

1 Robert P. Otilie, Esq., SBN 95845
Attorney at Law
2 444 West C Street, Suite 320
San Diego, CA 92101
3 Telephone: (619) 231-4841
Facsimile: (619) 231-3293
4 Email: ro@ottilielaw.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/06/2024 at 08:43:00 PM
Clerk of the Superior Court
By E- Filing, Deputy Clerk

5 Christian C. Haffner, SBN 248962
6 Timothy T. Morgan, SBN 280054
HAFFNER & MORGAN LLP
7 2333 First Avenue, Suite 200
San Diego, CA 92101
8 Telephone: (619) 541-8787
Facsimile: (619) 541-8795
9 Email: tim@haffnermorgan.com
Email: christian@haffnermorgan.com

10 Attorney for Plaintiff/Petitioner
11 Helen Michelle VanDiver

12
13 **SUPERIOR COURT OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN DIEGO**

15 HELEN MICHELLE VANDIVER,)

Case No. 37-2024-00006780-CU-WM-CTL

16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
Plaintiff/Petitioner,)

TRIAL BRIEF:

v.)

**PLAINTIFF/PETITIONER HELEN
MICHELLE VANDIVER'S TRIAL
BRIEF IN THIS ELECTION CONTEST**

19 CYNTHIA L PAES, in her official)
capacity as San Diego Country Registrar)
20 of Voters; DIANA J.S. FUENTES, in her)
official capacity as San Diego City Clerk;)
21 CITY OF SAN DIEGO,)

Date: March 29, 2024

22 Defendants/Respondents)

Time: 1:30 p.m.

Dept.: C-75

23 _____)
24 LARRY E. TURNER,)

25 Real Party In Interest.)
26 _____)

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. SUMMARY 7

II. FACTUAL BACKGROUND..... 8

 A. How The Petitioner Will Submit Her Evidence 8

 1. Petitioner’s Complaint/Petition (With 15 Exhibits) 8

 2. Lawrence Hamilton Declaration (With 26 Exhibits) 8

 3. Supplemental Lodgment of Exhibits 8

 4. Declaration of Timothy T. Morgan Regarding Deposition of
 Larry Turner 9

 5. Request For Judicial Notice 9

 6. Larry Turner Generated Evidence..... 9

 B. The Three Voter Registrations Of Real Party In Interest, LARRY
 TURNER 9

 C. The March 5, 2024 Primary Election..... 10

 D. The Three Qualifications For Individuals Who Want To Run For
 Mayor..... 11

III. BURDEN OF PROOF IN DOMICILE CONTESTS 12

IV. UNDER THE LAW, TO BE A “VOTER” IN SAN DIEGO ONE MUST BE
DOMICILED AT THE ADDRESS OF THEIR VOTER REGISTRATION..... 13

V. THE COURTS ENFORCE REASONABLE ELECTION LAWS..... 18

VI. MR. TURNER’S CANDIDACY AND HIS CLAIMED “QUALIFICATION”
FOR THE BALLOT 21

 A. Larry Turner Expresses His Intention To Run For Mayor And Moves
 Forward To The Ballot; No One Determines His Actual Qualifications. 21

 B. The San Diego City Clerk And San Diego County Registrar Of Voters
 Have Advanced The Candidacy Of Turner As A Qualified Candidate –
 Without Determining If He Was Validly Registered To Vote In The City
 From November 7th Through December 7th 22

 C. Turner Has Never Shared With Elections Officials Or Voters That He
 Has Been Domiciled In El Cajon, California At all Relevant Times. 23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII. WITH THIS BACKGROUND IN LAW – THE COURT WILL HAVE TO DETERMINE WHETHER MR. TURNER WAS DOMICILED IN THE CITY OF SAN DIEGO FROM NOVEMBER 7, 2023 TO DECEMBER 7, 2023. 25

 A. What Is The Evidence That Will Be Presented At Trial On These Issues? 25

 B. Potential TURNER Evidence 26

VIII. THE EVIDENCE BEFORE THE COURT ON THE ISSUE OF DOMICILE, AS OPPOSED TO RESIDENCES, IS UNCONTROVERTED – MR. TURNER WAS NEVER DOMICILED FOR THOSE 30 DAYS IN THE CITY OF SAN DIEGO. 28

IX. THE CITY’S LEGISLATIVE BRANCH HAS CONTEMPLATED THAT A CANDIDATE COULD BE DISQUALIFIED AFTER THE PRIMARY ELECTION. 32

X. CONCLUSION. 33

1 **TABLE OF AUTHORITIES**

2 **Page**

3 **STATE CASES**

4 *Aldabe v. Aldabe*
5 (1962) 209 Cal.App.2d 453, 467 14

6 *Atkinson v. Lorbeer*
7 (1896) 111 Cal. 419, 422 20

8 *Chapman v. Superior Court of Los Angeles County*
9 (1958) 162 Cal.App.2d, 421, 426. 15

10 *Daniels v. Tergeson*
11 (1989) 211 Cal.App.3d 1204 20, 21

12 *Griffin v. Griffin*
13 (1953) 122 Cal.App.2d 92, 98 12

14 *Johnson v. Hamilton*
15 (1975) 15 Cal.3d 461 at 472 20

16 *Murphy v. Travelers Insurance*
17 (1949) 92 Cal.App.2d 582 12

18 *Noble v. Franchise Tax Board*
19 (2004) 118 Cal.App.4th 560 15, 16

20 *Sheehan v. Scott*
21 (1905) 145 Cal. 684, at 688, 689 12

22 *Stasher v. Harger-Holdeman*
23 (1962) 58 Cal.2d 23 20

24 *Whittell v. Franchise Tax Board*
25 (1964) 231 Cal.App.2d 278 14, 15

26 *Zeilinga v. Nelson*
27 (1971) 4 Cal.3d 716 13

28 **FEDERAL CASES**

Anderson v. Celebrezze
(1983) 460 U.S. 780, 788 19

Burdick v. Takushi
(1992) 504 U.S. 428 19

Dunne v. Blumstein
(1972) 405 U.S. 330 20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE STATUTES

California Code of Civil Procedure, Section 1060 7
California Code of Civil Procedure, Section 1085 7
California Code of Civil Procedure, Section 1086 7
California Code of Civil Procedure, Section 526 7
California Election Code, Section 13314 7
California Elections Code, Section 10418(a) 11
California Elections Code, Section 1301 10
California Elections Code, Section 2024 14
California Elections Code, Section 2027 16
California Elections Code, Section 2028 17
California Elections Code, Section 349 12
California Elections Code, Section 349 14

STATE REGULATIONS

California Code of Regulations, Section 17014(c) 15

OTHER AUTHORITIES

San Diego City Charter, Section 7 11, 12
San Diego City Council Ordinance No. 21742 11
San Diego Municipal Code, Section 27.0103 13
San Diego Municipal Code, Section 27.0119 12, 13
San Diego Municipal Code, Section 27.0201 18
San Diego Municipal Code, Section 27.0210(c) 18
San Diego Municipal Code, Section 27.0217 18

1 San Diego Municipal Code, Section 27.0219 18
2 San Diego Municipal Code, Section 27.0222..... 18
3 San Diego Municipal Code, Section 27.0635..... 32, 33

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I.**

2 **SUMMARY**

3 This is an action in which Petitioner/Plaintiff HELEN MICHELLE VANDIVER
4 (“VANDIVER” or “PETITIONER”) seeks a determination by this Court that Real Party in
5 Interest, LARRY E. TURNER (“TURNER” or “Real Party”) has not met the minimum
6 qualifications imposed by the CITY OF SAN DIEGO to run for Mayor.

7 The San Diego Municipal Code requires only 3 qualifications to run for Mayor: (1) be a
8 citizen; (2) 18 years old, and (3) be a resident who had been *validly registered* to vote for 30 days
9 *prior to submitting his or her nomination papers*. TURNER submitted his Affidavit to this effect
10 on December 1, 2023 [Petition, Exh. 7] and submitted his nomination papers on December 7,
11 2023 [Exh. 37 to Supplemental Lodgment].

12 Petitioner contends that TURNER was *not validly registered* to vote in the CITY OF SAN
13 DIEGO for 30 days prior to December 1st or December 7, 2023.

14 This is essentially a fact case. The only law is the San Diego Municipal Code and legal
15 authorities defining and addressing “domicile.” To be *validly* registered under the California
16 Elections Code, the residence listed on an individual’s voter registration must be that individual’s
17 *domicile*. While an individual can have multiple residences, they can only have one domicile.
18 That is discussed below.

19 Petitioner brings this action in three causes of action: (1) Declaratory Relief (CCP §1060);
20 Injunction (CCP §526); Writ of Mandate (CCP §§1085 and 1086; Elections Code §13314).

21 The principal relief that the Court will grant, if it agrees with Petitioner, will be a Writ of
22 Mandate directed to the three Elections Officials (City Clerk, Registrar of Voters and City of San
23 Diego) commanding them (1) not to include the votes received in the Primary Election by
24 TURNER in any tally of the votes; (2) not to include TURNER’s votes in *any* certification of the
25 election; and (3) not allowing him to be on the ballot for the City’s November 2024 Mayoral
26 race. The writ, if granted, would issue to: (1) the San Diego City Clerk, in her official capacity;
27 (2) the San Diego County Registrar of Voters in her official capacity; (3) the CITY OF SAN
28

1 DIEGO.¹

2
3 **II.**

4 **FACTUAL BACKGROUND**

5 **A. How The Petitioner Will Submit Her Evidence**

6 The evidence in this case will come from the following sources:

7 1. Petitioner's Complaint/Petition (With 15 Exhibits)

8 Petitioner has executed a Verified Complaint, which includes 15 exhibits. All exhibits have
9 been authenticated and each is either a document the court can judicially notice or has been
10 authenticated by Otilie in his declaration.

11 2. Lawrence Hamilton Declaration (With 26 Exhibits)

12 Evidence will come from the Declaration (or trial testimony, if needed) of Licensed Private
13 Investigator Lawrence J. Hamilton. Mr. Hamilton has executed an 84-paragraph declaration in
14 which he authenticates 26 exhibits. The 26 exhibits have been submitted with a Notice of
15 Lodgment.

16 3. Supplemental Lodgment of Exhibits

17 This case was worked up to be with all documents ready to be filed by the ex parte hearing.
18 With the extended time into March for a filing of Petitioner's papers, there have been some
19 additions. The Supplemental Lodgment of Exhibits begins at Exh. 27 and goes through Exh. 37.
20 Exhibits 27 through 34 are declarations of attempted service by the Knox Attorney Service, some
21 at the Soldin Lane address in El Cajon, and others at the Ocean Beach bungalow in San Diego.
22 Exh. 35 is a declaration of attorney Robert Otilie, who also attempted service on February 15th
23 and February 16th. Otilie also authenticates Exh. 36 (communication from the attorney for the
24 Registrar stating that ballots began to be printed on December 30, 2023) and Exh. 37 (which is
25 from the City Clerk's Office, date stamped) showing the date LARRY TURNER submitted his

26
27
28

Petitioner seeks a writ that only impacts Mr. TURNER's votes, any certification that
would include Mr. TURNER's votes, and his placement on the November 2024 ballot.
She does *not* seek to impose a broader obligation on any of the Election Officials in
future elections.

1 nomination papers.

2 4. Declaration of Timothy T. Morgan Regarding Deposition of Larry Turner

3 The Larry Turner deposition will be taken after the preparation of this brief. It will be
4 submitted in a condensed format attached to the Declaration of Timothy T. Morgan, which will
5 emphasize the key testimony. This arrangement has been agreed to by Mr. TURNER's counsel to
6 accommodate counsel's requested change in the scheduled deposition date of March 8th.

7 Mr. Morgan will provide highlights to the deposition of Mr. TURNER as time permits once
8 we have the transcript. If time permits, some of those highlights will be added further down in
9 this brief.

10 5. Request For Judicial Notice

11 The Court has been requested to take judicial notice of the government generated
12 documents included in the Hamilton Declaration and Complaint exhibits.

13 6. Larry Turner Generated Evidence

14 The delay in the trial has generated evidence provided by Mr. TURNER himself: (1) Mr.
15 TURNER's March 8th deposition; (2) Mr. TURNER's responses to Special Interrogatories and
16 (3) Mr. TURNER's verified response to Petitioner's Verified Petition/Complaint.

17 Mr. TURNER's responses to special interrogatories and his verified response to
18 Petitioner's petition/complaint are due after the filing of this trial brief. Information supplied by
19 Mr. TURNER in that regard will be supplemented to the record as soon as it becomes available.

20
21 **B. The Three Voter Registrations Of Real Party In Interest, LARRY TURNER**

22 In the fall of 2019, TURNER and his wife, Cynthia L. Turner, purchased a residence at
23 9285 Soldin Lane, in El Cajon, CA 92021. The still own it and "stay there." This is not in
24 dispute. TURNER has repeatedly admitted this [see, e.g., Complaint, Exh. 11]. TURNER almost
25 immediately registered to vote at the Soldin Lane address once he bought it. He claimed this as
26 his principal residence for domicile purposes [Exh. 1 to the Petition is his registration of which
27 this Court has, along with the other registrations, been requested to take judicial notice].

28 Lodged as Exhibit 2 to the Petition is the next registration for TURNER. It is dated July 10,

1 2023. On *that* date, TURNER advised the Registrar of Voters that he was *then domiciled* for
2 voting purposes at 550 – 15th Street, Unit 205, San Diego, CA 92101 [“Unit 205”]. This is a two-
3 bedroom condominium, as the Investigator’s Declaration and Exhibits demonstrate. It is *both*
4 *owned and occupied* by Giorgio Kirylo. Elsewhere it was also listed by TURNER as his
5 campaign headquarters and Kirylo was listed elsewhere as the Campaign Manager.

6 Exhibit 3 to the Petition is the third registration TURNER has had in the last 8 months.
7 This one is dated November 23, 2023. TURNER here stated, under penalty of perjury, he was
8 now *domiciled* at 5012 Del Monte Avenue, San Diego, CA 92107. This is a small bungalow in
9 Ocean Beach that Petitioner has alleged was on Zillow as a potential rental as late as the last
10 week of 2023 [“Ocean Beach bungalow”]. There are 3 other bungalows in its back yard.

11 All three of these registrations factor into the Court’s determination. Easily the most
12 significant is the second registration at 550 – 15th Street, Unit 205 [“Unit 205”]. In order to be
13 qualified to run for Mayor, TURNER must have been principally domiciled at that address by no
14 later than November 7, 2023. He testified under oath to the Registrar, in Exhibit 1 (Voter
15 Registration) that he had been domiciled there since July 10, 2023.

16
17 **C. The March 5, 2024 Primary Election**

18 On March 5, 2024, San Diego conducted a municipal primary election at which time voters
19 voted for the offices of San Diego Mayor, among others. The California Legislature, in the
20 California Elections Code, has authorized other jurisdictions in the State to join in what is known
21 as a “Consolidated Election” when those jurisdictions are holding their own election at the same
22 time as a statewide or national election.

23 Elections Code §1301, provides in relevant part:

24 “....

25 (b) (1) Notwithstanding subdivision (a), a city council may enact an ordinance
26 ... requiring its general municipal election to be held on the day of the
27 statewide direct primary election, An ordinance adopted pursuant to this
subdivision shall become operative upon approval by the county board of
supervisors.

28 (2) In the event of consolidation, the general municipal election shall be

1 conducted in accordance with all applicable procedural requirements of this
2 code pertaining to that primary, ... and shall thereafter occur in consolidation
with that election.”

3 The San Diego City Council voted on October 31, 2023 to consolidate its March 5th San
4 Diego Primary Election with the State of California Election, and did so pursuant to its
5 Ordinance No. 21742 [see, Exh. 4 to the Petition/Complaint, and Requests for Judicial Notice of
6 the City’s Ordinance]. Because the election is consolidated, and conducted by the Registrar, the
7 Ordinance authorizes the Registrar to assume responsibilities that would otherwise belong to the
8 City Clerk [for example, “(the San Diego County Registrar) is hereby authorized to canvass
9 returns of this Municipal Primary election”].

10 Of significance here, is the counting of the ballots. Under California Elections Code
11 §10418(a), in consolidated elections: “ballots counted and returned, returns canvassed, results
12 declared, certificates of election issued ... and all other proceedings incidental to, and connected
13 with the election shall be regulated and done in accordance with the provisions of law regulating
14 the statewide ... election”

15
16 **D. The Three Qualifications For Individuals Who Want To Run For Mayor**

17 The San Diego City Clerk has promulgated a document, lodged as Exh. 5 to the Petition,
18 entitled, “2024 Election Candidate Manual” [authenticated in Otilie Declaration]. The Court has
19 been requested to take judicial notice of this manual.

20 At page 5 of the Manual are San Diego’s “Requirements to Run for Elective Office.” There
21 are only three in the case of the San Diego Mayor:

- 22 • You must be a US citizen
- 23 • You must be at least 18 years old
- 24 • To run for Mayor or City Attorney, you must be a registered voter and resident
25 in the City of San Diego [for the] 30 days prior to the date you file your
nomination papers ...”

26 The Candidate Manual is based on the San Diego City Charter and San Diego Municipal
27 Code. The San Diego City Charter, §7, which this Court will be asked to judicially notice,
28 requires that any elected official at the City shall be a resident and elector of the City. Section 7

1 of the Charter also provides that the San Diego City Council “shall establish by ordinance
2 *minimum length of residency requirements for candidacy to elective office*, whether by
3 appointment or election.” [Emphasis added] This refers to *candidacy* requirements.

4 The San Diego City Council, pursuant to the San Diego City Charter, §7, has, in fact,
5 established *minimum length of residency requirements* in order to run, and those are addressed in
6 the San Diego Municipal Code, §27.0119 (Residency Requirements for Candidates in Elective
7 Offices).

8 Municipal Code, §27.0119, provides, in pertinent part:

9 “No individual is *eligible to run for*, or hold the office of Mayor or City
10 Attorney of the City, either by *election* or appointment, unless:

- 11 1.
- 12 2. That individual was a registered *voter* of the City at least 30 calendar
13 days prior to the date nomination papers were filed by the *candidate*
14 pursuant to the nomination and write-in procedures in this articles
15 ...” [First emphasis added; other emphasis in original]

16 III.

17 BURDEN OF PROOF IN DOMICILE CONTESTS

18 California law presumes that, once a domicile is acquired, it continues until it is shown that
19 a new domicile is acquired. [*Murphy v. Travelers Ins.* (1949) 92 Cal.App.2d 582; *Griffin v.*
20 *Griffin* (1953) 122 Cal.App.2d 92, 98. Buying or renting a second residence does *not* get you a
21 new domicile. That is a separate issue. An individual may have multiple residences, but only one
22 domicile [Elections Code, §349].

23 Where, as here, a contestant (Petitioner VanDiver in this case) asserts that domicile exists
24 in a non-qualifying jurisdiction (the Soldin Lane address in El Cajon) and the candidate (Real
25 Party in Interest, Larry Turner) asserts a change of domicile, the Petitioner’s burden is to
26 establish existence of the candidate’s non-qualifying domicile while the *candidate’s burden, by*
27 *way of a defense*, is to prove the acquisition of a new domicile in the appropriate electoral
28 jurisdiction. In *Sheehan v. Scott* (1905) 145 Cal. 684,² 689, the California Supreme Court held:

Sheehan was reversed on *other* grounds (the constitutionality of a multi-year residence

1 “After it had been shown that he had acquired a domicile in the County of
2 Santa Clara, the burden of proof was upon him [i.e., the candidate] to show
3 he had acquired [the new] domicile in San Francisco” [145 Cal. at 688- 689]

4
5 **IV.**

6 **UNDER THE LAW, TO BE A “VOTER” IN SAN DIEGO ONE MUST BE
7 DOMICILED AT THE ADDRESS OF THEIR VOTER REGISTRATION**

8 The Court will be asked to judicially notice San Diego Municipal Code (“SDMC”), §§
9 27.0119 and 27.0103. Section 27.0103 defines “voter” as:

10 “An elector who is *qualified and entitled to vote* under general law in San
11 Diego City elections ...” [emphasis added]

12 In the definition of “voter” [SDMC §27.0103], the San Diego City Council has also
13 provided that the individual voter be one who is “*validly* registered” [emphasis added].

14 TURNER, under oath on December 1, 2023 [see below, Exhibit 7 to the Petition, as
15 authenticated in Otilie Decl, and see RJN], told the City Clerk he had been a resident and
16 registered to vote in the City of San Diego for the prior 30 days. TURNER said the following
17 under oath on December 1, 2023:

18 “Under penalty of perjury, I, Larry Edgar TURNER, Jr., say that ... I am a
19 resident and registered voter of the political district for which I seek
20 nomination and shall have been such for at least 30 days immediately
21 preceding the submittal of my nomination petition for filing,” [Exh. 7
22 to Petition]

23 The critical issue here is whether or not *he actually principally lived* in the City of San
24 Diego during those 30 days and was therefore domiciled (i.e., his *permanent home* is here) at an
25 address within the City of San Diego, and whether he continued to do so, as he represented, up
26 until December 7, 2023 when his nomination papers were filed (the proof of the December 7,
27 2023 filing of nomination papers is Exh. 37, date stamped by the City Clerk).

28 What is domicile? For voting purposes, one must be *domiciled* at the address utilized to

requirement) in *Zeilinga v. Nelson* (1971) 4 Cal.3d 716. Zeilinga did not address at all the
shifting of the burden of proof.

1 vote. The California Legislature has established what constitutes a person’s domicile for voting
2 purposes. It is contained within California Elections Code, §349:

- 3 (a) “Residence” for voting purposes means a person’s domicile.
- 4 (b) The domicile of a person is that place *in which his or her habitation*
5 *is fixed, wherein the person has the intention of remaining, and to*
6 *which, whenever he or she is absent, the person has the intention of*
7 *returning. At a given time, a person may have only one domicile.*
- 8 (c) The residence of a person is that place in which the person's
9 habitation is fixed for some period of time, but wherein he or she
10 does not have the intention of remaining. At a given time, a person
11 may have more than one residence. [Emphasis added.]

12 As noted in the statute, an individual may have several residences for different purposes,
13 but they can only have a single domicile. [See, *Elections Code*, §349; *Whittell v. Franchise Tax*
14 *Board* (1964) 231 Cal. App.2d 278.]

15 California Elections Code, §2024, provides: “the mere intention to acquire a new domicile,
16 without the fact of removal avails *nothing*, neither does the fact of removal without the
17 intention.”

18 In *Aldabe v. Aldabe* (1962) 209 Cal.App.2d 453, 467, the Court held:

19 “A man’s home is where he makes it, *not where he would like to have*
20 *it’.*” [Emphasis added]

21 Domicile cases are no longer rare. In fact, in California they now come up frequently as the
22 tax rates have climbed. Individuals living in Rancho Santa Fe, Santa Monica or Atherton
23 purchase a house on the Nevada side of Lake Tahoe, Scottsdale, Arizona or in Austin, Texas and
24 claim residency there to avoid California’s high taxes. The Franchise Tax Board litigates these
25 cases to determine if the individual *has really moved their principal residence*, even as they
26 retain their California home. It all comes down to domicile.

27 In recent years, athletic helicopter parents will rent homes or apartments in the school
28 district of a powerhouse athletic program, and claim their child lives there and should be allowed
to play. The California Interscholastic Federation (CIF) generally prohibits athletic moves; so
through their administrative processes they litigate whether this new residence (which the parents
have actually rented) is *really* a new *permanent home*, or whether it is just a “temporary”

1 residence that has been retained to attempt to establish residency for a singular purpose (their
2 child’s sports program).

3 The California Code of Regulations creates the same standard in the tax cases as would
4 apply in the Court’s assessment of a domicile for purposes of valid voter registration. For
5 example, California Code of Regulations, §17014(c) defines the term “domicile” as the place
6 where an individual *has his true, fixed, permanent home and principal establishment and to*
7 *which he has, whenever he is absent, the intention of returning.* The regulation focuses on
8 whether the individual has voluntarily fixed the habitation *of himself and family*, not for a mere
9 special or limited purpose³, but with the present intention of making a *permanent* home, until
10 some unexpected event shall occur to induce him to adopt some other *permanent* home.

11 In the tax context, *Chapman v. Superior Court of Los Angeles County* (1958) 162 Cal.App.
12 2d, 421, 426 is illustrative of the nature of the Court’s inquiry in a domicile case. The Court held
13 that one’s domicile depends on an actual intent, and that the intent has to be evaluated *by their*
14 *objective actions.* After his deposition, and with answers to Special Interrogatories, we now can
15 more fully assess Mr. TURNER’s objective actions, or lack thereof.

16 In *Whittell v. Franchise Tax Board* (1964) 231 Cal.App.2d 278, the Court held that a
17 taxpayer may have several residences for different purposes including tax, but can have only one
18 domicile. Here, Mr. TURNER claims to having *at least 3 residences* during November 7, 2023 to
19 December 7, 2023 (El Cajon; 15th Street; OB bungalow); the issue is which was his *domicile*
20 from November 7 to December 7, 2023.

21 In *Noble v. Franchise Tax Board* (2004) 118 Cal.App.4th 560, the litigants were a family
22 from Rancho Santa Fe, claiming to be Colorado residents. In that decision, the Court held that
23 “to the extent residence and domicile depend upon intent, ‘that intention is to be gathered *from*
24 *one’s acts.*’ [Citing *Chapman v. Superior Court, supra, ...*; emphasis added], the cases
25 addressing the question of whether a taxpayer is domiciled in the state or region, and they

26 ³
27 At the ex parte hearing, Mr. Aguirre seemed to argue that this is *exactly* what has
28 happened here, arguing that *this is how it is done*, claiming that if you want to run for
office, you “rent a place in the city” and “register to vote” and you are qualified.

1 generally focus on the *objective indicia*”

2 In *Noble*, after looking at all the objective facts, the Court concluded:

3 “The uncontradicted facts establish that no matter what their intention for the
4 future, as of March 1994, appellants *had not relinquished either their*
5 *residence in California, ... or California domicile,* They may have
intended to move to Colorado, but they continued to reside in California
That they considered themselves in "transition" has no legal significance.”

6 In *Noble*, the appellants had continued *all the key domicile indicators* at their Rancho Santa
7 Fe address, just like Mr. TURNER has kept all the key domicile indicators at his El Cajon
8 address. In *Noble*, the Court looked at many of the objective factors Petitioner has raised here:

- 9 • continued ownership of the Rancho Santa Fe property, use of the
10 residence and still furnished with the family’s furniture;
- 11 • the family’s banking relationships remained in California;
- 12 • the family’s annual California automobile registrations were maintained
13 *on 3 automobiles* at the Rancho Santa Fe address;
- 14 • the family kept their California driver’s licenses and maintained the
15 Rancho Santa Fe address on the license;
- 16 • Primary personal checking account in California in Rancho Santa Fe;
- 17 • Maintained their post office and mail delivery in Rancho Santa Fe;
- 18 • Credit card statements were sent to the Rancho Santa Fe address;
- 19 • Other banking accounts were mailed at the Rancho Santa Fe address;
- 20 • Brokerage account statements were mailed to the Rancho Santa Fe
21 address;
- 22 • Cell phones were used by the Appellants, with the invoices for those
23 phones being sent to the California address.

22 In a press release, Mr. TURNER has stated that he has moved around from (1) a yacht in a
23 marina [2022-2023] to (2) 15th Street [2023], to now (3) the Ocean Beach bungalow [2023-
24 2024]. However, even in the Press Release, he stated that his wife and children remained in the
25 family home that Mr. and Mrs. Turner have owned since 2019. This directly implicates Elections
26 Code, §2027 which reads:

27 “A place where a person’s family is domiciled is his or her domicile unless
28 it is a place for a temporary establishment for his or her family or for
transient objects.”

1 Elections Code, §2028 is also implicated here:

2 “if a person has a family fixed in one place, and the person does business
3 in another place, the former is the person’s place of domicile.”

4 Even as late as the week of February 12th, when Knox Attorney Service and Attorney Otilie
5 were attempting to effect legal service on Mr. TURNER, the declarations under oath demonstrate
6 that all of the TURNER vehicles were parked at the El Cajon address, where there was activity,
7 lights and people present. Knocks on the door were not answered. The process servers at the
8 Ocean Beach bungalow, staking it out for 3-4 hours each night, signed declarations there was no
9 activity, no cars, no lights and no people. And this was after the flurry of media reports on the
10 lawsuit [These declarations are at Suppl. Lodgment Exhs. 27 to 35].

11 While the week of February 12th is not the dispositive week for purposes of this litigation, it
12 does show that, whatever connection was made in November with 15th Street, or the Ocean
13 Beach bungalow, neither was intended to be the permanent home of the family. That
14 unquestionably remains in El Cajon.

15 Mr. TURNER has claimed (but at the preparation of this brief has yet to produce) that he will
16 have rental agreements and rent payments; neither are the issue here. The issue is his domicile.

17 Mr. TURNER has stated in media accounts that he will have “letters from people that have
18 seen me coming and going.” That’s not the issue. If he can, in fact, produce contemporaneous
19 leases and market rate payments, it merely establishes that he acquired some connection to a
20 residence for some purpose. His purpose in getting these appears to be for a *temporary* political
21 endeavor, as even his counsel argued at the ex parte; that, in itself, defeats domicile. His home is
22 unquestionably in El Cajon.

23 In one interview with CBS 8, Mr. TURNER suggested that if “temporary” locations could
24 preclude a candidate from running for office, then perhaps others would also be precluded from
25 seeking office. That statement, if made, acknowledges that these were *temporary* residences.

26 On the issue of domicile, Petitioner contends this is not a close call. Carpetbagging is okay,
27 and people do it all the time in politics, but you actually have to *effectuate the move in a way that*
28 *creates a new domicile* because in San Diego, you have to be “validly registered” in order to be

1 qualified as a candidate.

2 Having registered to vote at his still current home in the City of El Cajon in January 2020
3 (and voted there in 2020 and 2022), and declared that his domicile, to have acquired the first (of
4 two) new domiciles, in this case at Unit 205 the two bedroom condo in downtown San Diego
5 also occupied by Giorgio Kyrilo, required all of the following:

- 6 1. That TURNER and his family *abandoned* their prior domicile, which
7 was 9528 Soldin Lane, in El Cajon, CA;
- 8 2. *Physically moved to, and be residing* as their principal residence,
9 with Mr. Kyrilo in Unit 205 of the building at 550 - 15th Street, in
10 San Diego, CA;
- 11 3. Combined with an intention of remaining in Unit 205 with Mr.
12 Kyrilo permanently or indefinitely as demonstrated by his action.

13 V.

14 THE COURTS ENFORCE REASONABLE ELECTION LAWS

15 The CITY OF SAN DIEGO has three basic qualifications to run for Mayor: (1) be a citizen;
16 (2) be 18 years or older; and (3) be a resident, and be *validly* registered voter, for the 30-days
17 preceding the filing of your nomination papers.

18 In addition, *nomination papers* themselves are mandatory requirements for seeking office in
19 the City of San Diego. The City of San Diego addresses elections, campaign finance and lobbying
20 in its Municipal Code, §27.0201 to §27.0222. The City has a very detailed process of getting
21 “nominated” to even be on the ballot (aside from the 3 qualifications). You just can’t ask to have
22 your name there if you meet the 3 qualifications. You have to follow the “Nomination Procedures”
23 spelled out in Municipal Code, §27.0201 to §27.0222. To run for Mayor, Municipal Code,
24 §27.0210(c) provides: “nomination *petitions of candidates* for the offices of Mayor and City
25 Attorney shall be signed by at least 240 *voters* registered in the City” [all emphasis in original].

26 This is a mandatory provision. If a candidate shows up with only 236 valid signatures (4
27 short), or 300 signatures (but 70 turn out to be invalid), that individual cannot be placed on the
28 ballot. This is because the City Clerk verifies the signatures (Municipal Code, §27.0217).

Municipal Code, §27.0219 then provides:

1 “If the City *Clerk* finds a Nominating *Petition* to be in insufficient or
2 improper form, the City *Clerk* shall so certify and send a Notice of
Insufficiency to the *candidate* seeking nomination” [emphasis added].

3 These are all mandatory provisions, just as the three qualifications (citizenship, age and
4 residency/validly registered voter) are mandatory qualifications.

5 This is not the first election case in San Diego, California or the United States. They are
6 quite frequent.

7 The United States Supreme Court has addressed the states’ legitimate interests in election
8 regulations. In *Anderson v. Celebrezze* (1983) 460 U.S. 780, 788, the Court said:

9 “[A]s a practical matter, there must be *substantial regulation of elections*
10 if they are to be fair and honest and if some sort of order, rather than
chaos, is to accompany the democratic process.’ [Citation] To achieve
11 these necessary objectives, States have enacted comprehensive and
sometimes complex elections codes ... nevertheless, the States’ important
12 regulatory interests are generally sufficient to justify reasonable, and non-
discriminatory restrictions” [emphasis added].

13 In *Burdick v. Takushi* (1992) 504 U.S. 428, the United States Supreme Court reviewed
14 Constitutional challenges to a Hawaii statute that was an absolute prohibition of write-in
15 candidacies, even in the primary election.

16 The United States Supreme Court declined to review the case on a “strict scrutiny” standard
17 of review; instead, the Court applied a rational basis standard. The Court stated the general rule
18 on election requirements: “... when a state election law provision imposes only ‘reasonable non-
19 discriminatory restrictions’ on the First and Fourteenth Amendment rights of voters, ‘the states’
20 important regulatory interests are generally sufficient to justify their restrictions” [504 U.S. 428
21 at 434].

22 The Court added:

23 “Election laws *will invariably impose some burden* Each provision of a
24 Code, ‘whether it governs *the registration and qualifications of voters*, the
selection and *eligibility of candidates*, or the voting process itself, inevitably
25 affects – at least to some degree – the individual’s right to vote and his right
to associate with others . . . [citation]. Consequently, to subject every voting
26 regulation to strict scrutiny and to require that the regulation be narrowly
tailored to advance a compelling state interest, as Petitioner suggests, would
27 tie the hands of States seeking to assure that elections are operated equitably
and efficiently.” [504 U.S. 428, at 433; emphasis added.]

28 The United States Supreme Court has held that states have a “compelling” reason for

1 requiring candidates for public office to *establish their residence* and eligibility for office within
2 a reasonable and fixed period of time before the election [*Dunne v. Blumstein* (1972) 405 U.S.
3 330].

4 The California courts have agreed. In *Johnson v. Hamilton* (1975) 15 Cal.3d 461 at 472, the
5 California Supreme Court said, as it related to an identical 30-day residency (and registration)
6 requirement:

7 “Such a 30-day prefiling residence requirement seems reasonably necessary
8 and convenient *to accommodate the needs of election officials in their task*
9 *of timely verification of the candidate’s true residence* prior to the preparation
and distribution of ballots.” [15 Cal.3d at 472; emphasis added]

10 In *Daniels v. Tergeson* (1989) 211 Cal.App.3d 1204, the Court, after quoting the Supreme
11 Court’s statement in *Johnson* above, held:

12 “Analogously, if the state has a compelling interest for requiring a
13 prospective candidate to be a resident 30 days before filing nomination
14 papers, *it can also require him to be a registered voter* in the district at that
time in order to validate he is a bona fide resident.”[211 Cal.App.3d at 1212;
emphasis added]

15 The Court went on to hold:

16 “... the voter registration requirement provides one of the least intrusive
17 means *to assure that supervisorial candidates are residents* of the districts
18 they seek to represent. It thus serves a compelling state interest other than
setting based candidate qualifications.” [211 Cal.App.3d at 1212; emphasis
added]

19 In *Daniels v. Tergeson*, the candidate contended that the Court should find that he
20 “substantially complied” with the 30-day requirement, given that it was undisputed he could
21 establish residency and valid registration in the district for 28 days. The Court rejected
22 application of the doctrine of “substantial compliance with respect to candidate qualifications
23 saying:

24 “If it goes to the substance or necessarily affects the merits or results of an
25 election, the provision is mandatory. Provisions relating to the time and
26 place of holding elections, *the qualifications of voters and candidates* and
other matters of that character are mandatory. (*Atkinson v. Lorbeer* (1896)
111 Cal. 419, 422)” [211 Cal.App.3d 1204, 1208; emphasis added.]

27 The decision is consistent with holdings of the California Supreme Court, including *Stasher*
28 *v. Harger-Holdeman* (1962) 58 Cal.2d 23, which held:

1 “... substantial compliance ... means *actual* compliance in respect to the
2 substance essential to every reasonable objective of the statute” [58 Cal.2d
23 at 29]

3 Here, it would appear (from the lack of meaningful domicile evidence associated with the
4 two addresses in San Diego), that Mr. TURNER may claim that he substantially complied,
5 suggesting that a lease, proof of payments and people “seeing him come and go” suffices whether
6 or not he has *any* of the expected indicia of a change of domicile. However, to that point that he
7 *substantially* complied with the domicile requirements to run for Mayor in San Diego, it is
8 helpful to look at an additional holding in *Daniels v. Tegeson*, where the court removed an
9 already elected candidate:

10 “The rationale for substantial compliance with statutory provisions relating
11 to [the] election [of] officers and conduct of the polls *has no application in*
12 *the realm of candidate qualifications*. Consequently, the cases holding that
13 substantial compliance with certain election laws is sufficient are inapplicable
14 to the [30-day registered voter requirement at issue]. Respondent properly
15 was charged with knowledge of the qualification requirements of the office
16 he sought. When he failed to meet the specified deadline, he was ineligible
17 for the office to which he was elected.” [211 Cal.App.3d at 1210; emphasis
18 added]

16 VI.

17 MR. TURNER’S CANDIDACY AND HIS CLAIMED 18 “QUALIFICATION” FOR THE BALLOT

19 A. Larry Turner Expresses His Intention To Run For Mayor And Moves Forward 20 To The Ballot; No One Determines His Actual Qualifications

21 On or about September 19, 2023, TURNER took his initial formal steps toward becoming a
22 candidate for mayor in the City of San Diego. Lodged as Petition Exhibit 6 is a document filed
23 with the City Clerk entitled, “Candidate Intention Statement” (California Form 501)
24 [Authenticated by Otilie Decl., and see, RJN].

25 On December 1, 2023, TURNER took the most significant steps (for our purposes here)
26 toward running for the Office of Mayor. He signed, and filed, a document promulgated by the
27 San Diego City Clerk entitled, “Statement and Affidavit of Nominee.” In that document, and
28 under penalty of perjury, TURNER stated that he *then* resided at 5012 Del Monte Avenue, San
Diego, CA 92107, and that he is a “resident and registered voter” in the City, *and had been for at*

1 *least 30 days immediately prior* to submitting the Affidavit under penalty of perjury. [The signed
2 Affidavit, under penalty of perjury, is lodged with this Petition as Exhibit 7 and is authenticated
3 by Otilie and described in the RJN.]

4 Exhibit 37 is a time-stamped document provided by the City Clerk showing LARRY
5 TURNER filed his nomination papers on December 7, 2023. The San Diego City Clerk has
6 provided another document signed by, and in the file for, TURNER. This is a “Candidate’s
7 Supplemental Information Sheet” [Petition, Exh. 8]. The City Clerk reports this document was
8 on file no later than December 7, 2023 when TURNER filed his nomination papers [see, Otilie
9 Decl., and RJN].

10 In this document [Petition Exh. 8], TURNER identified his campaign headquarters as being
11 located at 550 – 15th Street, Unit 205, San Diego, California 92101. This address matches the
12 address TURNER had been utilizing as his voter registration *since July 10, 2023*. This document
13 also identified Giorgio Kyrilo as the Campaign Manager for TURNER’s mayoral campaign. As
14 discussed in the Lawrence Hamilton Declaration (and verified by Government documents),
15 Giorgio Kyrilo is the listed owner of Unit 205. He also lives there. Notably, in Exh. 8, TURNER
16 did not list *his* residence address even though the form provided a blank for that purpose.

17 Exhibit 9 to the Petition is also a document in the City Clerk’s file [see, Otilie Decl., and
18 RJN]. It verified TURNER had met the qualifications, but did so based apparently on only a
19 phone or email check with the Registrar of Voters. The Registrar cited the July 2023 registration
20 at Unit 205. They confirmed he was registered, but no one conducted the independent
21 investigation as Petitioner conducted here to determine if that as a “valid registration.”

22
23
24 **B. The San Diego City Clerk And San Diego County Registrar Of Voters Have**
25 **Advanced The Candidacy Of Turner As A Qualified Candidate – Without**
26 **Determining If He Was Validly Registered To Vote In The City From**
27 **November 7th Through December 7th**

28 Exhibit 10 to the Petition is a copy of materials available on the San Diego City Clerk’s
website that communicates to San Diego voters: “City of San Diego Qualified Candidates For
The March 5, 2024 Primary Election.” This is why Petitioner has been forced to bring this

1 Petition. The City Clerk has announced Turner as “ Qualified,” without having advantage of this
2 extensive record available to the Court [see, Otilie, Decl., and RJN].

3
4
5 **C. Turner Has Never Shared With Elections Officials Or Voters That He Has Been Domiciled In El Cajon, California At All Relevant Times**

6 Lodged as Petition Exh. 11 is the full printout of the first media reporting of the issues
7 raised by the issues addressed in this lawsuit. It is a report by Scott Lewis at The Voice of San
8 Diego that went online on or about February 10, 2024. Lewis had interviewed TURNER and
9 raised the issue with him. In the report of the interview, attached as Exhibit 11, Lewis reports
10 TURNER made the following statements:

- 11 • TURNER stated that he and his wife own a home “technically in El Cajon,” but
12 it’s “more in the Alpine area”
- 13 • He admits he voted at this residence in the Alpine area in 2020 and 2022;
- 14 • He states that he moved to Ocean Beach in July;
- 15 • “We live in OB. We go back to the house in El Cajon/Alpine when my parents
are in town and we stay out there a little bit”;
- 16 • “I have mail sent [to Ocean Beach]”.

17 Petitioner became aware only in late January of 2024 that people in San Diego were
18 expressing surprise that TURNER was running for Mayor of *San Diego*, and that he may live in
19 El Cajon. *None* of this had been raised in the media. There had *never* been reporting of this issue.
20 TURNER was *not* telling anyone this. The Respondents themselves, government officials, tasked
21 with verifying qualifications, claim even they did not know.

22 Petitioner, thereafter, retained counsel in the last week of January 2024 (January 26, 2024 –
23 Otilie Decl., Exh. 35). Petitioner’s attorney then retained an investigator, Lawrence J. Hamilton,
24 to conduct an investigation. Hamilton had already examined and documented, extremely well, 34
25 separate residences lived in by Larry TURNER, essentially since high school; but residences
26 associated with Mr. TURNER had *stopped* on Soldin Lane, in El Cajon, starting in December of
27 2019. Nothing else showed up.

28 After establishing Mr. TURNER’s connection to his house in El Cajon, Mr. Hamilton’s

1 focus shifted to the 15th Street address. Mr. Hamilton describes this in a very detailed Declaration
2 under oath that comes with 26 exhibits.

3 As of February 9th or 10th, not a single “hit” was coming up associating Mr. TURNER with
4 the two San Diego residences. The only hits, from presumably literally millions of available
5 databases throughout the country, continued to show Mr. TURNER at the El Cajon address, even
6 though he had claimed he had moved there and shifted his domicile in July of 2023, 8 months
7 ago.

8
9
10 **D. Actions By Petitioner To Avoid This Lawsuit By Getting The Election Officials
To Deal With This**

11 Litigating can be expensive. Petitioner, therefore, desired that the Election Officials would
12 take advantage of the available evidence and act. Her counsel shared this evidence with them.

13 On February 6, 2024 [see, Exh. 12 to the Petition, as authenticated in Otilie’s initial Decl.],
14 Otilie communicated with the 3 Respondents: Paes (Registrar), Fuentes (City Clerk) and the
15 City of San Diego (by and through the City Attorney, Mara Elliott). Exhibit 12 to the Petition is a
16 14-page letter communicating that, while the investigator had not yet concluded his investigation,
17 because of the impact on the pending election, Otilie, on behalf of Petitioner, wanted to share
18 everything then available and do so as quickly as possible. He did. It is 14 pages. Notably, to
19 date, TURNER has yet to refute a single line of Mr. Hamilton’s findings, now more fully
20 documented in an 85-paragraph Declaration (submitted to this Court), corroborated by 26
21 separate exhibits [the Notice of Lodgment for this trial].

22 While the Election Officials responded, none indicated they intended to do anything.
23 Consequently, Otilie followed up with his letter of February 9, 2024 making clear that he
24 believed it was the responsibility of the Election Officials to deal with the matter and raising the
25 questions asking them if they intended to do so [see, Exh. 13 to the Petition, as authenticated by
26 Otilie Decl.]. None of the Respondents have done anything since to address this situation. Otilie
27 even met with the City Clerk and her attorney on February 12, 2024. She said if Mr. TURNER
28 was not qualified, Ms. VanDiver would have to go to Court by filing “a writ.” She said she

1 would not oppose the action and “would do as instructed” by the Court. This is what necessitated
2 the lawsuit, not a desire to interfere with the election as declared by Mr. TURNER and his
3 counsel.

4
5 **VII.**

6 **WITH THIS BACKGROUND IN LAW – THE COURT WILL HAVE**
7 **TO DETERMINE WHETHER MR. TURNER WAS DOMICILED IN**
8 **THE CITY OF SAN DIEGO FROM NOVEMBER 7, 2023 TO DECEMBER 7, 2023.**

9 The residency requirement to run for Mayor is clearly a *legal residency*, which means
10 domicile. To be “validly registered,” Mr. TURNER would have had to establish domicile:

- 11 • ... a permanent physical move by his family out of his El Cajon domicile;
- 12 • a physical and complete move by his family to his alleged new domicile;
- 13 • with an intention for the family to remain there.

14 **A. What Is The Evidence That Will Be Presented At Trial On These Issues?**

15 Mr. TURNER, not Petitioner, sought to delay the matter until after the election. As a result
16 of the delay, we will now have (1) a deposition (March 8), (1) answers to 12 Special
17 Interrogatories (responses due March 15), and (3) a paragraph-by-paragraph answer, under oath,
18 to the Verified Petition (due March 17). Petitioner had already submitted the following:

- 19 1. Verified Complaint with its 15 exhibits as authenticated by Otilie’s Declaration
20 and containing numerous government filings, which this Court can judicially
21 notice;
- 22 2. Lawrence Hamilton Declaration and its 26 separate exhibits;
- 23 3. Notice of Lodgment of Hamilton’s 26 exhibits;
- 24 4. Otilie Declaration – authenticating the 15 exhibits to the Verified Complaint;
- 25 5. Request for Judicial Notice – requesting judicial notice of all appropriate
26 government documents contained within the 15 exhibits to the Verified Petition
27 filed under oath and Lawrence Hamilton’s 85-paragraph Declaration and the 26
28 corroborating exhibits submitted by Lawrence Hamilton;
6. Supplemental Lodgement of Exhibits 27-37.

Additional evidence in this case may now include the following:

- 1 1. Deposition testimony of Larry TURNER;
- 2 2. The Verified Answer of Larry Turner (to be filed after this brief);
- 3 3. Larry TURNER's response to 12 special interrogatories (answers due after this
4 brief);
- 5 4. Any additional evidence produced by Mr. TURNER himself as a part of his case
6 (to be addressed in Reply).

7 **B. Potential TURNER Evidence**

8 Mr. TURNER has repeatedly stated (though not shared at the preparation time of *this* brief)
9 that he has essentially 3 types of evidence: (1) rental agreements; (2) proof of payment by
10 cancelled checks, and (3) "letters from people who have seen him coming and going."

11 An authentic contemporaneous rental agreement is significant only in showing that Mr.
12 TURNER has acquired some interest in, or association with, the subject property for *residency*
13 purposes. It really communicates *nothing* about domicile.

14 The reported payments would also simply show that he had acquired some interest in, or
15 association with, a particular property for residence or other purposes. It, too, would say nothing
16 about domicile. But it will be important to see how much was paid in rent to determine if, in fact,
17 four people moved in to live with Mr. Kyrilo in that second bedroom at the 15th Street address or
18 whether, as appears to be the case, his wife and two children stayed in El Cajon, as it is alleged
19 Mr. TURNER did too for the majority of, if not all, of the time.

20 If the alleged rents are below market rates, it would create a whole new host of issues in
21 that a candidate for mayor cannot accept free or subsidized rent, or utilities paid for him, without
22 having to report that as a gift. San Diego has low gift limits. Those issues may be for another
23 entity on another day.

24 Standing alone, the mere preparation and signing of a rental agreement, and payment of
25 some alleged rent, does absolutely nothing to advance Mr. TURNER's claims of domicile. It only
26 proves, assuming there is proof, that he has a 2nd or 3rd residence. This case focuses on domicile.

27 Further, "letters from people showing they saw me coming and going" essentially proves
28 the same thing, which is that Mr. TURNER had some connection to a residence. He could have

1 been “coming and going” for any variety of reasons, but such “letters” would not be a typical, or
2 particularly meaningful, way in which one would establish domicile. It might show that you have
3 a connection to the residence, but residency is not domicile.

4 In the media, Mr. TURNER has made fun of the Petitioner because she has suggested that
5 his “library card” is not in the City, or because the “address on my driver’s license” is not in the
6 City and is somewhere else. Yet, these are the actual *objective factors* the Court has to look for to
7 determine domicile. You actually have to change your address at the DMV within 10 days. Mr.
8 TURNER appears to be admitting he never did in over 8 months, and that is because his principal
9 residence continues to be the El Cajon house where he slept almost all nights until perhaps
10 February 16th.

11 In one interview, Mr. TURNER stated that where one lives is “where my feet are,” as he sat
12 on the couch in the Ocean Beach bungalow in a CBS-8 interview on February 16th. That’s not
13 true for domicile purposes. An unmarried San Diego candidate could have a girlfriend or
14 boyfriend who lived in Carlsbad. He or she could literally have “his feet” there every night, yet
15 still be domiciled in the City of San Diego, if his principal home was in San Diego. Domicile has
16 nothing to do where your feet are on February 16th. In this case, domicile has everything to do
17 with where Mr. TURNER’s principal home was, *where he and his family* lived, from November
18 7th through December 7th, 2023. That was El Cajon.

19 Mr. TURNER focused prior to the ex parte hearing on his claim to be living in Ocean
20 Beach in February 2024. Mr. TURNER’s qualification to run for Mayor of our City is dictated by
21 where he was domiciled from November 7th through December 7, 2023. Even if he had
22 established domicile with his family in the Ocean Beach bungalow by November 23rd, it would
23 be insufficient if he was not also domiciled with his family at 15th Street, Unit 205, from
24 November 7th through November 23rd, in the two bedroom condominium he claims the family
25 shared with Mr. Kyrilo.

26 This is what he is going to have to prove. Significantly, press conferences, subpoenas seeking
27 “collusion” and unwarranted attacks of “election interference” are not factors that prove domicile.

1 **VIII.**

2 **THE EVIDENCE BEFORE THE COURT ON THE ISSUE OF DOMICILE, AS**
3 **OPPOSED TO RESIDENCES, IS UNCONTROVERTED – MR. TURNER WAS**
4 **NEVER DOMICILED FOR THOSE 30 DAYS IN THE CITY OF SAN DIEGO**

5 The Court needs to review the testimony of Lawrence Hamilton, provided in 85-paragraphs
6 and 26 corroborating exhibits (Notice of Lodgment). Mr. Hamilton first established his own
7 qualifications. Next, he describes his original work, where he determined that Larry TURNER,
8 by all accounts, lived in El Cajon at 9258 Soldin Lane, El Cajon, CA 92021. This proof, largely
9 through official government property, tax and postal records, along with voter registration,
10 proved Mr. TURNER was domiciled on Soldin Lane starting in 2019.

11 When Petitioner’s counsel retained Mr. Hamilton in late January 2024, the focus turned to
12 the alleged new domiciles of 550 – 15th Street, Unit 205 and 5012 Del Monte Avenue, although
13 the burden is on Mr. TURNER to establish a changed domicile.

14 Mr. Hamilton methodically described for the Court how information is generated that
15 shows up in apparently literally millions of databases, largely operated by governments. He
16 makes clear that this is not a surveillance case (where were Mr. TURNER’s “feet” each night);
17 this is a domicile case. Mr. Hamilton searched for all those things *that the individual himself or*
18 *herself generates*, when they really move, as opposed to taking up temporary residence.

19 The reported cases say you have to look at the objective acts to determine domicile. You do
20 not look at rental agreements. Residences are different than domicile. The cases do look at DMV
21 and utility records, and most of the other factors addressed by Mr. Hamilton.

22 When people move permanently, which is required for domicile, they do innumerable little
23 and big things associated with the move. They arrange for a trash can with the City. They make
24 application for, and then get a contract for, multiple utilities, and cable and phones. If they are in
25 a complex (like 15th Street), they register with the Homeowners’ Association, put their name on
26 the door and register their vehicles (3 here) so they can park in the garage.

27 Typically, individuals will provide a change of address to the post office or, at a minimum,
28 a forwarding address. If you have permanently moved, you want to get your mail on time at your
new permanent residence. It would be unusual to *not* have your mail forwarded, or change your

1 address, for over seven (7) months, and simultaneously be claiming that you had actually
2 changed your principal residence while having abandoned the old one.

3 You would notify *everybody* that needed to be notified of the new address: your school
4 alumni association, your banks, your employer, your insurance companies, your friends and
5 family, your investments and others. By law, you must notify the DMV within 10 days. You
6 would re-register your vehicles.

7 It's a process, but people do that when they permanently move. If they are not permanently
8 moving, or are just temporarily stationed or residing somewhere for some limited purpose (such
9 as it contended here), they do not do those things.

10 This is why Mr. Hamilton's Declaration is so important. He focuses on domicile, not
11 residency. He has documented 34 separate residences for Mr. TURNER over 31 years. 17 are
12 since 2012. Several are for less time than 9 months Mr. TURNER claims to have been domiciled
13 in our City of San Diego.

14 Yet, *all* those prior residences (before 2019) show up in reporting because when he moved
15 each of these times, Mr. TURNER took affirmative steps to let people, governments and
16 businesses know that he moved. Those steps that *he took*, left a trace. Mr. TURNER moved 33
17 perhaps times before arriving at Soldin Lane in 2019. He always left a trace. He changed his
18 address with the Post Office. Yet, there is no trace of this claimed change of domicile to San
19 Diego in July 2023, or any time thereafter.

20 Through Paragraph 17 of his declaration, Mr. Hamilton is able to describe those
21 approximately 3 dozen residences for Mr. TURNER essentially since high school; that long list
22 stops cold once he arrived at 9285 Solidin Lane, in El Cajon, in December 2019. That was over 4
23 years ago. Nothing comes up for two different claimed San Diego residences.

24 In Paragraphs 18 through 24, Mr. Hamilton describes the specific addresses associated with
25 TURNER. None are the two addresses at issue here. He looked at trust deeds and tax payments.
26 In Paragraph 23, he describes running a TransUnion database search as late as January 28, 2024
27 [Exhibit 25]. Even by then, neither of the San Diego addresses were showing anything at all.

28 In Paragraphs 25 through 42, Mr. Hamilton describes his efforts to find *any* association at

1 all with Mr. TURNER and the 15th Street address in the East Village area of downtown San
2 Diego. This went way beyond the various database searches and looked for physical evidence at
3 the building itself. In fact, Mr. Hamilton discovered that there was another individual in that
4 residence (Mr. Kyrilo) who had a VA loan, which he understands required that be his principal
5 residence. If he was there, and that is not apparently disputed, then Mr. Turner, his wife and two
6 children had to be packed in the other bedroom. It is not believed Mr. TURNER will make that
7 claim.

8 Mr. TURNER also has a VA loan, according to Mr. Hamilton. Mr. Hamilton understands
9 that you have to relinquish that loan (there are only a few exceptions) if the residence (El Cajon
10 in this case for Mr. TURNER) is no longer your *principal* residence. Only Mr. TURNER would
11 have that evidence of having relinquished the VA loan.

12 Paragraphs 43 through 46 address the three vehicles registered to Mr. TURNER. Only *he*
13 would have the address where those are registered. Mr. TURNER's own public comments would
14 suggest they are still registered in El Cajon.

15 Motor vehicles lead to the Department of Motor Vehicles. We all have a Driver's License
16 or California Identification Card. Petitioner understands those have to be changed with the DMV
17 within 10 days of a permanent move. Mr. TURNER has suggested to the media his license still
18 shows El Cajon. Petitioner submits it shows El Cajon because that is his home. That is his
19 domicile.

20 Paragraphs 45 through 54 describe other searches that would show up if someone had
21 actually moved to a new residence. For example, utilities. Mr. TURNER has never established
22 any utilities in the City of San Diego, at either address.

23 In Paragraphs 55 through 63, Mr. Hamilton talks about the Post Office. Exhibits 21 through
24 24 go along with his testimony. The four exhibits regarding postal service are generated by the
25 United States Government. Mr. Hamilton personally obtained one of these from the Postmaster
26 for Mr. TURNER's home in El Cajon. It certified that there had never been a change of address
27 or mail forwarding. The other documents corroborate that.

28 The first thing you do when you move, if you *really move*, is make sure your mail catches

1 up with you. You can change addresses later, but you want to be getting that mail because you
2 have to pay your bills on time, make sure your insurance is up-to-date and so many other
3 obligations met. The Hamilton declaration (and exhibits) show that when Mr. TURNER moved
4 to El Cajon, he *immediately* notified the Post Office of his changed address. He never changed it
5 again.

6 Speaking of insurance, Mr. TURNER should be producing rental insurance policies he
7 obtained on both 15th Street and the OB bungalow. Renters insurance is just as important as
8 homeowner's insurance. It insures your property, but also gives you liability insurance. Petitioner
9 is informed and believes there will be no insurance policies ever taken out by Mr. TURNER at
10 the two San Diego residences between November 7 to December 7, 2023. He does have
11 insurance on his home.

12 Paragraph 64 discusses a final comprehensive search that was undertaken on January 28,
13 2024. Even then, two months after Mr. TURNER claims to have moved from 15th Street to
14 Ocean Beach, nothing was showing up for 15th Street. Mr. TURNER claims to have been
15 domiciled there with his wife and two children, but never left a trace where a trace would be
16 expected if it had become his permanent family home. He *always* left traces in the past; he left
17 none for both of these San Diego addresses.

18 In Paragraph 65 through 74, Mr. Hamilton describes his efforts to find any connection
19 between Mr. TURNER and 5012 Del Monte Avenue. That turned up nothing.

20 In Paragraphs 75 through 82, Mr. Hamilton did describe the one time that Mr. TURNER's
21 property was watched from late in the evening, and then again early in the morning. This was on
22 the Thursday night, January 4, 2024, and the morning of Friday, January 5th. All three of the
23 Turner vehicles were at the house late at night (at 10 pm). All were there in the morning.
24 Somebody's father appears to have left with the children early in the morning. Mr. TURNER
25 himself came out of the house in the morning. This is not evidence of a permanent move to San
26 Diego 7 months earlier; it's just the opposite. This was mid-week, not the weekend.

27 In the last 3 paragraphs, Mr. Hamilton provides his findings and conclusions. They are
28 pretty straight forward and unequivocal:

- Every connection for Mr. TURNER, his wife and his family remains [even now] at 9285 Soldin Lane, El Cajon, CA 92021;
- Based on all publicly available evidence, and additional evidence available only to a licensed private investigator, there is literally no evidence of an association by Mr. TURNER, his wife or his family at 550 - 15th Street, Unit 205, from July 10, 2023 through November 23, 2023;
- Last, again based on publicly available evidence and evidence available only to a licensed private investigator, there is literally no evidence of an association by Mr. TURNER, his wife or his family at 5012 Del Monte Avenue, in San Diego, from November 23, 2023 to the present.

IX.

**THE CITY’S LEGISLATIVE BRANCH HAS CONTEMPLATED THAT
A CANDIDATE COULD BE DISQUALIFIED AFTER THE PRIMARY ELECTION.**

While Plaintiff moved promptly, approximately a month *before* the election, the matter has been delayed for trial at the request of, among others, the Real Party in Interest LARRY TURNER.⁴ Turner now will likely claim that it is too late, and that he cannot be disqualified after votes have been cast, when it was the Petitioner attempting to schedule the trial for February 29th or March 1st, the week before the election.

However, the San Diego City Council has contemplated that a candidate, selected by voters in the Primary Election as one of the two individuals that would otherwise go onto the General Election, could be disqualified. Counsel for the City itself, at the trial scheduling hearing, suggested to the Court this matter *could be resolved after the votes* because, as he shared with the Court, the legislative branch has addressed disqualifications after the primary.

Attorney Krentz, from the San Diego City Attorney’s Office, was the one who advised the Court of San Diego Municipal Code, §27.0635, entitled, “Disqualification of Candidates Between Primary and General Election.” It provides in part:

“If a *candidate* whose name would appear on the ballot for any *District or Citywide general election or special election* dies, withdraws or is disqualified ... prior to the time the ballots for the *District or Citywide general election or special election* are printed, the individual who received

Of course, in media interviews before the scheduling hearing, it was Mr. TURNER who predicted his opponents *would try to drag the litigation beyond the March 5th primary*.

1 the next highest number of votes ... shall be deemed a *candidate*, and their
2 name shall be printed on the ballot for use at the ... *Citywide general election*
3” [All italics in original.]

4 Mr. TURNER supported the delay presumably because he believed the Court would be less
5 likely to remove his name from the ballot, should he be one of the top two vote-getters in the
6 Primary Election. Yet, since our legislative branch has spoken directly on the issue, and has
7 expressly contemplated a *disqualification* even at that point, it is not for the Court to second-
8 guess the City Council on this issue.

9 Further, it is understood that the trial in this matter will take place *before* the San Diego
10 City Council has even certified the results from this election. Consequently, and if that is the
11 case, Municipal Code, §27.0635 would not even be implicated as this Court would be exercising
12 a remedy requested by Petitioner to preclude the certification of votes for the unqualified
13 candidate, Larry TURNER. In that scenario, he would not yet even be in the runoff.

14 If that certification has already occurred, then this Code section would apply and is the
15 method chosen by the City Council to deal with it.

16 X.

17 CONCLUSION

18 Petitioner has made an *overwhelming* prima facie case that Mr. TURNER was domiciled in
19 the City of El Cajon, from November 7, 2023 through December 7, 2023. Having done so, the
20 burden at this point has shifted to Mr. TURNER to establish he became domiciled in San Diego
21 *during that time*. He must produce the evidence that would only be available to him that would
22 not simply show that he had some *connection to a residence*, but that:

- 23 • Mr. TURNER, his wife and his children *abandoned*, as their principal
24 domicile, the home at 9528 Soldin Lane, in El Cajon, California no later
25 than November 7, 2023;
- 26 • That Mr. TURNER, his wife and children *physically moved to, and then*
27 *were permanently residing at* a new principal residence, the lone available
28 bedroom in Unit 205 of the building at 550 – 15th Street, in San Diego,
California by November 7, 2023;
- Combined with an intention of Mr. TURNER and his family of remaining
in Unit 205 permanently or indefinitely as demonstrated by objective


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

actions;

- Mr. TURNER, his wife and his children then *abandoned* their domicile at 550 – 15th Street, Unit 205, in San Diego, CA on or about November 23, 2023;
- Mr. TURNER, his wife and his children *physically moved to, and then were permanently residing in a new principal residence*, this time at 5012 Del Monte Avenue, in San Diego (the Ocean Beach bungalow) by November 23, 2023;
- Combined with an intention of Mr. TURNER and his family of remaining at 5012 Del Monte Avenue permanently or indefinitely as demonstrated by objective actions.

Moving for purposes or running for office is allowed, but you actually have to make the move, and not just a temporary one until the campaign is over. You have to change your domicile. If you fail to do that in San Diego, then you are not qualified. On this record, at this point, Mr. TURNER is not qualified. His lack of qualifications cannot be belatedly corrected, because his qualification period was from November 7, 2023 to December 7, 2023, not what he may have done thereafter in response to this meritorious challenge.

Dated: March , 2024

By 
 ROBERT P. OTTILIE
 Attorney for Plaintiff/Petitioner
 HELEN MICHELLE VANDIVER