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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN MATEO
12
13

14 **MICHAEL NI,**

15 Plaintiff and Petitioner,

16 v.

17
18 **WARREN SLOCUM, in his official capacity
as Chief Elections Officer of San Mateo
19 County, and DOES 1-100, inclusive,**

20 Defendant-Respondent.

Case No. CIV 492074

**BRIEF OF AMICUS CURIAE THE
SECRETARY OF STATE OF
CALIFORNIA**

Date: March 18, 2010
Time: 9:00 a.m.
Dept: 28
Judge: Hon. George A. Miram

Action Filed: February 18, 2010

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1 Debra Bowen, the Secretary of State of the State of California, submits this brief as *amicus*
2 *curiae* in support of respondent Warren Slocum’s request that the petition for writ of mandate be
3 denied, and that judgment in favor of respondent be granted on petitioner’s declaratory relief
4 action.

5 INTRODUCTION

6 Petitioner Michael Ni (petitioner) traced his signature, and other information, onto the
7 screen of an iPhone telephone/mini-computer. A rendering of this traced signature was then
8 electronically transferred via a wireless network to a third party, Verafirma. Verafirma took the
9 facsimile of petitioner’s “signature” traced on the telephone screen and inserted it, and other
10 information, into an electronic copy of an initiative petition. The electronic petition, with the
11 inserted data, was then transferred to a flash drive, another electronic device. This flash drive was
12 then delivered to San Mateo County elections officials so that the electronic petition saved on the
13 drive could be counted to determine whether the initiative at issue would qualify for the statewide
14 ballot. Petitioner asserts that the use of this electronic procedure to “sign” an initiative petition
15 complies with the California Elections Code. Petitioner’s assertion is incorrect. The Elections
16 Code does not permit an electronic facsimile of a person’s signature to be used on an initiative
17 petition.

18 As explained below, the Elections Code contemplates that an individual’s signature, and
19 other relevant information, will be directly affixed by the individual on to an initiative petition.
20 That did not occur in this case. Additionally, when the Legislature intended to permit the use of
21 an electronic facsimile for an elections-related purpose it has specifically authorized it. Indeed,
22 there is a specific provision in the Elections Code where use of an electronically-transmitted
23 signature is authorized. However, the provisions governing the signing of an initiative petition do
24 not contain similar authorization. Lastly, the use of electronic devices and the Internet to engage
25 in elections-related activities presents multiple, and often conflicting, policy considerations.
26 There are issues of security and access involved in deciding whether electronic devices and the
27 Internet should be used in election activities. The proper place to resolve this debate and draw
28 appropriate lines as to when and how electronic devices may be used in election activities is the

1 Legislature, and not the courts. This Court should decline petitioner’s invitation to expand the
2 state’s elections laws in a manner never contemplated or permitted by the political branches of
3 government.

4 **ARGUMENT**

5 **I. THE ELECTIONS CODE DOES NOT AUTHORIZE THE SIGNING OF AN INITIATIVE
6 PETITION BY ELECTRONIC MEANS.**

7 Article II, section 10, subdivision (e), of the California Constitution states that the
8 Legislature shall specify the process by which initiatives may qualify for the ballot. The issue in
9 this case is whether a facsimile of a “signature” made on the screen of an electronic device which
10 is then transmitted over a cellular network and imputed into an initiative petition complies with
11 the Elections Code’s requirements for signing an initiative petition. A close reading of all the
12 applicable statutory provisions shows that the Elections Code does not permit such “electronic
13 signatures” for an initiative petition.¹

14 A statutory scheme governing a particular subject must be construed as a whole. (*Smith v.*
15 *Superior Court* (2006) 39 Cal.4th 77, 83.) Thus, to evaluate the specific statutory language
16 governing the signing of initiative petitions, it is first useful to review the process by which
17 initiatives can be placed on the ballot. The initiative process begins when an initiative proponent
18 requests that the Attorney General of California issue a title and summary of a proposed initiative.
19 (Cal. Const., art. II, § 10, subd. (d); § 9001, subd. (a).) The Attorney General’s title and summary
20 summarizes the chief points of the initiative. (§ 9001, subd. (a).) Once the title and summary is
21 issued, the proponent may circulate a petition, which contains the title and summary, to collect
22 signatures from registered voters. (§§ 100, 9009, 9020, and 9032.) If the required number of
23 legitimate signatures is collected, the initiative may be presented to the voters at the next
24 statewide election. (Cal. Const., art. II, § 8; §§ 9031 and 9032.)

25 The petition can be circulated and presented to county elections officials in sections. (§
26 9030, subd. (a).) Circulators can be employed to circulate the petition to the voters for signatures.

27 _____
28 ¹ All statutory references are to the Elections Code unless otherwise specified.

1 (§§ 9021 and 9022.) A petition is circulated within each county and registered voters of that
2 county may sign the petition. (§ 9021.)

3 Elections Code sections 100 and 9020 specify how a petition is to be signed. In relevant
4 part, section 100 provides:

5 Each signer shall *at the time of signing the petition* or paper personally affix his or her
6 signature, printed name, and place of residence, giving street and number, and if no
7 street or number exists, then a designation of the place of residence which will enable
8 the location to be readily ascertained. (Italics added.)

9 Similarly, section 9020 provides, in relevant part:

10 *The petition sections shall be designed* so that each signer shall personally affix all of
11 the following: [¶] (a) His or her signature. [¶] (b) His or her printed name. [¶] (c) His
12 or her residence address, giving street and number, or if no street or number exists,
adequate designation of residence so that the location may be readily ascertained. [¶]
13 (d) The name of his or her incorporated city or unincorporated community. [¶] Only a
14 person who is a qualified registered voter at the time of signing the petition is entitled
15 to sign it. [¶] The number of signatures attached to each section shall be at the
16 pleasure of the person soliciting the signatures. (Italics added.)

17 These two provisions thus specify that the signator shall personally affix his signature, and other
18 required information, onto the petition itself.

19 Both sections 100 and 9020 also specify that a petition must contain spaces where the
20 signator may affix his or her signature, printed name, and residence address. This language
21 further illustrates that the signator of the initiative petition must sign and affix information onto
22 the petition itself. Indeed, if an individual could sign a petition through electronic means, there
23 would be no need to require that a petition contain spaces for the signature, printed name, and
24 address since an electronic signature and the other information could simply be attached to the
25 end of the petition.

26 The Elections Code then specifies that the petitions that were signed must be presented to
27 county elections officials. Section 9030, subdivision (a), states that “[e]ach section of the petition
28 shall be filed with the elections official of the county . . . in which it was circulated.” Once the
petition is submitted to the county elections official, the official begins to determine the total
number of valid signatures appearing on the petition and transmits the number to the California
Secretary of State. (§ 9030, subd. (b).) The Secretary of State will tally the information provided
by the various counties to determine whether sufficient valid signatures were collected to place

1 the proposed initiative on the next statewide ballot. (Cal. Const., art. II, § 8, subd. (b); §§ 9030
2 and 9031.)

3 By consistently using the identical term “the petition” throughout the relevant statutes
4 governing the collection, submission and verification of initiative petition signatures, the
5 Elections Code makes clear that proponents, voters and county elections officials should be
6 working from *the same identical document*. Thus, the same identical document upon which the
7 signator personally affixed his or her signature and other information must be delivered to the
8 county elections official for verification that the voter is qualified to sign the petition. There is no
9 provision in the Elections Code that permits a registered voter to create an electronic image of his
10 or her signature, and other information required by sections 100 and 9020, on an electronic
11 device, for the proponents to provide an electronic facsimile of the voter’s signature and other
12 information to a county elections official, or for a county elections official to knowingly accept
13 and review for verification purposes an electronic facsimile of the voter’s information.

14 In this case, petitioner’s verified petition explains that he “was told that [the proposed
15 initiative] was available online by a friend. Petitioner pulled up a link to the petition through his
16 home computer, reviewed it, and then signed it on an iPhone screen. He then went through the
17 three steps required to affix his signature to the electronic petition and gave the electronic petition
18 to the proponents on a flash drive to turn in along with the paper petition sections.” (Pet. ¶ 5.)
19 Thus, the petitioner admits that he did not directly and personally affix his signature and other
20 information onto the petition the proponent submitted to San Mateo elections officials.

21 Moreover, section 100 states that “[e]ach signator shall *at the time of signing* the petition”
22 affix his or her signature, printed name, and other information in the space provided on the
23 petition. This language indicates that when the signator affixes the required information, the
24 signing process should be finished, without the need to complete any subsequent steps. Here,
25 however, petitioner’s affixing of his information on to the iPhone screen did not complete the
26 petition signing process. Instead, the following process occurred: (1) petitioner reviewed a copy
27 of the initiative on his personal computer; (2) he then went to a separate electronic device, an
28 iPhone; (3) petitioner wrote his signature and other information on the iPhone’s screen; (4) a

1 rendering of the information traced on the screen was then electronically transmitted to a third
2 party, Verafirma; (5) Verafirma then took the facsimile of petitioner's signature and other
3 information and electronically placed it into an electronic version of the petition; (6) the
4 electronic version of the petition was then saved onto yet another electronic device, a flash drive;
5 and, then, (7) the flash drive was delivered to San Mateo County elections officials. Thus, the
6 instrument upon which petitioner personally affixed his signature and other information was an
7 iPhone, and not a document or the petition itself. This was not compliance with the applicable
8 statutes.

9 The Secretary of State is the chief elections officer of California. (§ 10; Gov. Code, §
10 12172.5.) As such, she is charged with "see[ing] that elections are efficiently conducted and that
11 state election laws are enforced." (Gov. Code, § 12172.5.) In her capacity as the state's chief
12 elections officer, the Secretary sent a Memorandum to county elections officials expressing her
13 official opinion that an initiative petition purportedly completed on an electronic device did not
14 comply with state elections laws. (Memorandum #10063 dated February 9, 2010, attached as
15 Exh. A to Patel Decl.) This Memorandum constitutes a contemporaneous administrative
16 construction of a statutory scheme by the governmental official charged with the enforcement and
17 interpretation of the scheme. As such, the Secretary's interpretation of sections 100 and 9020's
18 requirements "is entitled to great weight." (See *Andal v. Miller* (1994) 28 Cal.App.4th 358, 364
19 fn. 3 [the Secretary's guidelines on state election requirements are "entitled to great weight"].)

20 **II. WHEN THE LEGISLATURE INTENDED TO PERMIT ELECTRONIC SUBMISSION OF**
21 **SIGNATURES FOR THE ELECTIONS PROCESS, IT HAS EXPRESSLY AUTHORIZED IT.**

22 Although the petitioner spends much time explaining the creativity and novelty of a
23 technology that permits electronic transmission of a rendition of a signature, at its core,
24 Verafirma's technology simply allows a person's initial signature to be captured, converted into
25 an electronic format, and then transmitted to a different location, where a facsimile of the initial
26 signature is recreated. For the purposes of the Elections Code, this process is no different than the
27 technology behind a fax machine, which has existed for more than a quarter of a century. A fax
28 machine also can take a rendering of a person's signature, convert the signature, and any other

1 written information, into an electronic format, transmit the image of the signature, and other
2 information, over an electronic medium (a telephone line or similar medium), and produce a
3 facsimile of the signature and other information originally created somewhere else. As petitioner
4 acknowledges, California law does not permit submission of a fax signature for an initiative
5 petition. (See Petitioner's Pts. & Auth. pp. 8-9.) There is simply no reason to distinguish
6 between an electronically-created fax signature and the signature created by Verafirma's
7 technology. In both instances, technology is being used to reproduce or recreate a voter's
8 signature and other information that the Elections Code requires be directly and personally
9 affixed to the initiative petition in the first instance.

10 In fact, when the Legislature has wanted to permit submission of signatures by a fax-like
11 device or procedure, it has expressly authorized such a procedure. Elections Code section 3103,
12 subdivision (f), authorizes an elections official to send a special absentee voter (generally a
13 member of the armed forces living outside the country) a special absentee ballot by "mail,
14 facsimile, or electronic transmission." (See § 300 [defining special absentee voter].) Section
15 3103.5, enacted in 2004, provides the only instance where a facsimile signature may be utilized
16 by a voter for an elections purpose. Section 3103.5 permits special absentee voters living outside
17 of the country to, in certain circumstances, return their completed ballot and voter oath waiving
18 their right to cast a secret ballot via a "facsimile transmission."

19 Additionally, section 3110 permits a special absentee voter who is recalled to military
20 service and unable to vote at his or her polling place on election day to request a mail ballot to
21 submit his or her vote. Under such circumstances, the voter may request the mail ballot "by
22 facsimile, or by e-mail or online transmission if the elections official makes the transmission
23 option available." (§ 3110.) Thus, where the Legislature has wanted to authorize the use of a
24 "facsimile, electronic transmission, or online transmission" for an election-related purpose it has
25 expressly done so. There is no similar legislative authorization to accept a facsimile, electronic or
26 online signature, like the petitioner's signature here, for an initiative petition. (Compare Fam.
27 Code, § 17400, subd. (b)(2); Gov. Code, § 27391, subd. (e); Harb. & Nav. Code, § 735.2; Ins.
28 Code, § 38.5 [all expressly authorizing the use of an "electronic signature"].) The Elections Code

1 does contain a definition of what can constitute a signature for purposes of the Code. (§ 354.5.)
2 However, section 354.5 does not include electronic signatures.² (Compare Gov. Code, § 14608
3 [expressly stating that the term “in writing” as used in the statute “includes a secured electronic
4 signature”].) Thus, the lack of statutory authorization here means that a fax-like electronic
5 transmission of a signature for an initiative petition is not valid and cannot be accepted.

6 **III. THE LEGISLATIVE HISTORY CONFIRMS THAT ELECTRONIC SIGNATURES WERE**
7 **NOT ENVISIONED TO SATISFY ELECTIONS CODE REQUIREMENTS.**

8 In 1997, the Legislature passed Assembly Bill (AB) 44. AB 44 directed the Secretary of
9 State to create “a task force to conduct a study on the creation of a digital electoral system.”
10 (Copy of AB 44 attached as Exh. B to Patel Decl.) Among other things, the proposed digital
11 electoral system would “permit an eligible person to . . . sign any petition” authorized by the
12 election laws, such as an initiative petition. Then-Governor Pete Wilson vetoed the bill. In
13 relevant part, Governor Wilson’s veto message explained that:

14 This bill calls for a task force to study establishing a digital electoral system that
15 would, among other things, *allow individuals to register to vote, sign an initiative*
16 *petition and cast their vote through the use of digital technology.* The use of such a
17 system will compromise voter confidentiality and generate significant opportunities
18 for fraud. Since the digital system would be available only to those with access to
19 computer terminals, it would not replace the current system. Accordingly, the use of
20 two systems would complicate voter verification procedures, further compromising
21 the electoral process. [¶] Although current encryption technology is making
22 advances in providing a more secure environment to prevent tampering by third
23 parties, no one can yet guarantee a completely safe, tamper-proof system. Without
24 such a guarantee, a study is premature. (Italics added.)

25 (Copy of Veto Message attached as Exh. C to Patel Decl.) It is clear from the passage of the
26 legislation and the veto message that AB 44 was an attempt to study a practice and a technology

27 ² Petitioner argues that the Elections Code’s definition of “writing” applies in determining
28 what constitutes a “signature” permitted under the Code. However, it is the term “signature,” and
not “writing,” that is used in sections 100 and 9020, and the Code’s definition of “signature” does
not include an electronic rendering of a signature. Additionally, when the Legislature has wanted
to include an electronic signature within the definition of a “writing,” it expressly did so, such as
in Government Code section 14608. The failure to include an electronic signature within the
Elections Code’s definition of either a “signature” or a “writing” must be considered purposeful.
(*United Farm Workers of America v. Agricultural Labor Relations Bd.* (1995) 41 Cal.App.4th
303, 316 [“the expression of certain things in a statute necessarily involves exclusion of other
things not expressed”].)

1 that was not permitted by law so that an examination could be made to determine whether the law
2 should be changed to permit use of the technology for initiative petition signature gathering and
3 other purposes. Since the 1997 veto of AB 44, there has been no change in the Elections Code
4 that would lead one to believe that using electronic signatures on initiative petitions would be
5 permitted by the law. AB 44's legislative history thus indicates that the Elections Code has not
6 been understood as permitting a person to create an electronic signature to sign an initiative
7 petition.

8 This conclusion is further confirmed by the history of the initiative process. In 2000, an
9 individual proposed an initiative entitled the "Smart Initiatives Initiative." (Copy of Smart
10 Initiatives Initiative, attached as Exh. D to Patel Decl.) Among other things, this proposed
11 initiative would have amended the Elections Code to expressly authorize an initiative proponent
12 to "collect digital signatures."³ Although this proposed initiative did not qualify for the ballot, it
13 further shows that the Elections Code does not currently authorize collection of petition
14 signatures by electronic means.

15 **IV. THE SECRETARY OF STATE'S INTERPRETATION OF THE STATUTORY SCHEME DOES**
16 **NOT INFRINGE ON THE PEOPLE'S RIGHT TO INITIATIVE.**

17 The petitioner argues that his interpretation of the statutory scheme must be accepted to
18 preserve the right to initiative. This argument is without merit. The right to the initiative and the
19 referendum has been called "one of the most precious rights of our democratic process," and the
20 courts have adopted a policy of "liberal construction to this power whenever it is challenged in
21 order that the right not be improperly annulled. If doubts can reasonably be resolved in favor of
22 the use of this reserve power, courts will preserve it." (*Associated Home Builders etc. Inc. v. City*
23 *of Livermore* (1976) 18 Cal.3d 582, 591 [citations omitted].) However, the courts have equally
24 emphasized that the statutory rules for qualifying an initiative for the ballot must be substantially
25 satisfied. (*Mapstead v. Anchudo* (1998) 63 Cal.App.4th 246, 257 ["Courts have regularly upheld

26 ³ The proponent of the initiative was Marc Strassman, who at one point was apparently the
27 "Executive Director of Campaign for Digital Democracy, a leading advocacy organization
28 supporting the right of every citizen to vote and sign initiative petitions over the Internet." (See
Patel Decl. ¶ 6 and attachment Exh. E)

1 and given effect to legislation establishing procedures for the exercise of initiative and
2 referendum rights and facilitating the performance of duties of elections officials.”].)

3 Adopting the Secretary of State’s interpretation of the statutory scheme would not annul the
4 People’s initiative power in this case. First, the right to circulate an initiative petition and submit
5 it to county elections officials belongs to the initiative’s proponent. There is no claim whatsoever
6 that the petitioner’s signature is necessary to qualify this particular initiative for the statewide
7 ballot. The initiative proponent is not even a party to this proceeding. The proponent submitted
8 the petitioner’s “signature” using Verafirma’s technology as a test case to determine whether the
9 technology meets the requirements of the Elections Code. (See Pet. ¶ 4.) Thus, there is no
10 danger that refusal to accept the petitioner’s purported “signature” threatens the initiative at issue.

11 Second, to the extent that petitioner has a legal entitlement to sign an initiative petition, that
12 entitlement can easily be satisfied through alternative means. As the petitioner acknowledges in
13 his points and authorities, an individual often can obtain a copy of an initiative petition from the
14 Internet, print it out, directly affixed his or her signature and other information to the petition, and
15 then deliver it to the proponent for submission to county elections officials. (See Petitioner’s Pts.
16 & Auth. p. 1:17-18 [“Although almost all election-related documents are now available online via
17 the Internet, voters are still forced to print out these documents, *simply to sign them.*”].) The
18 initiative power has existed in California since 1911. The exercise of this power does not depend
19 upon utilization of Verafirma’s novel technology to “sign” initiative petitions. Thus, there would
20 be no injury to the initiative process in denying the petition in this case.

21 The substantial compliance doctrine also does not apply in this case. Courts will require
22 elections officials to accept initiative documents that substantially comply with statutory
23 requirements. The substantial compliance doctrine applies where there has been a minor
24 technical failure to comply with a specific statutory requirement. Here, however, there can be no
25 substantial compliance because the underlying statutes do not permit a voter to “sign” an
26 initiative petition via an iPhone using Verafirma’s technology. Thus, the substantial compliance
27 doctrine is simply inapplicable.

1 **V. ANY MECHANISM FOR SUBMITTING ELECTRONIC SIGNATURES FOR ELECTION**
2 **DOCUMENTS SHOULD BE ESTABLISHED BY THE LEGISLATURE.**

3 The question of whether an electronic device or the Internet should be used for election
4 purposes is an issue best resolved by the Legislature, and not on a piece meal, incremental basis
5 in the courts. As the academic studies the petitioner filed in this case indicate, the question of
6 whether to permit use of electronic tools and the Internet in elections involves multiple, and often
7 competing, policy considerations. These issues are best considered in a deliberative legislative
8 process where various stakeholders can participate, rather than in a writ proceeding where a
9 particular corporation, Verafirma, is interested in furthering its commercial interest by use of its
10 particular technology.

11 One of the significant issues in using electronic systems for election purposes is the security
12 of such systems. Although Verafirma claims that its system is secure, there has been no
13 opportunity to test that claim in this case. Verafirma claims that its technology is sufficiently
14 secure because the technology complies with the requirements of Government Code section 16.5.
15 Even if true, there is no reason to believe or accept that compliance with section 16.5 alone would
16 or should be sufficient when exercising electoral rights. Government Code section 16.5 was
17 enacted in 1995. (Stats. 1995, ch. 594 [Assembly Bill 1577].) However, two years later, in 1997,
18 the Legislature passed AB 44 to impanel a task force to study the creation of a digital electoral
19 system. Governor Wilson vetoed AB 44, in part, because he believed that electronic election
20 systems still “generate significant opportunities for fraud” and because “no one can yet guarantee
21 a completely safe, tamper-proof system.” Thus, the Legislature and the Governor did not view
22 section 16.5 by itself as sufficient to protect against potential security issues or to authorize the
23 activity that Verafirma erroneously argues is permitted by law.

24 This conclusion is echoed by a January 2000 report issued by the California Secretary of
25 State’s Internet Voting Task Force. Despite the then-existing law, such as Government Code
26 section 16.5, the Task Force still found that “technological threats to the security, integrity and
27 secrecy of Internet ballots are significant.” (Copy of Task Force’s Report, attached as Exh. F to
28 Patel Decl.; see also www.sos.ca.gov/elections/ivote/ [copy of complete report].) Thus, mere

1 compliance with Government Code section 16.5's security requirements does not support finding
2 that a technology must be trusted if it is used for the electoral process. Moreover, whether
3 Verafirma's technology is or is not secure is irrelevant for the issue before the court because the
4 use of such technology to "sign" initiative petitions is simply not permitted by the Elections Code.

5 Additionally, as indicated, when the Legislature has intended to permit the use of
6 technology for election purposes, it has expressly authorized it. For example, the Elections Code
7 permits the use of electronic systems for the purpose of casting and tallying votes, but it also
8 requires the Secretary of State to test and approve the use of such systems first. (§§ 19200, 19205,
9 19220 and 19250.) If this Court approves use of Verafirma's technology, it would usher in a new
10 era, approving the use of electronic mechanisms in the voting process without express legislative
11 authorization, and without assuring any regulatory oversight to ensure the reliability or security of
12 such technology. (See *United Farm Workers of America, supra*, 41 Cal.App.4th at p. 315 [when
13 interpreting a statutory scheme, "consideration should be given to the consequences that will flow
14 from a particular interpretation"].) Moreover, the Legislature has the exclusive constitutional
15 authority to regulate the initiatives process. (Cal. Const., art. II, § 10, subd. (e).) A judicial
16 decision that authorizes a new process in an area of the law in which the Legislature has exclusive
17 power to govern and regulate raises potential separation of powers concerns. (Cal. Const., art. IV,
18 § 1 ["The powers of state government are legislative, executive, and judicial. Persons charged
19 with the exercise of one may not exercise either of the others except as permitted by this
20 Constitution."].)

21 In sum, to permit the use of Verafirma's technology, it is necessary to change the Elections
22 Code. The complex issues presented in permitting use of electronic devices and the Internet to
23 sign initiative petitions are best resolved in total by the Legislature, not in an incremental basis by
24 this Court in this case.

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CONCLUSION

The Legislature is expressly empowered to regulate the mechanism for signing initiative petitions. The Elections Code does not authorize use of electronic devices to sign such petitions. Thus, the petition for a writ of mandate should be denied, and a judgment in favor of respondent on the declaratory relief action should be granted.

Dated: March 8, 2010

Respectfully Submitted,

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DECLARATION OF SERVICE BY U.S. MAIL AND E-MAIL

Case Name: **Michael Ni v. Warren Slocum, et al.**

No.: **CIV 492074**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 8, 2010, I served the attached

1. NOTICE OF ENTRY OF ORDER PERMITTING THE SECRETARY OF STATE OF CALIFORNIA TO PARTICIPATE AS AMICUS CURIAE IN THE PROCEEDING
2. BRIEF OF *AMICUS CURIAE* THE SECRETARY OF STATE OF CALIFORNIA
3. DECLARATION OF HIREN PATEL IN SUPPORT OF BRIEF OF *AMICUS CURIAE* THE SECRETARY OF STATE OF CALIFORNIA

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

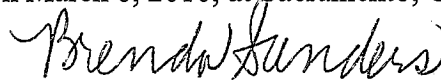
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 8, 2010, at Sacramento, California.

Brenda Sanders
Declarant


Signature