

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SHASTA**

**HON. MONICA MARLOW**

Dept 4  
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#174130

**SHASTA COUNTY CITIZENS  
FOR JUSTICE, et al.,  
Plaintiffs,**

vs.

**CITY OF SHASTA LAKE, et al.,  
Defendants.**

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**NATURE OF PROCEEDINGS: RULING ON ORDER TO SHOW CAUSE FOR  
PRELIMINARY INJUNCTION**

This action relates to an election set for April 10, 2012 to recall Dolores Lucero as a member of the City Council for the City of Shasta Lake. Plaintiffs seek an injunction to restrain and enjoin Defendants from any of the following:

1. Holding a recall election on April 10, 2012, as is contemplated by Resolution No. CC 11-81 of the City Council for the City of Shasta Lake;
2. Taking any action on the recall petition for Shasta Lake City Councilmember Dolores Lucero, except as to treat the same as null, void, and having no force and effect; and,
3. Taking any action whatsoever relating to the planning, carrying out, or otherwise proceeding with a recall election of Shasta Lake City Councilmember Dolores Lucero, including, but not limited to, appointing an elections inspector.

On March 8, 2012, the Court conducted a hearing on Plaintiffs' application for a temporary restraining order, application for the issuance of an order to show cause re: preliminary injunction, and application for order shortening time for notice and hearing re: the application for preliminary injunction. The Court denied the application for a temporary restraining order. Despite its request for an order shortening time, Plaintiffs sought additional time to file additional declarations and points and authorities as part of their reply to the opposition. Defendants objected on the grounds that it would add new evidence and raise new matters not now before the Court. The Court sustained the objection. The parties then agreed to shorten time so that the hearing on the order to show cause re: preliminary injunction could be heard forthwith on March 8, 2012. The parties submitted on the pleadings and argument.

Although the application for the order to show cause listed other action which Defendants appeared to be seeking to enjoin, the proposed order to show cause submitted by

Defendants and ultimately signed by the Court includes only the items listed above. The Court addresses only the relief sought in the order to show cause.

Two interrelated factors are evaluated by the trial court in deciding whether to issue a preliminary injunction. The first is the “reasonable probability” that the plaintiff will prevail on the merits at trial. [*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 206.] The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. [*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 624-625.] The burden is on the moving party to show all elements necessary to support issuance of a preliminary injunction.

Preliminarily, it is worth noting that Plaintiffs’ pleadings set forth that the Shasta County Elections Office performed its statutory duty of verifying voter registration and signatures on the recall petition. On December 21, 2011, the County Clerk announced that the recall petition had been found sufficient. The signatures submitted totaled 1,658. The signatures deemed valid totaled 1,500. The number of signatures required was 1,222. There are 278 signatures over and above the number required.

#### I. Reasonable Probability of Prevailing on the Merits at Trial

Four declarations were submitted in support of this allegation. In two of the declarations, the evidence presented is that declarants did not sign the recall petition. [Declarations of John Nelson and Charles Lukens.] In the third declaration, the evidence presented is that declarant signed a petition allegedly after being told by Kay Kobe that it was not for the recall of Dolores Lucero. There is no evidence setting forth what was in fact signed by this declarant. [Declaration of Dolores Arnold.] The fourth declarant is Councilmember Dolores Lucero. Councilmember Lucero declares that she saw Kay Kobe approach a resident on private property and observed the interaction between Kobe and the resident. Lucero observed that Kobe appeared to be holding a document which Lucero believed to be a recall petition. Lucero declares that she observed Kobe assisting the resident in signing the document. Lucero declares that she contacted the resident at his residence regarding Kay Kobe approaching him. The resident was John Nelson, whose declaration was referenced above. Lucero declares that Mr. Nelson told her he signed a petition circulated by Kobe. However, contrary to Lucero’s statements made under penalty of perjury, Mr. Nelson stated under penalty of perjury that he declined to sign the recall petition.

A declaration was submitted by Cathy Darling Allen, the Count Clerk/Registrar of Voters for Shasta County. The declaration sets forth that she reviewed the recall petition. The recall petition consisted of 68 sections. Ms. Darling Allen reviewed all sections. Kay Kobe was not the circulator on any of the sections.

The declarations submitted by Plaintiffs do not support the allegation that signatures were gathered by non-resident circulators. The declaration submitted by the Registrar of

Voters affirmatively sets forth that based on her review of the recall petition, Kay Kobe was not a circulator.

Furthermore, even assuming there was evidence that signatures were gathered by a non-resident circulator, there is no statutory or constitutional authority for the Court to enjoin a recall election on the ground that signatures on a recall petition were obtained by a non-resident petition circulator. The statutory scheme for remedies relating to improper signature gathering is to hold the circulator accountable, not the signator. The power of recall petition is one reserved to the people, and in order to protect the people in the exercise of this power, statutory provisions dealing with such powers are always liberally construed in favor of the power to the people. [Elections Code §§18600-18610; *Truman v. Royer* (1961) 189 Cal.App.2d 240.]

Based on the above, the Court finds there is no reasonable probability that Plaintiffs will prevail on the merits at trial.

II. Interim harm if the preliminary injunction is denied compared to harm to defendants if the preliminary injunction is issued

There is no interim harm to Plaintiffs. Granted, the result of the election may be that Councilmember Lucero is recalled. However, the harm to Councilmember Lucero on a personal level is not the harm which is at issue. The harm at issue is to the electoral process. There is no evidence of likely harm to the electoral process if the injunction is not granted. If the election is allowed to proceed, registered voters of the City of Shasta Lake, including Plaintiff Shasta County Citizens for Justice to the extent its members are qualified voters in the City of Shasta Lake, will have an opportunity to decide whether to recall Councilmember Lucero. No one improperly will be denied a right to vote.

On the other hand, if the Court were to grant the preliminary injunction the electoral process would be harmed because citizens would be deprived of the opportunity to vote. According to the declaration of the Registrar of Voters, many statutory duties are required to be performed a certain number of days prior to Election Day. Many of the required statutory duties have already been performed. If the preliminary injunction is granted, the following would result:

1. Packing and staging of polling place supplies and equipment would be suspended;
2. Preparation for poll worker training would be stopped. The preparation includes modifications to training materials, development of materials, and printing and assembly of training materials;
3. The County would be unable to comply with "vote by mail" requests;
4. Filing for write-in candidates ends March 27, 2012; such filings would be suspended;
5. Delivery of election equipment and supplies to polling places would cease;
6. Preparation for temporary staff to perform hand tally and canvass duties would cease;
7. The delivery of polling place ballots from the printer would cease;

8. "Vote-by-mail" voters may receive their ballots late, causing the ballots to be returned late. Such ballots would not be counted and voters would be disenfranchised;
9. If a preliminary injunction was granted, and then later lifted during the course of litigation, the expense to the taxpayer in rescheduling the election would be in excess of \$40,000; and,
10. Enjoining an election which is already scheduled to proceed and later reinstating or rescheduling the election date would cause voters to become confused. Uncertainty as to the election date would ensue, and the likely consequence would be an adverse impact on voter turn-out and voter disenfranchisement.

The Court must consider the goal of preservation of the status quo until a final determination of the merits of the action. [*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.] The status quo is an election date of April 10, 2012. A preliminary injunction disrupts rather than preserves the status quo.

Because there are other grounds for denying the application for a preliminary injunction, it is not necessary for the Court to address at this stage of the proceedings whether the requirement of Elections Code §11045 is unconstitutional.<sup>1</sup>

### III. California Public Records Act Request

Citing the California Public Records Act, Plaintiffs also have sought disclosure of the circulator declarations section of the recall petitions. Government Code §6253.5 provides that recall petitions are not public records open to public inspection. Plaintiffs argue that the circulator declarations are a section of the recall petition which may be segregated and disclosed to the public. However, there is no statutory authority to parse sections of the recall petition and allow public disclosure of some sections.

The application for a preliminary injunction is denied. The request for disclosure of public records is denied. Plaintiffs are to prepare the order, attaching this ruling as an exhibit to the proposed order.

Dated: March \_\_\_\_ 2012

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**MONICA MARLOW**  
**Judge of the Superior Court**

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<sup>1</sup> Elections Code §11045 provides: *Only registered voters of the electoral jurisdiction of the officer sought to be recalled are qualified to circulate or sign a recall petition for that officer.*

**CERTIFICATE OF MAILING**

**STATE OF CALIFORNIA, COUNTY OF SHASTA**

***I, THE UNDERSIGNED, CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT I AM A DEPUTY COURT CLERK OF THE ABOVE-ENTITLED COURT AND NOT A PARTY TO THE WITHIN ACTION; THAT I MAILED A TRUE AND CORRECT COPY OF THE ABOVE TO EACH PERSON LISTED BELOW BY DEPOSITING SAME IN THE UNITED STATES POST OFFICE IN REDDING, CALIFORNIA, ENCLOSED SEALED ENVELOPES WITH POSTAGE PREPAID***

***DATED: March \_\_\_\_, 2012***

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***DEPUTY CLERK***

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