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11 Attorneys for Plaintiff Ben Eilenberg

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 BEN EILENBERG,

15 Plaintiff,

16 vs.

17 THE CITY OF COLTON, and DOES  
18 1 through 50, inclusive,

19 Defendants

Civil Action No.

COMPLAINT

**COMPLAINT**

1  
2 Plaintiff Ben Eilenberg for his complaint against Defendant City of  
3 Colton and Does 1 through 50 (collectively “Defendants”) states as follows:  
4

5 **NATURE OF CASE**

6 1. This is an action under 42 U.S.C. 1983 for violation of civil  
7 rights. Specifically, Plaintiff is managing an initiative that is planned to be  
8 on the November 2020 ballot for the City of Colton, CA. Defendants have  
9 refused to allow initiative signature gatherers in the City of Colton,  
10 effectively blocking the ability to get the initiative on the ballot. Therefore,  
11 Plaintiff was forced to bring this lawsuit.  
12  
13  
14

15 **THE PARTIES**

16 2. Plaintiff Ben Eilenberg is an individual residing in Fullerton,  
17 California.  
18

19 3. Plaintiff Ben Eilenberg is managing the initiative campaign for  
20 the initiative entitled “Initiative Measure To Add Food Trucks, Food Truck  
21 Commissaries, and Commercial Kitchens As Permitted Uses by Right in  
22 the City’s Commercial, Mixed-Use and Industrial Zones, Establishing a  
23 Food Truck Overlay Zone and a Permitting System for Such Operations.”  
24  
25

26 4. Defendant the City of Colton is a general law city in the State of  
27 California, County of San Bernardino.  
28

**JURISDICTION AND VENUE**

1  
2 5. This Court has subject matter jurisdiction over this dispute  
3 pursuant to 42 U.S.C. 1983.  
4

5 6. This Court has personal jurisdiction over Defendant City of  
6 Colton because it is located within this judicial district, regularly transacts  
7 business within this judicial district, and has committed violations of 42  
8 U.S.C. 1983 in this district.  
9

10 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§  
11 1391(b).  
12

13 **GENERAL ALLEGATIONS**

14 ***The Initiative Process In California***

15  
16 8. “The initiative is the power of the electors to propose statutes  
17 and amendments to the Constitution and to adopt or reject them. (Cal.  
18 Const. art. II, sec. 8(a).)  
19

20 9. In 1911, California voters amended the state Constitution to  
21 provide voters the power to enact initiatives and referenda. This includes  
22 the right to do so on a municipal level.  
23

24 10. The process to qualify an initiative for the ballot is as follows:  
25

- 26 a. Notice of Intent. Voters of the city draft the text of the  
27 measure and file it with the City Clerk along with the notice  
28

1 of intent to circulate petition. (Cal. Elec. Code § 9202.) The  
2 notice of intent may include a statement of the purpose of  
3 the measure, not to exceed 500 words. The legislative body  
4 may establish a filing fee not to exceed \$200, provided that  
5 the fee must be refunded if, within one year, the city clerk  
6 certifies the petition as sufficient.  
7

8  
9 b. Request for Title and Summary. The city attorney must  
10 provide a title for the measure and an impartial summary, in  
11 fewer than 500 words, within 15 days of the filing of the  
12 notice of intent. (Cal. Elec. Code § 9203.)  
13

14  
15 c. Publication or Posting. The notice of intention filed with the  
16 city clerk and the title and summary prepared by the City  
17 Attorney must be published or posted by the proponents.  
18 (Cal. Elec. Code § 9205.)  
19

20  
21 d. Preparation and Circulation of Petition. After publication or  
22 posting, the proponents prepare and circulate the petition.  
23 (Cal. Elec. Code § 9207.) Elections Code section 9020  
24 provides that the petition “shall be designed so that each  
25 signer shall personally affix . . . [h]is or her residence  
26 address.” That requirement is intended allow the election  
27  
28

1 official to determine during the verification process that the  
2 signer is properly registered at his or her residence address  
3 and therefore eligible to sign the petition. (Assembly v.  
4 Deukmejian (1982) 30 Cal.3d 638 [petition directing signers  
5 to write their address as registered to vote violates Elections  
6 Code].) In addition, each section of the petition must have a  
7 declaration of the circulator, the person soliciting the  
8 signatures, who must be qualified to vote in the city, and the  
9 declaration must be in a specific form prescribed by law.  
10 (Cal. Elec. Code § 9209.) The circulator's declaration must  
11 contain the information required by Elections Code section  
12 104. Subdivision (a)(3) of section 104 requires that the  
13 declaration set forth "in the circulator's own hand . . . the  
14 dates between which all the signatures to the petition or  
15 paper were obtained . . . ."

- 16  
17  
18  
19  
20  
21  
22 e. Filing. Signatures and sections must be filed with the City  
23 Clerk within 180 days of the receipt of the title and summary.  
24 (Cal. Elec. Code § 9208.) All sections of the petition must be  
25 filed at the same time by one or more of the official  
26  
27  
28

1           proponents or persons authorized in writing by the  
2           proponents. (Cal. Elec. Code § 9210.)

3           11. Plaintiff is required to comply with these requirements or risk  
4           not having the initiative qualify for the ballot.

5  
6                           ***Plaintiff Has Been Blocked From Moving***

7  
8                           ***His Initiative Forward In The City Of Colton***

9           12. On or about November 7, 2019, Plaintiff submitted an initiative  
10           to Defendant the City of Colton for Title and Summary. (Exhibit A.)

11  
12           13. On or about November 21, 2019, Defendant provided a title and  
13           summary for the initiative. (Exhibit B.)

14  
15           14. The issuance of the title and summary began the 180 day  
16           deadline to gather signatures for the initiative to qualify it for the November  
17           2020 ballot.

18  
19           15. Plaintiff then published the initiative in the local newspaper as  
20           required under the Election Code.

21  
22           16. After the publication, Plaintiff hired a signature gathering firm  
23           and began gathering signatures.

24  
25           17. During the signature gathering process, the Covid-19 crises  
26           began.

1 18. Plaintiff wrote to Defendant the City of Colton to confirm that the  
2 signature gatherers would continue to be allowed to gather signatures, or in  
3 the alternative, that the City would provide an alternative accommodation.  
4  
5 (Exhibit C.)

6 19. Defendant replied stating that it would not be allowing any  
7 accommodations (such as simply placing the initiative measure on the  
8 ballot via the City Council.) (Exhibit D.)  
9

10 20. Plaintiff therefore replied to confirm that the signature gatherers  
11 would be permitted to move forward with signature gathering, as they are  
12 essential workers engaged in a constitutional function. (Exhibit E.)  
13  
14

15 21. Defendant replied stating that it would not deem the signature  
16 gatherers essential workers. (Exhibit F.)  
17

18 22. This has left Plaintiff in the position where he cannot gather  
19 signatures for the initiative to be placed on the November 2020 ballot.  
20

21 **COUNT I – 42 U.S.C. 1983**

22 23. Plaintiff incorporates herein the allegations of paragraphs 1  
23 through 22 above specifically by reference.  
24

25 24. Section 1983 allows claims alleging the “deprivation of any  
26 rights, privileges, or immunities secured by the Constitution and [federal  
27 laws].” 42 U.S.C. § 1983.  
28

1           25. Defendant, by blocking the ability to gather signatures in the  
2 City of Colton and not providing any other accommodation (whether by  
3 extending deadlines, placing the matter on the ballot via the City Council, or  
4 other accommodation), has deprived Plaintiff of his Constitutional Rights  
5 under both the Federal and California Constitutions.  
6

7           26. Defendants acted under color of statute, ordinance, regulation,  
8 custom or usage of California and municipal authority.  
9

10           27. Plaintiff has suffered the following damages:  
11

- 12           a. Loss of funds and time spent on the initiative prior to the City  
13               of Colton's refusal to allow signature gathering
- 14           b. Loss of moneys that certain properties would be worth if the  
15               initiative passes
- 16           c. Loss of constitutional right to gather signatures for an  
17               initiative.  
18  
19

### 20   **COUNT II – Writ of Mandate**

21  
22           28. Plaintiff incorporates herein the allegations of paragraphs 1  
23 through 27 above specifically by reference.  
24

25           29. Plaintiff has a constitutional right to gather signatures to qualify  
26 an initiative.  
27  
28





**VERIFICATION**

I, Ben Eilenberg, as Plaintiff, verify under penalty of perjury that I have read the above complaint and its contents. I also verify that, to the best of my knowledge and recollection, the matters stated in the complaint are true and correct.

Executed this 12<sup>th</sup> day of April, 2020

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Ben Eilenberg