 19, 2018, Clark Lee, the CDP's Political Director, and Kasey Wolukones, the CDP's Deputy Political Director, issued a memorandum (the "Memorandum") in which they concluded that only 36 of the 41 signatures Jaffe submitted were verified and that therefore Jaffe's challenge of Pelosi's automatic endorsement had failed.
- 17. Among the signatures that were rejected was that of Niloy Mukherjee, a bona fide resident of the 12th Congressional District eligible to sign the petition at the time he signed. The CDP provided no explanation for the rejection of Mr. Mukherjee's signature or any others.
- 18. The Memorandum stated that 38 (not 37) signatures were necessary for Jaffe to reach the twenty percent (20%) threshold required by the CDP By-Laws, and indicated that the CDP was basing the threshold on a 190-voter list (the "190-voter list") that had never been made available to Jaffe, rather than the 182-voter list.

The CDP Denied Jaffe an Opportunity to Speak at the Hearing Regarding His Challenge of the Rejection of His Petition

19. On January 22, 2018, Jaffe submitted a challenge to the CDP's rejection of his petition to challenge Pelosi's automatic endorsement. On January 29, 2018, Jaffe submitted a supplemental statement in support of his challenge. A true and correct copy of Jaffe's challenge and supplemental statement is attached hereto as Exhibit 2 and incorporated herein by this reference.

- 20. On February 7, 2018, the CDP's Compliance Review Commission (the "CRC") held a telephonic "hearing" to address Jaffe's challenge. The CRC refused Jaffe's request to speak and at this hearing and refused his offer to answer questions.
- 21. During the hearing, an inquiry was made by a CRC member as to when the 190-voter list, upon which the CDP based its signature threshold, became available. It was determined that the 190-voter list did not come into existence until as late as January 17, 2018, the **same date** on which challenge petitions were due. No list containing 190 voters was ever provided to Jaffe at any time prior to the January 17, 2018 due date.
- 22. On February 12, 2018, the CRC issued a written decision upholding the CDP staff's rejection of Jaffe's challenge to the automatic endorsement of Pelosi. In its decision, the CRC inaccurately speculates that Jaffe "clearly knew" of the new 190-voter list because his petition contained the signatures of three eligible voters who did not appear on the 182-voter list. In fact, Jaffe acquired the signatures of these voters by asking for the signatures of eligible voters and these three voters volunteered their signatures. Had Jaffe been given the opportunity to speak at the CRC hearing, Jaffe could have offered this clarification. A true and correct copy of the CRC's Decision is attached hereto as Exhibit 3 and incorporated herein by this reference.

The CDP's Timeline for Hearing Jaffe's Appeal of the CRC Decision Will Ensure That a Final Decision is Not Made Until After the CDP Convention

23. On February 13, 2018, through counsel, Jaffe submitted to the CDP an appeal of the CRC's decision. A true and correct copy of the appeal is attached hereto as Exhibit 4 and incorporated herein by this reference.

- 24. On February 15, 2018, the CDP staff issued a notice to interested parties stating that written responses to the appeal must be submitted by February 27, 2018. A true and correct copy of the notice is attached hereto as Exhibit 5 and incorporated herein by this reference.
- 25. The CDP's endorsing convention will occur from February 23, 2018 to February 25, 2018.
- 26. Jaffe requested that the CDP provide an expedited schedule for his appeal, so that a final determination by the CDP can be made in time for the endorsing convention. However, without explanation, the CDP has refused to expedite the appeal, thus effectively seeking to "run out the clock" on Jaffe's efforts to challenge Pelosi's automatic endorsement.

Applicable Substantive Law

California Constitution Art. I, Sec. 7

27. The California Constitution provides that "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws." (Cal. Const. Art I, Sec. 7.) The California Supreme Court has determined that this right to due process includes a right to "freedom from arbitrary adjudicative procedures." (Saleeby v. State Bar of California, (1985) 39 Cal.3d 547, 563-65 [citing People v. Ramirez, (1979) 25 Cal.3d 260, 268-69.].) Furthermore, the California Code of Civil Procedure creates a statutory right to a fair hearing before an impartial tribunal. (Cal.

Code Civ. Proc. section 1094.5(b); <u>Clark v. City of Hermosa Beach</u>, (1996) 48 Cal. App. 4th 1152, 1170.)

28. While in some ways a political party is a private organization, actions taken by political parties that can fairly be attributable to the state are subject to due process.

(Wilson v. San Luis Obispo County Democratic Central Committee (2009) 175 Cal. App. 44th 489, 499-500.) Party conventions are mechanisms provided for by state law. (See Cal. Elec. Code sec. 20001(2).) Moreover, the CDP acts in a public capacity and uses public resources when endorsing and nominating candidates for the United States House of Representatives. Therefore, the CDP's actions in establishing voting processes for endorsing conventions are subject to due process.

California Democratic Party By-Laws

29. The CDP's By-Laws provide that the CDP's "endorsement process shall be broadly and fairly representative of the various components of the Party." (CDP By-Laws, Article VIII, Section 1(d).) To achieve this aim, the By-Laws provide that incumbent candidates such as Pelosi shall not automatically receive the CDP's endorsement if a petition is submitted to the CDP signed by twenty percent (20%) of eligible Pre-Endorsing Conference participants for a given district. In such instances, incumbent candidates such as Pelosi will be subject to the regular endorsement process, along with the challenger. (CDP By-Laws, Art. VIII, Sec. 3(g)(12).)

Applicable Procedural Law

Elections Code Section 13314(a)(1)

30. This Petition is brought pursuant to Elections Code section 13314(a)(1), which 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, sample ballot, voter pamphlet, or other official matter, or that any neglect of duty has occurred, or is about to occur." Jaffe alleges that such an error or omission has occurred, or is about to occur in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter, or that a neglect of duty has occurred, or is about to occur with regard to the CDP placing of Pelosi's name on the consent calendar for the CDP's endorsing convention, and refusing to place Jaffe's name on an endorsement ballot along with Pelosi's name as part of the regular endorsement process.

Elections Code Section 13313(a)(2)

31. Elections Code section 13314(a)(2) provides that "A peremptory writ of mandate shall issue only upon proof of both of the following: (A) That the error, omission, or neglect is in violation of this code or the Constitution, and (B) That issuance of the writ will not substantially interfere with the conduct of the election." Jaffe alleges that the error, omission, and/or neglect are in violation of the Elections Code or the Constitution, and that issuance of the writ will not substantially interfere with the conduct of the election.

Code of Civil Procedure Section 1085

32. This Petition is also brought pursuant to Code of Civil Procedure section 1085, et seq. which provides, in relevant part, that "A writ of mandate may be issued by any court to any ... person, to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office"

Code of Civil Procedure Section 1086

- 33. Code of Civil Procedure section 1086 provides, in relevant part, 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."
- 34. Jaffe does not have a plain, speedy or adequate remedy in the ordinary course of law, especially insofar as the timeline CDP has provided to consider Jaffe's challenge of the automatic endorsement of Pelosi will not allow for a final decision to be made until after CDP's endorsing convention.

Equitable Relief is Appropriate and Justified

- 35. The issuance of the requested writ of mandate will not substantially interfere with the conduct of the election insofar as there is sufficient time for the parties to brief the matter and for oral argument to be held and a trial court decision rendered prior to the commencement of CDP's endorsing convention on February 23, 201.8
- 36. Should the requested writ not issue, irreparable harm will occur in that Jaffe's name will not appear on the ballot for endorsement for House of Representatives for CA-12.

37. Jaffe is entitled to prompt judicial review of this matter, and this procedure for a writ of mandate is the appropriate procedure for obtaining that judicial review.

FIRST CAUSE OF ACTION

(Petition for Writ of Mandate - Elections Code Section 13314)

- 38. Jaffe realleges and incorporates herein by reference the allegations of paragraphs 1 through 37, inclusive.
- 39. As set forth above, the CDP has violated the law by denying Jaffe a legitimate opportunity to challenge the automatic endorsement of Pelosi.
- 40. The CDP's By-Laws provide for a process through which Jaffe sought to challenge the automatic endorsement of Representative Pelosi. Despite the fact that Jaffe met all requirements of the process, the CDP refused to find that the requirements had been met.
- 41. The CDP staff inexplicably denied the validity of numerous signatures on Jaffe's petition.
- 42. The CDP staff "hid the ball" and unfairly decided that Jaffe was required to collect signatures based on the 190-voter list which appears to have only come into existence on the same day that Jaffe's petition was due.
- 43. It was reasonable for Jaffe to pursue the signatures of twenty percent (20%) of eligible voters based on the 182-voter list that was provided to Jaffe and which the CDP represented as the "final" list from which to gather signatures.

- 44. The CDP has provided Jaffe with a sham of a process in order to give the impression that it is willing to deny automatic endorsement to Pelosi where a challenger successfully gathers a sufficient number of signatures.
- 45. The CDP misled Jaffe and changed the standards Jaffe was required to meet without notifying Jaffe and in direct contradiction of prior representations made to Jaffe.
- 46. As a result of these "bait and switch" tactics, the CDP denied Jaffe the due process to which he is entitled in seeking the CDP's endorsement. This has resulted in gross unfairness to Jaffe and substantial harm to Jaffe and his campaign.
- 47. Additionally problematic is the fact that the CDP's actions reaffirm the widely held perception that it is not interested in encouraging promising new candidates that enable the CDP to achieve its stated policy goal of an endorsement process that is "broadly and fairly representative of the various components of the Party," but instead, seeks to coddle wealthy, powerful incumbents, while denying its members the opportunity to even vote on alternatives.
- 48. Based on the foregoing, Jaffe is entitled to a writ of mandate pursuant to Elections Code section 13314 requiring the CDP to submit Pelosi to the regular endorsement process and include Jaffe's name on the endorsement ballot.

SECOND CAUSE OF ACTION

(Petition for Writ of Mandate - Code Civil Proc. Section 1085 et seq.)

49. Jaffe realleges and incorporates herein by reference the allegations of paragraphs 1 through 37, inclusive.

- 50. Based on the foregoing, the CDP has violated Jaffe's due process rights and denied Jaffe a fair opportunity to seek the endorsement of the CDP.
- 51. Based on the foregoing, Jaffe is entitled to a writ of mandate pursuant to Code of Civil Procedure section 1085 et seq. requiring the CDP to submit Pelosi to the regular endorsement process and include Jaffe's name on the endorsement ballot.

THIRD CAUSE OF ACTION

(Injunctive Relief - Code Civ. Proc. Sec 526 et seq.)

- 52. Jaffe realleges and incorporates herein by reference the allegations of paragraphs 1 through 29, inclusive.
- 53. Jaffe alleges that the CDP's By-Laws and due process require the CDP to consider the endorsement of the candidates for CA-12 via the regular endorsement process, denying Pelosi an automatic endorsement and allowing Jaffe's name to appear on the endorsement ballot.
- 54. Jaffe alleges that he is entitled to a preliminary and permanent injunction and requests that the court issue such equitable relief.

FOURTH CAUSE OF ACTION

(Declaratory Relief - Code Civ. Proc. Sec 1060 et seq.)

- 55. Jaffe realleges and incorporates herein by reference paragraph 1 through 29, inclusive.
- 56. The CDP believes that Jaffe has failed to meet the requirements set forth in the CDP's By-Laws to challenge the automatic endorsement of Pelosi.

57. Jaffe is of the view that he has met the requirements for challenging the automatic endorsement of Pelosi, as those requirements were represented to him by the CDP.

PRAYER

WHEREFORE, Jaffe prays:

On the First and Second Causes of Action:

1. That this court issue its <u>Peremptory Writ of Mandate</u> ordering the CDP, and all persons acting pursuant to its direction and control, to remove Pelosi's endorsement from the consent calendar for the CDP Convention and that Pelosi and Jaffe be subject to the regular endorsement process in order to seek endorsement as candidates for CA-12.

On the Third Cause of Action:

2. That this court issue a <u>preliminary and permanent injunction</u> ordering the CDP to consider the endorsement of Jaffe and Pelosi as candidates for CA-12 via the regular endorsements process, denying Pelosi's automatic endorsement and allowing Jaffe's name to appear on the endorsement ballot along with Pelosi's.

On the Fourth Cause of Action:

3. That this court issue a <u>declaration</u> that Jaffe has met the requirements for challenging the automatic endorsement of Pelosi.

On all Causes of Action:

- 4. That the court award Jaffe costs, including reasonable attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, as permitted to be recovered from the CDP; and
- 5. That this court grant such other and further relief as may be just and proper.

Respectfully Submitted:

Dated: February 20, 2018

y: 0

Bradley W. Hertz

The Sutton Law Firm, PC

Attorneys for Petitioner

STEPHEN R. JAFFE, Candidate for United States House of Representatives