

1                                   **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
2                                   **COUNTY OF SAN FRANCISCO**  
3                                   **APPELLATE DIVISION**

4                   **SANDRA SUSAN MERRITT,**  
5                                   **Petitioner,**

6                                   **vs.**

7                   **THE SUPERIOR COURT OF**  
8                   **THE STATE OF**  
9                   **CALIFORNIA, COUNTY OF SAN**  
10                   **FRANCISCO,**  
11                                   **Respondent;**

12                   **PEOPLE OF THE STATE OF**  
13                   **CALIFORNIA,**  
14                                   **Real Party in Interest.**

**Writ No.:**

**IMMEDIATE STAY**  
**REQUESTED**

**Preliminary Hearing, Feb. 19,**  
**2019**

**Superior Court of the State of**  
**California, County of San**  
**Francisco**

**Case No.: 17006621**

**Dept.: 23**

**Judge: Christopher C. Hite**

**Tel. No.: (415) 551-0323**

15                                   **REQUEST FOR STAY OF PROCEEDINGS; VERIFIED PETITION**  
16                                   **FOR WRIT OF MANDATE, PROHIBITION, OR OTHER**  
17                                   **APPROPRIATE RELIEF; MEMORANDUM; AND APPENDIX**

18                                   **Pursuant to California Rules of Court, Rule 8.46(e)(4):**  
19                                   **PUBLIC – Redacts Material from Sealed Record**

20                                   From the Orders of the Superior Court of  
21                                   the State of California  
22                                   County of San Francisco  
23                                   Case No. 17006621  
24                                   The Honorable Christopher C. Hite  
25                                   Presiding  
26                                   Tel.: (415) 551-0323

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**REQUEST FOR STAY; VERIFIED PETITION FOR WRIT OF**  
**MANDATE, PROHIBITION, OR OTHER APPROPRIATE RELIEF;**  
**MEMORANDUM; AND APPENDIX**

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**REQUEST FOR STAY; VERIFIED PETITION FOR WRIT OF  
MANDATE, PROHIBITION, OR OTHER APPROPRIATE RELIEF;  
MEMORANDUM; AND APPENDIX**

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1 **REQUEST FOR STAY**

2 By reason of the September 10, 2018 and October 5, 2018 Orders,  
3 which were consolidated and rendered on October 5, 2018, described in  
4 Allegations contained in Section V, the San Francisco Superior Court  
5 requires Petitioner to proceed to a Preliminary Hearing on February 19  
6 through March 1, 2019. Petitioner respectfully requests a stay of the  
7 proceedings to avoid due process violations attendant to the Attorney  
8 General’s divided interests in these proceedings.



1 **PETITION**

2 TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
3 FOR THE COUNTY OF SAN FRANCISCO, APPELLATE DIVISION:

4 Petitioner, SANDRA SUSAN MERRITT, petitions this Court for a  
5 Writ of Mandate, Prohibition, or other appropriate relief (“Petition”), and for  
6 a stay of proceedings, directed to Respondent Court, and by this verified  
7 petition represents that:

8 **I**

9 **Petitioner & Real Party in Interest**

10 Petitioner, SANDRA SUSAN MERRITT (hereinafter, “Merritt”), is  
11 the Defendant in a felony action now pending in Respondent Court entitled  
12 *The People of the State of California v. David Robert Daleiden and Sandra*  
13 *Susan Merritt*, No. 17006621. The People of the State of California are the  
14 Real Party in Interest.

15 **II**

16 **Respondent**

17 Respondent, the Superior Court of California, County of San  
18 Francisco, is now, and at all times mentioned in this petition has been  
19 exercising judicial functions in connection with the proceeding described in  
20 Section I.

21 **III**

22 **Venue is Proper**

23 All the proceedings about which this petition is concerned have  
24 occurred within the territorial jurisdiction of Respondent and of the Court of  
25 Appeal of the State of California, First Appellate District.



1 September 10, 2018. (App. Vol-1, **Tab 2** (9-10-18 Transcript (“Tr.”) 27:6-  
2 13) at App-202.) Then, compounding its legal errors, Respondent denied  
3 Merritt’s Motions for lack of evidence on October 5, 2018. (App. Vol-1, **Tab**  
4 **3** (10-5-18 Tr. 32:7 – 40:14) at App-237-45.) Although Respondent’s initial  
5 legal errors occurred on September 10, those rulings became ripe for review  
6 on October 5, 2018, when Respondent combined its September 10 and  
7 October 5 rulings for review purposes. (*Id.* (10-5-18 Tr. 3:24-4:6) at App-  
8 208-09.)

9 Although Merritt is not obligated to demonstrate prejudice pre-trial,  
10 Respondent’s abuse of discretion severely prejudices her: Merritt has been  
11 denied the right to obtain testimonial evidence in support of her Recusal and  
12 Dismissal Motions, in which her federal and state equal protection rights are  
13 at stake, *see Murgia v. Municipal Court* (“*Murgia*”), 15 Cal. 3d 286, 290,  
14 293 (1975), as well as her federal and state rights to “[a] fair and impartial  
15 trial [which] is a fundamental aspect of the right of accused persons not to be  
16 deprived of liberty without due process of law,” *People v. Superior Court*  
17 (“*Greer*”), 19 Cal. 3d 255, 266 (1977) (citing U.S. Const., 5<sup>th</sup> & 14<sup>th</sup>  
18 Amends.; Cal. Const., art. I, § 7).

19 **A. Statement of Facts.**

20 Merritt’s research as an investigative journalist lead her to discover  
21 that abortion providers were altering abortion procedures to increase their  
22 ability to harvest intact fetal organs for sale. Abortion providers, Merritt  
23 found, were willing to perform “partial birth abortions” or other techniques  
24 in which they killed and dissected live fetuses **outside their mothers**. Thus,  
25 Merritt began working undercover, gathering information for the Center for  
26

1 Medical Progress’ (“CMP”) Human Capital Campaign, necessarily  
2 involving conversations with abortion providers related to the harvest and  
3 sale of aborted body parts. Undercover, Merritt attended abortion  
4 conferences as an exhibitor, and she met publicly with Planned Parenthood  
5 representatives to discuss the purchase of fetal tissue specimens from  
6 Planned Parenthood. (App. Vol-1, **Tab 1** (Recusal/Dismissal Motions, 3-4),  
7 at App-6-7.) Fourteen of those representatives are alleged victims named as  
8 “Does” in the Amended Criminal Complaint, which charges Merritt and her  
9 co-defendant, David Daleiden, with violating Section 632(a)). (App. Vol-2,  
10 **Tab 4** (Amended Criminal Complaint) at App-249.)

11 CMP published video reports of the investigations on its website, on  
12 YouTube, and on Facebook. (App. Vol-1, **Tab 1** (Recusal/Dismissal  
13 Motions, 4) at App-7.) The reports were highly successful and immediately  
14 drew appropriate public outrage and moral indignation at Planned  
15 Parenthood’s practices, as well as swift legal action. At least two entities in  
16 California were successfully prosecuted, forced to pay almost \$8 million in  
17 penalties, and shuttered permanently in connection with their unlawful baby  
18 parts transactions. Several states and the federal government moved to  
19 defund Planned Parenthood to varying degrees. The United States Congress  
20 conducted an investigation and referred Planned Parenthood to law  
21 enforcement agencies for criminal prosecution in connection with its illegal  
22 profiteering from aborted baby body parts.

23 Instead of indicting and prosecuting Planned Parenthood for its  
24 documented criminal conduct, the California Attorney General brought this  
25 unprecedented criminal action against the newsgatherers—the first such

1 action of its kind. The following relevant facts have occurred in this  
2 proceeding against Merritt:

3 **1.** On **July 24, 2018**, Petitioner filed her Recusal and Dismissal  
4 Motions with proffered exhibits (*id.* at App-1), redacted in compliance with  
5 the March 28, 2017 Order sealing alleged victim names in conjunction with  
6 the warrant for Merritt’s arrest. (App. Vol-2, **Tab 5** (3-28-17 Sealing Order)  
7 at App-257).

8 **2.** Merritt’s Recusal and Dismissal Motions proffered evidence of  
9 conflict and discriminatory prosecution, strongly indicating that there is (and  
10 has been) an ongoing financial, political, and close-working relationship  
11 between the Attorney General’s Office (spanning two administrations) and  
12 numerous Planned Parenthood executives who employ many of the alleged  
13 victims in this prosecution. Merritt’s Motions, as well as a further proffer  
14 required by Respondent for Merritt to obtain an evidentiary hearing, (App.  
15 Vol-2, **Tab 6** (Joint Offer of Proof (“JOP”)) at App-258), demonstrated the  
16 need for an evidentiary hearing. Merritt proffered documentary evidence,  
17 including the following:

18 **a.** Attorney General Becerra publicly and consistently  
19 demonstrated his loyalty to Planned Parenthood, beginning in his capacity as  
20 a U.S. Congressman and continuing to the present. Most recently, during his  
21 Attorney General campaign, Planned Parenthood **sponsored and hosted** his  
22 primary election party, where he addressed party-goers standing in front of a  
23 large sign, reading, “**I STAND WITH PLANNED PARENTHOOD.**”  
24 (App. Vol-1, **Tab 1** (Recusal/Dismissal Motions, 6) at App-9 (emphasis  
25 added).) His statements in front of that sign are available on YouTube (on  
26

1 Attorney General Becerra’s channel), clearly praising with special thanks  
2 and applause “**Planned Parenthood who has been there in the fight from**  
3 **the very beginning ....**” (*Id.* (emphasis added).) Likewise, a May 25, 2018  
4 YouTube video published by the California Department of Justice (“DOJ”)  
5 shows Attorney General Becerra assuring viewers that his Office is “**united**”  
6 with Planned Parenthood, and he found that “very important to say.” (*Id.*)  
7 And, as early as March 2016, then-Congressman Becerra publicly disparaged  
8 Merritt and Daleiden, going on record to condemn the federal congressional  
9 “witch hunt on Planned Parenthood,” which he attributed to the “culprits in  
10 what’s been going on involving fetal tissue” (referring to Merritt and  
11 Daleiden concerning the now-dismissed Texas prosecution against them for  
12 substantially the same alleged conduct underlying this California  
13 prosecution). (App. Vol-2, **Tab 7** (Merritt’s *Request for Evidentiary Hearing*  
14 *& Reply to People’s Response in Opposition to Defendants’ Motions to*  
15 *Recuse the Attorney General’s Office and to Dismiss for Selective*  
16 *Prosecution & Opposition to Evidentiary Hearing* (“Merritt Reply”), *Exhibit*  
17 *1*) App-290.)

18 **b.** The Attorney General’s own documents further show  
19 that Planned Parenthood has enjoyed a tight working relationship with the  
20 Attorney General’s Office since at least 2015, during the same time-frame as  
21 when the investigation against Merritt and Daleiden began under the  
22 administration of Kamala Harris, Becerra’s predecessor. Documentation  
23 shows collaboration on several occasions related to abortion, as well as  
24 pinpoint draft legislation (AB 1671) which has since amended Section 632  
25 to criminalize any further release of CMP videos that could incriminate  
26

1 Planned Parenthood. (App. Vol-1, **Tab 1** (Recusal/Dismissal Motions, 9-11)  
2 at App-12-14.) Simultaneously, documents show the Attorney General’s  
3 Office injecting itself into local investigations that could involve Planned  
4 Parenthood, looking for connections to Merritt and Daleiden’s activities. (*Id.*  
5 (7-8) at App-10-11.) A December 2015 DOJ investigative report also shows  
6 direct involvement in the investigation by Planned Parenthood’s then-Chief  
7 Counsel, Beth Parker, who instructed DOJ to seize Daleiden’s computers for  
8 Planned Parenthood, and which were seized soon after the March 23, 2016  
9 meeting discussed below. (*Id.* (6-7) at App-9-10.)

10 c. During the ongoing investigation, a private meeting  
11 occurred on March 23, 2016, between then-Attorney General Kamala Harris  
12 and Planned Parenthood executives, including Beth Parker, two prosecution  
13 witnesses, and the supervising employers of three alleged victims in this case.  
14 One attendee is known to have personally donated to Kamala Harris’  
15 campaign for Senate later that year, in October 2016. (*Id.* (6-7, 10) at App-9-  
16 10, 13.) Jill Habig, an executive in Kamala Harris’ Office produced a list of  
17 “action items” developed from this meeting. Action items included  
18 “Legislation” (likely the now enacted amendment to Section 632), as well as  
19 safety concerns of a prosecution witness, Dr. Russo. (App. Vol-2, **Tab 7**  
20 (Reply, 12 & *Exhibit 2*) at App-285, App-2921; App. Vol-2, **Tab 6** (JOP, 3-  
21 4) App-260-61.)

22 d. The Attorney General’s documents also show that the  
23 two lead prosecuting attorneys who had worked on the criminal investigation  
24 under the Harris administration have continued the prosecution to date:  
25 Deputy Attorney General Johnette Jauron and Senior Assistant Attorney

1 General Robert Morgester. (App. Vol-2, **Tab 7** (Merritt Reply, *Exhibit 5*) at  
2 App-297.)

3 e. Merritt documented substantial financial contributions  
4 by Planned Parenthood entities and individual employees to Attorneys  
5 General Harris and Becerra’s congressional campaigns. (App. Vol-1, **Tab 1**  
6 (Recusal/Dismissal Motions, 12-13) at App-15-16.)

7 f. Merritt documented numerous, well-publicized  
8 violations of Penal Code Section 632 by similarly situated journalists, which  
9 have gone **unprosecuted**. Like Merritt’s investigations, reporters from CBS,  
10 FOX 11 Los Angeles, NBC4 Los Angeles, and animal rights groups  
11 conducted investigations undercover with hidden cameras. (*Id.* (14-18, 18  
12 n.46) at App-17-21.) The Attorney General did not investigate or prosecute  
13 any of these journalists. Instead, the Attorney General, **without personal**  
14 **knowledge, argued** that these journalists’ investigations were  
15 distinguishable, and he engaged in selective prosecution on these bases.  
16 (App. Vol-2, **Tab 8** (*People’s Response in Opposition to Defendants’*  
17 *Motions to Recuse the Attorney General’s Office and to Dismiss for Selective*  
18 *Prosecution* (“Opp. Recusal/Dismissal Motions”), 15-16, 16 n.2) App-316-  
19 17.) However, the factors on which the Attorney General sought to  
20 distinguish these investigations could not be known absent an actual  
21 investigation.

22 g. Merritt further demonstrated that, prior to this  
23 prosecution, the State of California has never criminally prosecuted any  
24 undercover journalist engaged in public interest news gathering under  
25



1 Section 632. (App. Vol-1, **Tab 1** (Recusal/Dismissal Motions, 18-19, 18 nn.  
2 47-49) at App-21-22.)

3 **3.** Merritt sought to call witnesses in support of her Recusal and  
4 Dismissal Motions. However, Respondent required that Merritt provide an  
5 offer of proof for an evidentiary hearing. (App. Vol-2, **Tab 9** (8-17-18 Email  
6 Order) at App-348.) The Attorney General then opposed Merritt’s  
7 anticipated request and offer. (App. Vol-2, **Tab 10** (*People’s Response in*  
8 *Opposition to Defendants’ Request for Evidentiary Hearing on Recusal*  
9 *Motion* (“Opp. Evid. Hr’g”) at App-349.)

10 **4.** Defendants’ *Joint Offer of Proof*, (App. Vol-2, **Tab 6** (JOP) at  
11 App-258), proffered the testimony of twenty-four witnesses who could  
12 provide testimony based upon their personal knowledge of facts relevant to  
13 Merritt’s claims.

14 **5.** On **September 10, 2018**, Respondent denied Merritt’s request  
15 for an evidentiary hearing on both her Recusal and Dismissal Motions, (App.  
16 Vol-1, **Tab 2** (9-10-18 Tr. 25:11-12) App-200), after noting the Legislature’s  
17 “clear effort under Penal Code Section 1424 to reduce the number of  
18 unnecessary evidentiary hearings . . . ”, (*id.* (25:6-11) at App-200), and  
19 further noted that “no similar statute” exists for a discriminatory prosecution  
20 motion (*id.* at 25:11-15) App-200). Respondent cited no authority for  
21 denying an evidentiary hearing on either the Recusal or the Dismissal  
22 Motions, other than the procedures and standards found in Section 1424, and  
23 that Section was misapplied throughout Respondent’s decision. (*See, e.g., id.*  
24 (26:12-15) at App-201.) Respondent further rejected the Joint Offer of Proof,  
25

1 finding no proffered witness necessary. (*Id.* (26:16 to 27:1-14) at App-201-  
2 02.)

3           **6.**     On **October 5, 2018**, Respondent heard arguments on Merritt’s  
4 Recusal and Dismissal Motions, without an evidentiary hearing, and denied  
5 both motions, (App. Vol-1, **Tab 3** (10-5-18 Tr., 32-36) at App-237-41 (re:  
6 recusal); (37:1 to 40:14) at App-242-45 (re: dismissal)), under Section 1424,  
7 despite Respondent’s acknowledgment of its inapplicability, and without  
8 citation to any authority. (*Id.* (32:9-14) App-237.)

9           **B. Statement of Legal Issues.**

10           This Court should grant this Petition to consider the following **first**  
11 **impression** questions of law:

12           1.     Whether Respondent abused its discretion by imposing Penal  
13 Code Section 1424 procedure and standards to obtain an evidentiary hearing  
14 on Merritt’s Recusal and Dismissal Motions, when neither *Greer* nor  
15 *Murgia*, or their progeny, adopt any such requirements, and when by its  
16 terms, Section 1424 only applies to district attorneys, city attorneys, and city  
17 prosecutors.

18           2.     Whether Respondent abused its discretion by misapplying  
19 Penal Code Section 1424’s substantive standard to deny Merritt’s Recusal  
20 Motion to recuse the Attorney General.

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**VI**

**Petitioner Has Exhausted Her Remedies**

In support of Merritt’s Dismissal and Recusal Motions, Merritt argued in her moving papers and at oral arguments that Penal Code Section 1424 was not applicable, and that, instead, the California Supreme Court’s decision in *Greer* controlled. (*See* App. Vol-2, **Tab 7** (Merritt Reply, 2-4) at App-275-77; Vol-1, **Tab 3** (10-5-18 Tr. 27-29) App-232-34.) Merritt further argued in her pleadings and at oral arguments for an evidentiary hearing. (App. Vol-2, **Tab 7** (Merritt Reply, 7-14) at App-280-87; App. Vol-1, **Tab 2** (9-10-18 Tr. 13:17 to 20:10) at App-188-95.) Respondent denied Petitioner’s motions.

**VII**

**Petitioner Diligently Filed This Petition**

There is no statutory deadline for seeking writ relief in this instance, and Merritt diligently filed this Petition within the sixty-day appeal deadline. *See Good v. Superior Court*, 158 Cal. App 4<sup>th</sup> 1494, 1505 n. 9 (2008) (even writ petition filed **after** 60 days will not be denied unless Respondent can show prejudice). On October 5, 2018, Respondent combined its September 10 and October 5 rulings for review purposes. (App. Vol-1, **Tab 3** at (10-5-18 Tr. 3:24-4:6) (App-208.) Also, Respondent’s September 10 rulings became ripe for review on October 5, when Respondent denied her Recusal and Dismissal Motions.

Further, the Real Party in Interest, the People, have not been prejudiced because the preliminary hearing is docketed for February 19 through March 1, 2019.

1 **VIII.**

2 **Petitioner Has No Adequate Remedy**

3 The orders issued on September 10 and October 5, 2018, are not  
4 appealable at this time, because neither are final judgments of conviction and  
5 do not otherwise qualify as appealable final judgments under Section 1237  
6 (“Appeal by defendant”).

7 Petitioner has no plain, speedy, or adequate remedy at law other than  
8 the relief sought in this Petition, and the right of appeal is wholly inadequate,  
9 because:

10 1) Merritt is constitutionally entitled to **fair** proceedings, free  
11 from discriminatory bias and conflicting interests of the Attorney General,  
12 who improperly chose his loyalty to Planned Parenthood over proceeding  
13 fairly. *See People v. Jackson*, 128 Cal. App. 4th 1009, 1022 (Dist. Ct. App.  
14 2005) (quoting *Press–Enterprise Co. v. Superior Court*, 464 U.S. 501, 508  
15 (1984)) (“No right ranks higher than the right of the accused to a fair trial”).

16 2) Should Merritt succeed, further proceedings would be  
17 unnecessary, and thus, wasting public time and funds, and imposing an  
18 unnecessary emotional toll on Merritt.

19 3) Merritt would otherwise be required to defend against 15  
20 felony counts, thereby imposing substantial time and costs for litigation  
21 expenses, including but not limited to interstate travel and lodging for  
22 witnesses and counsel.

23 4) If required to appeal Respondent’s Orders only after a final  
24 judgment, Merritt would have to shoulder the heavier burden of prejudice,  
25 whereas she is not required to show prejudice pretrial. *See People v. Pompa-*

1 *Ortiz*, 27 Cal. 3d 519, 529 (1980) (citing *People v. Wilson*, 60 Cal. 2d 139  
2 (1963)).

3 **IX**

4 **Petitioner’s Irreparable Harm Absent Writ Relief**

5 Petitioner will be irreparably injured for the reasons stated above, in  
6 Section VIII, if Respondent is not compelled to grant Merritt an evidentiary  
7 hearing on her Recusal and Dismissal Motions. These questions are **issues of**  
8 **first impression**, and the Court should consider this case because of the  
9 significant legal impact on the bench and Bar, preserving both Section 1424’s  
10 proper scope and the principle of *stare decisis*. In addition, the correction of  
11 Respondent’s error will serve the proper administration of justice rather than  
12 thwarting the Legislature’s intent for Section 1424.

13 **PRAYER**

14 WHEREFORE, Petitioner prays that:

15 This Court immediately stay all proceedings in case number  
16 17006621 until further order of this Court; and that:

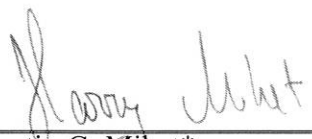
17 This Court issue an alternative writ of mandate directing and requiring  
18 Respondent Court to grant Merritt an evidentiary hearing on her Recusal and  
19 Dismissal Motions, or to show cause before this Court, at a specified time  
20 and place, why it has not done so and why a peremptory writ should not issue;  
21 and that:

22 On the return of the alternative writ and hearing on the order to show  
23 cause, the Court issue a peremptory writ of mandate compelling respondent  
24 Court to grant Merritt an evidentiary hearing on her Recusal and Dismissal  
25 Motions in her Case No. 17006621; and that:

1 This Court grant Merritt such other and further relief as may be  
2 appropriate and just.

3  
4 DATED: November 20, 2018

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23 *Attorneys for Defendant Sandra Susan*  
24 *Merritt*

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REQUEST FOR STAY; VERIFIED PETITION FOR WRIT OF  
MANDATE, PROHIBITION, OR OTHER APPROPRIATE RELIEF;  
MEMORANDUM; AND APPENDIX

1 **MEMORANDUM IN SUPPORT OF WRIT PETITION**

2 **I. PETITIONER HAS DEMONSTRATED ALL NECESSARY**  
3 **REQUIREMENTS TO OBTAIN EXTRAORDINARY RELIEF,**  
4 **AND THIS COURT’S REVIEW OF RESPONDENT’S LEGAL**  
5 **ERRORS IS *DE NOVO*.**

6 Merritt incorporates her allegations and argument in Sections VII and  
7 VIII of her Petition. Code of Civil Procedure Section 1086 requires writs to  
8 issue where there is no “plain, speedy, and adequate remedy, in the ordinary  
9 course of law.” *Id.* Factors for consideration must include: time and expense  
10 to proceed with trial; prejudice from delay; the ability to correct possible  
11 errors before or during trial; and personal hardships. *See Hoya v. Superior*  
12 *Court*, 75 Cal. App.3d 122, 128–29 (Dist. Ct. App. 1977); *Shuford v.*  
13 *Superior Court*, 11 Cal. 3d 903, 907 (1974).

14 “Where the trial court’s decision rests on an error of law, as it does  
15 here, the trial court abuses its discretion.” *People v. Superior Court*  
16 *(Humberto S.)*, 43 Cal. 4th 737, 742 (2008). Questions of statutory  
17 construction are reviewed *de novo*. *See Shorts v. Superior Court*, 24 Cal.  
18 App. 5th 709, 719-20 (Dist. Ct. App. 2018) (citing *People v. Prunty*, 62 Cal.  
19 4th 59, 71 (2015); *Rubio v. Superior Court*, 244 Cal. App. 4th 459, 471  
20 (2016)). Otherwise, the standard is abuse of discretion. *People v. Superior*  
21 *Court (“Greer”)*, 19 Cal. 3d 255, 269 (1977). However, a writ will lie if  
22 discretion can be “**exercised in only one way.**” *Shorts v. Superior Court*,  
23 24 Cal. App. 5th at 719 (quoting *Babb v. Superior Court*, 3 Cal. 3d 841, 851  
24 (1971)) (emphasis added).

1           **II.   RESPONDENT ABUSED ITS DISCRETION BY**  
2           **DISREGARDING CONTROLLING LAW AND DRAWING**  
3           **IMPROPER INFERENCES IN FAVOR OF THE ATTORNEY**  
4           **GENERAL, THEREBY IMPROPERLY DENYING MERRITT**  
5           **AN EVIDENTIARY HEARING.**

6           Merritt incorporates by reference all allegations from her Petition.

7           **A.   Disregarding Controlling Law, Respondent Misapplied**  
8           **Section 1424 Procedure and Standards.**

9           Respondent misapplied Section 1424 to deny Merritt’s request for an  
10          evidentiary hearing for her Recusal and Dismissal Motions. (App. Vol-1,  
11          **Tab 2** (9-10-18 Tr., 25:6 to 27:14) at App-200-02.) Initially, Respondent  
12          correctly acknowledged that due process applies to Merritt’s Dismissal  
13          Motion, (*id.* (26:12-15) at App-201) and acknowledged that Section 1424  
14          does not apply to recuse the Attorney General (App. Vol-1, **Tab 3** (10-5-18  
15          Tr., 32:9-14) at App-237). Yet, on September 10, Respondent faulted Merritt  
16          (albeit incorrectly) for failing to provide affidavits and for purportedly failing  
17          to show disputed facts, both of which are only required by the inapplicable  
18          Section 1424. (App. Vol-1, **Tab 2** (26:12-15) App-201.) On these improper  
19          bases, Respondent denied Merritt the opportunity to present testimonial  
20          evidence on **both** her Recusal and Dismissal Motions. Instead, Respondent  
21          drew improper inferences in the Attorney General’s favor (discussed below).  
22          Respondent cited no authority for departing from *Greer* concerning recusal,  
23          nor any authority for imposing Section 1424 standards on Merritt’s claims  
24          under *Murgia* and its progeny.

25          By its own express terms, Section 1424 strictly applies **only** to district  
26          attorneys, city attorneys and city prosecutors.<sup>3</sup> Nowhere does Section 1424

<sup>3</sup> Section 1424 provides, in pertinent part:



1 contemplate recusing an Attorney General, a constitutional officer (Cal.  
2 Const. art. V, § 11). The Legislature was obviously aware of the Attorney  
3 General’s existence, because it referred to it several times in this statute, but  
4 **not** with respect to its disqualification. Thus, the Legislature could and would  
5 have included the Attorney General within Section 1424’s **recusal** purview  
6 had it so intended:

7 Where the Legislature makes **express statutory distinctions**,  
8 we must presume it did so deliberately, giving effect to the  
9 distinctions, unless the whole scheme reveals the distinction is  
10 unintended. This concept merely restates another statutory  
11 construction canon: we presume the Legislature intended  
12 everything in a statutory scheme, and **we should not read  
statutes to omit expressed language or include omitted  
language**. As our Supreme Court stated, “**we are aware of no  
authority that supports the notion of legislation by  
accident.**” (*In re Christian S.* (1994) 7 Cal. 4th 768, 776 ... .)

13 *Jurcoane v. Superior Court*, 93 Cal. App. 4th 886, 894 (Dist. Ct. App. 2001)  
14 (emphasis added). Moreover, Section 1424’s legislative history,

15 Indicate[s] the bill was drafted and sponsored **by the Attorney  
16 General** in response to *Greer*; the Attorney General’s office  
sought the measure as a means of reducing the number of

17  
18 (a)(1) Notice of a motion to **disqualify a district attorney** from  
performing an authorized duty shall be served on the district attorney and  
19 the Attorney General .... The notice of motion shall ... be **supported by  
affidavits** of witnesses who are competent to testify to the facts set forth  
20 in the affidavit.  
The district attorney or the Attorney General, or both, may file **affidavits  
in opposition** . . . . The judge shall **review the affidavits** and determine  
21 whether or not an evidentiary hearing is necessary. The motion may not  
22 be granted unless the evidence shows that a conflict of interest exists that  
would render it unlikely that the defendant would receive a fair trial. ...  
23  
24 (b)(1) Notice of a motion to **disqualify a city attorney or city  
prosecutor** from performing an authorized duty involving a criminal  
25 matter shall be served on the city attorney or city prosecutor and the  
district attorney . . . .  
26 *Id.* (emphasis added).

1                   disqualifications and thereby **alleviating an increase in that**  
2                   **office’s disqualification workload.**

3                   *People v. Eubanks*, 14 Cal. 4th 580, 591 n.3 (1996) (citing Sen. Com. On  
4                   Judiciary, Rep. on Sen. Bill No. 1520 (1979 -1980 Reg. Sess.), as amended  
5                   Apr. 10, 1980, pp. 1-3) (emphasis added). The drafter and sponsor of Section  
6                   1424 excluded his own office from an express list of recusable prosecutors,  
7                   which **only the Legislature** may alter. *See, e.g., Spaccia v. Superior Court*,  
8                   209 Cal. App. 4<sup>th</sup> 93, 104, 104 n.25 (Dist. Ct. App. 2012) (Section 1424  
9                   inapplicable in civil cases by express terms). Respondent arbitrarily adopted  
10                  Section 1424 and departed from *Greer* without authority, thus violating the  
11                  *stare decisis* doctrine, which “obligates inferior courts to follow the decisions  
12                  of courts exercising superior jurisdiction.” *Schmier v. Supreme Court*, 78  
13                  Cal. App. 4th 703, 710 (Dist. Ct. App. 2000)).

14                   **B.     Merritt Met Her Burden to Obtain an Evidentiary Hearing**  
15                   **for Her Recusal and Dismissal Motions.**

16                  Respondent first erred by using Section 1424’s **substantive** standard  
17                  instead of that in *Greer* or *Murgia* (and their progeny), for which only  
18                  plausible justification must be shown to obtain an evidentiary hearing.  
19                  Additionally, Respondent erred in applying Section 1424’s **procedural**  
20                  requirements, which neither *Greer* nor *Murgia* (or their progeny) impose for  
21                  either of Merritt’s motions.

22                  Specific to recusal motions, *Greer* remains the proper standard on the  
23                  merits to recuse **the Attorney General**, which requires only an **appearance**  
24                  **of conflict** to recuse. The California Supreme Court explained the  
25                  distinctions between the standards in *Greer* and Section 1424:  
26

1 [S]ection 1424 was enacted in part to refine the standard for  
2 pretrial recusal this court had articulated in ... [*Greer*]. In  
3 *Greer*, we held the trial court had the *statutory* authority under  
4 Code of Civil Procedure section 128 to disqualify the  
5 prosecuting attorney. ... The recusal standard we stated was any  
6 conflict of interest that “**might affect or appear to affect**” the  
7 prosecutor’s impartiality. ... Responding to an increase in the  
8 number of recusals, which the Attorney General attributed in  
9 part to *Greer*’s “appearance” standard, the Legislature made  
10 clear in Penal Code section 1424 that a conflict of interest,  
11 whether actual or apparent, required recusal under our statutory  
12 law only if it bore an *actual likelihood* of leading to unfair  
13 treatment. ... In addition to providing for **procedures** by which  
14 the motion for recusal was to be made and answered, **section**  
15 **1424 established substantive requirements** for a motion to  
16 disqualify the **district attorney**. ...

17  
18 In *Greer*, while considering the scope of the trial court’s  
19 authority against the “background” of “the due process  
20 implications of prosecutorial bias. ..., we expressly rejected the  
21 notion that “before he recuses a prosecutor, the trial judge must  
22 first determine that failure to do so would permit a violation of  
23 the defendant’s basic constitutional rights” ... . Rather, the goal  
24 of pretrial recusal is to avoid conflicts that *might* lead  
25 ultimately to due process violations and hence to reversals or  
26 mistrials. **The constitutional guarantees of a fair trial, we**  
**explained in *Greer*, “would seem better served when judges**  
**have discretion to prevent even the possibility of their**  
**violation.** Individual instances of unfairness, although they  
may not separately achieve constitutional dimension, might  
well **cumulate** and render the entire proceeding  
constitutionally invalid. The trial judge need not delay until the  
last straw of prejudice is added, by which time it might be too  
late to avert a mistrial or a reversal.” ...

19 *People v. Vasquez*, 39 Cal. 4th 47, 58–59 (2006) (bold emphasis added)  
20 (citations omitted).

21 Applying the proper substantive and procedural standards found in  
22 *Greer* and *Murgia* (and their progeny), Merritt presented sufficient evidence  
23 to warrant an evidentiary hearing. She demonstrated plausible justification,  
24 as well as evidence of a conflict of interest that required an evidentiary  
25 hearing. In *People v. Gray*, 254 Cal. App. 2d 256 (Dist. Ct. App. 1967), the

1 court rejected the clear and convincing evidence standard, and instead, held  
2 **preponderance of the evidence** as the proper standard to prove  
3 discriminatory prosecution, *id.* at 266 (citing Evid. Code §§ 606, 664),  
4 because of the nature of the claim:

5 **Evidence of discriminatory enforcement usually lies buried**  
6 **in the consciences and files of the law enforcement agencies**  
7 **involved and must be ferreted out by the defendant.** ... In the  
8 average case, however, the imposition of a burden heavier than  
9 proof by a preponderance of the evidence might mean the  
10 **nullification of the defense** as a practical matter.

11 *Id.* Merritt sought to meet this burden by calling material witnesses with  
12 personal knowledge of relevant facts, because she was unable to obtain  
13 voluntary affidavits from **hostile** witnesses, such as the Attorney General’s  
14 Office and DOJ officials, and Planned Parenthood executives (also  
15 employers of alleged victims). Respondent’s denial of an evidentiary hearing  
16 left Merritt unable to prove her claim by ferreting out necessary evidence of  
17 motive, bias and intent, which are in the consciences of these hostile  
18 witnesses.

19 As observed in *Gray*, “[w]e doubt that the Fourteenth Amendment  
20 sanctions so cynical a posture,” as to require a higher standard than the  
21 preponderance of the evidence. *Id.* at 266. The First District Court of  
22 Appeal’s analysis in *Bortin v. Superior Court*, 64 Cal. App. 3d 873 (Dist. Ct.  
23 App. 1976) is not to the contrary. Under *Bortin*, discovery motions  
24 supporting discriminatory prosecution claims require plausible justification,  
25 *id.* at 878 (citing *Ballard v. Superior Court*, 64 Cal. 2d 159, 167 (1966)), and  
26 a demonstration ““that the requested information will facilitate the  
ascertainment of the facts and a fair trial,”” *id.* (quoting *Pitchess v. Superior*

1           *Court*, 11 Cal. 3d 531, 536 (1974)). Under *Bortin*, where plausible  
2 justification is not readily apparent, a defendant must make a “prima facie”  
3 or “**plausible**” showing, and that showing “**need not be strong.**” *Id.* at 878  
4 (emphasis added). Although, on October 5, 2018 Respondent cited *People v.*  
5 *Superior Court (Baez)*, 79 Cal. App. 4<sup>th</sup> 1177 (Dist. Ct. App. 2000), a Sixth  
6 District Court of Appeal decision, (App. Vol-1, **Tab 3** (10-5-18 Tr. 37:24-  
7 27) at App-242,) which applied the federal standard to obtain discovery  
8 (“some evidence”) of discriminatory effect and purpose, 79 Cal. App. 4<sup>th</sup> at  
9 1187 (citing *U.S. v. Armstrong*, 517 U.S. 456 (1996)), the California  
10 Supreme Court looked to (and did not reject) California’s plausible  
11 justification standard (allowing either direct or circumstantial evidence) for  
12 obtaining discovery; the Court looked at both standards, without rejecting  
13 California’s standard. *People v. Montes*, 58 Cal. 4<sup>th</sup> 809, 828-29 (2014).

14           For her Recusal and Dismissal Motions, Merritt presented sufficient  
15 evidence to obtain an evidentiary hearing that Respondent considered,  
16 **without the Attorney General presenting any relevant rebuttal evidence.**  
17 Necessarily relating to both claims, Merritt plausibly showed evidence (or  
18 presented “some evidence”) of discriminatory prosecution, both prongs of  
19 intent and effect, by both Attorneys General Harris and Becerra under  
20 *Murgia* and *Baluyut v. Superior Court*, 12 Cal. 4<sup>th</sup> 826, 836-37 (1996)  
21 (discriminatory purpose present when government selects “the course of  
22 action ‘at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects  
23 upon an identifiable group,” *id.* (quoting *Wayte v. United States*, 470 U.S.  
24 598, 610 (1985))). Respondent erred in denying an evidentiary hearing  
25 because, as explained below, Respondent necessarily drew improper  
26

1 inferences in favor of the Attorney General. In *Baez*, the court upheld the  
2 trial court’s order for discovery, in part, because there were inferences that  
3 could have been drawn in the defendant’s favor, which met even the “some  
4 evidence” federal standard. *Baez*, 79 Cal. App. 4<sup>th</sup> at 1191-92.

5 While the *Baez* court found hearsay insufficient to support a discovery  
6 motion, *id.* at 1193, Merritt proffered Attorney General Becerra’s testimony  
7 of his direct, public affirmations of a long-term relationship with Planned  
8 Parenthood, which seriously imply discriminatory intent (especially together  
9 with other cumulative evidence), as well as the appearance of a serious,  
10 conflicting loyalty. (Pet., V.A. ¶ 2(a).) Moreover, the Attorney General  
11 admitted in his opposing brief that he had engaged in selective prosecution  
12 based upon the content of Merritt’s (and Daleiden’s) research and tacitly  
13 admitted that his office had not interviewed or prosecuted any of the  
14 undercover journalists identified by Merritt (Pet. V.A., ¶ 2(f)). Without any  
15 personal knowledge, the Attorney General argued **factual distinctions**  
16 between Merritt’s investigations and those conducted by animal rights  
17 proponents and major network journalists. The factual distinctions argued  
18 could not be known without an actual investigation, and the Attorney General  
19 failed to provide any evidence of such. For example, Merritt’s proffered  
20 (unprosecuted) investigations obviously involved undercover journalists’  
21 surreptitious, non-public recordings, and did occur, or could likely have  
22 occurred in multiple jurisdictions. To find otherwise required Respondent to  
23 draw an improper inference in the Attorney General’s favor.

24 Furthermore, the Attorney General’s distinctions are not only  
25 irrational and irrelevant, but they demonstrate unconstitutional content and

1 viewpoint discrimination. First, his purported selection criteria for  
2 prosecuting only Merritt (such as multijurisdictional activities or creation of  
3 undercover identities) are not conditions precedent for violating Section  
4 632(a), and are, thus, arbitrary. Even more constitutionally offensive, he  
5 attempted to justify his prosecution based on the video content or viewpoint  
6 presented by Merritt, arguing they were “edited to enhance their shock value  
7 and published online,” (App. Vol-2, **Tab 8** (Opp. Recusal/Dismissal  
8 Motions, 16, 16 n.2) at App-317). Content and viewpoint distinctions violate  
9 the First Amendment Free Speech Clause. *See, e.g., Police Dep’t of the City*  
10 *of Chicago v. Mosely*, 408 U.S. 92, 95-96 (1972). The Attorney General’s  
11 admission to targeting Merritt for the content of her speech clearly evidences  
12 discriminatory intent. *See Baluyut*, 12 Cal. 4<sup>th</sup> at 836 n.7 (“[w]hen the equal  
13 protection claim is based on an overtly discriminatory classification, . . . ,  
14 discriminatory intent need not be shown”). Respondent erred by ignoring the  
15 Attorney General’s own admissions, and instead drawing inferences in his  
16 favor.

17 Likewise, Respondent legally erred in rejecting Merritt’s proffered  
18 (unprosecuted) investigations by unreasonably narrowing comparable  
19 incidents by journalistic content (distinguishing investigations on “abortion-  
20 related issues” or “pro-choice advocates”). (App. Vol-1, **Tab 3** (10-5-18 Tr.  
21 38:20-28) App-243.) Of the caselaw extensively explored by Merritt’s  
22 counsel, there were **no cases** involving criminally prosecuted journalists  
23 whatsoever. (Pet., V.A. ¶ 2(g)). As such, Respondent abused its discretion by  
24 requiring Merritt to find non-existent cases.

1           **C.     Respondent Erred as A Matter of Law by Drawing**  
2           **Impermissible Inferences in Favor of the Attorney**  
3           **General.**

4           Whether under *Baez* or under Section 1424, Respondent abused its  
5           discretion by drawing improper inferences in the Attorney General’s favor.  
6           As argued in Merritt’s Reply (App. Vol-2, **Tab 7** (Merritt Reply, 12-13) App-  
7           285-86), the Court in *Packer v. Superior Court*, 60 Cal 4<sup>th</sup> 695 (2014), held  
8           that, under Section 1424, the trial court’s “choice of one inference over  
9           another was improperly made without hearing testimony, evaluating  
10          credibility, and resolving factual disputes that were key to determining the  
11          relative reasonableness of the alternative inferences raised by the parties’  
12          affidavits.” *Id.* at 712.

13          Respondent’s Orders are fraught with impermissible inferences. For  
14          example, Attorney General Becerra’s several, direct statements of loyalty to  
15          and “stand[ing] with” Planned Parenthood, and affirmatively recognizing  
16          they had “been there in the **fight from the very beginning**,” (Pet., V.A. ¶  
17          2(a)), in conjunction with Planned Parenthood’s political sponsorship, cannot  
18          lightly be dismissed as a mere campaign promise. Neither can Attorney  
19          General Becerra’s public attacks of disparagement on Merritt and Daleiden  
20          made prior to taking office concerning the now-dismissed Texas prosecution  
21          against Merritt and Daleiden for the essentially the same alleged acts with  
22          which they are charged in California. Then-Congressman Becerra publicly  
23          disparaged Merritt and Daleiden by attributing the congressional “witch hunt  
24          on Planned Parenthood,” to the “culprits in what’s been going on involving  
25          fetal tissue,” referring to Merritt and Daleiden. (App. Vol-2, **Tab 7** (Merritt  
26          Reply, *Exhibit 1*) at App-290.) Respondent’s rejection of these statements



1 draws an impermissible inference in the Attorney General’s favor, in light of  
2 the **personal**, long-term relationship between the Attorney General and  
3 Planned Parenthood, which exceeds boundaries of detached constituents.

4 Respondent also drew an improper inference regarding the March 23,  
5 2016 meeting where Respondent found that the list of “action items” **clearly**  
6 **indicated what had occurred.** (App. Vol-1, **Tab 2** (9-10-18 Tr., 26:6-11) at  
7 App-201.) The “action items” stemming from the March 23, 2016 meeting  
8 only contained a **summary** of discussion points. (Pet. V.A. ¶ 2(c).) The list  
9 did not purport to contain **a verbatim transcript or an exhaustive list of**  
10 **discussion topics.** Serious questions arise from that meeting, such as the  
11 timing of the execution of a search warrant on Daleiden’s home soon after  
12 that meeting and the extent of now-Senator Harris’ sense of obligation to  
13 Planned Parenthood, considering all the facts cumulatively. (Pet., V.A. ¶  
14 2(b)-(c); App. Vol-2, **Tab 6** (JOP 3-5) at App-260-62.)

15 Likewise, Respondent improperly inferred Planned Parenthood’s lack  
16 of involvement in the criminal investigation by assuming DOJ investigative  
17 reports are exhaustive, despite evidence that Planned Parenthood’s counsel,  
18 Beth Parker, requested that DOJ seize evidence for Planned Parenthood’s  
19 benefit, and which was in fact seized soon after the March 23, 2016 meeting.  
20 (App. Vol-1, **Tab 2** (9-10-18 Tr., 25:23 to 26:1) at App-200-01; (Pet. V.A. ¶  
21 2(b)-(c).) The reports do not purport to contain verbatim transcripts. These  
22 reports beg the question whether Beth Parker was given special access to  
23 evidence and DOJ investigators, and how much. Responded erred in denying  
24 Merritt an evidentiary hearing where this and other serious questions could  
25 have been answered.

1                   **D.     Respondent Misapplied Section 1424 Standards to Deny**  
2                   **Merritt’s Recusal Motion.**

3                   Respondent’s denial on the merits is also fraught with legal error. In  
4                   addition to Respondent’s legal errors in denying Merritt’s Dismissal Motion  
5                   on October 5, Respondent compounded its September 10 errors by applying  
6                   Section 1424’s substantive standard (actual likelihood of leading to unfair  
7                   treatment, *see Vasquez*, 39 Cal. 4<sup>th</sup> at 58-59) to deny the Recusal Motion on  
8                   the merits. As explained above, under *Greer*, Merritt needed only show an  
9                   **“appearance of impropriety”** to recuse the Attorney General. 19 Cal. 3d at  
10                  268. Impartiality is “perhaps most important during the charging process . . .  
11                  when the prosecutor’s discretion is most apparent[,]” *id.* at 267 n.8. The  
12                  Attorney General’s personal and emotional involvement that might bias  
13                  objectivity suffices to recuse him. *Id.*

14                  Respondent’s factual rulings on October 5 are both contaminated by  
15                  applying Section 1424, (App. Vol-1, **Tab 3** (10-5-18 Tr., 32:9 to 36:28) at  
16                  App-237-41), and result from improperly denying an evidentiary hearing on  
17                  September 10. (*Id.*) Even where Respondent ruled that there was no evidence  
18                  of a perceived conflict, that finding was grounded in misapplying Section  
19                  1424, requiring the evidence to “lead to the conclusion that defendants **will**  
20                  **or have received** unfair treatment.” (*Id.* (34:6-14) at App-239 (emphasis  
21                  added.)

22                  Respondent also erred in ruling that no evidence suggested a  
23                  continuing conflict from the Harris administration, again under the incorrect  
24                  Section 1424 standard. (*Id.* (32:26 to 33:26) at App-237-38.) To the contrary,  
25                  Merritt demonstrated a plausible justification that both Attorneys General  
26

1 had developed close ties with Planned Parenthood executives, thereby raising  
2 an appearance of conflict under *Greer*. (Pet., V.A. ¶ 2(a) – (g).) Under  
3 *Murgia*, 15 Cal. 3d at 290–91, pursuing an improper purpose (even in part)  
4 taints the **entire** prosecution. (App. Vol-2, **Tab 7** (Merritt Reply, 6-7) at App-  
5 279-80.) Respondent relatedly erred in ruling that the lead DAG, Ms. Jauron,  
6 or her prosecutorial team were not connected to any prior conflict. (App. Vol-  
7 1, **Tab 3** (10-5-18 Tr., 33:15-26) at App-238.) The Attorney General’s  
8 discovery documents show that both Ms. Jauron and her supervisor, SAAG  
9 Robert Morgester, worked on the investigation under the Harris  
10 administration. (Pet., V.A. ¶ 2(d)). Their investigation culminated with  
11 Attorney General Becerra filing criminal charges against Merritt. Merritt also  
12 reminded Respondent that it was held proper to recuse an entire office where  
13 a conflicted attorney’s high authoritative position could affect the  
14 prosecution, as recognized by the court in *Spaccia v. Superior Court*, 209  
15 Cal. App. 4<sup>th</sup> 93, 103 (Dist. Ct. App. 2012). (App. Vol-2, **Tab 7** (Merritt  
16 Reply, 3-4) App-276-77.) Likewise, Attorney General Becerra’s high  
17 position certainly should disqualify his entire office.

18 Respondent also erred by relying on *People v. Neely*, 70 Cal. App. 4<sup>th</sup>  
19 767, 775-79 (Dist. Ct. App. 1999), concerning political promises because that  
20 analysis hinges on Section 1424’s standard (likelihood of conflict)<sup>4</sup> and  
21 incomparable facts. In *Neely*, the alleged conflict concerned the prosecutor’s  
22 ability to fairly seek the death penalty after making general campaign  
23 promises to impose it. *Id.* at 776. However, that prosecutor offered a plea

24 <sup>4</sup> Respondent also errantly relied on *Hambarian v. Superior Court*, 27 Cal.  
25 4<sup>th</sup> 826, 833 (2002) (App. Vol-1, **Tab 3** (10-5-18 Tr. 36:1-4), which is  
26 likewise inapt because it applies Section 1424.

1 bargain, *id.* at 777, demonstrating no predisposition toward the death penalty.  
2 The *Neely* court rejected defendant’s arguments, *id.*, but the facts are not  
3 comparable here. Attorney General Becerra went beyond mere general  
4 campaign promises, demonstrating his specific loyalty to one organization,  
5 by publicly describing his close, ongoing relationship with Planned  
6 Parenthood. That relationship fails to compare to bare, general campaign  
7 promises. Likewise, Attorney General Becerra took no affirmative step to  
8 repudiate or distance his Office from Planned Parenthood, as did the  
9 prosecutor’s plea bargain offer in *Neely*.

10 Finally, Respondent erred by failing to cumulatively weigh Merritt’s  
11 evidence (considered for evidentiary hearing purposes (App. Vol-1, **Tab 2**  
12 (9-10-18 Tr. 7:15-21) at App-185)). Under *Greer*, “[i]ndividual instances of  
13 unfairness, although they may not separately achieve constitutional  
14 dimension, might well **cumulate** and render the entire proceeding  
15 constitutionally invalid.” *People v. Vasquez*, 39 Cal. 4th at 59 (emphasis  
16 added).

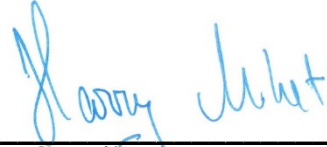
17  
18 **III. CONCLUSION**

19 For all the foregoing reasons, this Court should grant the relief sought  
20 in Merritt’s Prayer for Relief.

21 Respectfully submitted

22 DEFENDANT SANDRA SUSAN MERRITT,  
23 By Counsel.

1 DATED: November 20, 2018



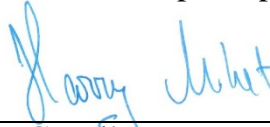
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**CERTIFICATION OF COMPLIANCE**

Pursuant to California Rules of Court, Rule 8.883(b)(1), this brief is **6,797 words**, including footnotes. The total number of words was calculated through the use of the word count feature of the computer program used to prepare the brief.



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Horatio G. Mihet

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Cal. Code Civ. P. 1013(c), I hereby certify that, on  
3 November 20, 2018, I served the forgoing *Request for Stay; Verified Petition*  
4 *for Writ of Mandate, Prohibition, Or Other Appropriate Relief;*  
5 *Memorandum; And Appendix;* on the following parties/entities via the  
6 following methods:

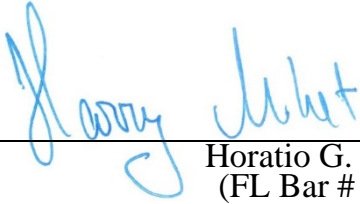
7	Johnette Jauron	Steve Cooley
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14 San Francisco Superior Court  
15 **Attention:** Judge Christopher C. Hite  
16 Department 23, First Floor  
17 Hall of Justice  
18 850 Bryant St.  
19 San Francisco, CA 94103  
20 **Fed Ex Standard Overnight to Courier (listed below) for hand-**  
21 **delivery:**

22 Specialized Legal Services, Inc.  
23 1112 Bryant St., Suite 200  
24 San Francisco, CA 94103  
25 Tel. (415) 487-0300

26 I further certify that I am over the age of 18 and not a party to this  
action.

1 Dated: November 20, 2018



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