

**GOVERNMENT OF INDIA  
LAW AND JUSTICE  
LOK SABHA**

UNSTARRED QUESTION NO:5847  
ANSWERED ON:02.05.2003  
GUIDELINES FOR CANDIDATES FOR ELECTION  
ADHIR RANJAN CHOWDHURY;DALPAT SINGH PARASTE

**Will the Minister of LAW AND JUSTICE be pleased to state:**

- (a) whether the Election Commission has sent new guidelines for the candidates who are likely to file nominations for the State Assemblies and Lok Sabha constituencies;
- (b) if so, the details of the revised guidelines being issued by the Election Commission in this regard; and
- (c) the reasons for issuing such guidelines?

**Answer**

MINISTER OF LAW & JUSTICE AND COMMERCE & INDUSTRY (SHRI ARUN JAITLEY)

(a) Yes, Sir.

(b) A Statement is laid on the Table of the House.

(c) The Election Commission of India in compliance with the judgement of the Supreme Court delivered on 13.3.2003 in writ petitions, namely WP(C) No. 490 of 2002, WP(C) No. 509 of 2002 and WP(C) No. 515 of 2002, has issued the aforesaid instructions alongwith its order dated 27.3.2003 to the Chief Electoral Officers, thereby requiring the candidates contesting elections to the Parliament and State Legislatures to furnish certain information about themselves on affidavit as part of their nomination papers.

Statement referred to in reply to part (b) of the Lok Sabha Unstarred Question No.5847 for 2.5.2003.

BY REGISTERED A.D.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001.

No.3/ER/2003/JS-II                      Dated: 27th March, 2003.

To  
The Chief Electoral Officers of all States and Union Territories.

Subject:- Supreme Court's order dated 13th March, 2003 relating to right to information of electors regarding criminal antecedents, assets and liabilities and educational qualifications of candidates - implementation of the order.

Sir,

I am directed to say that the Hon'ble Supreme Court of India, by its order dated 13th March, 2003 in Civil Appeal No.490 of 2002 (People's Union for Civil Liberties and another v Union of India) has directed as follows:-

4. The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information

and laying down the parameters of that right.

5. Section 33B inserted by the Representation of the People (3rd Amendment) Act, 2002 does not pass the test of constitutionality firstly for the reason that it imposes blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

6. The right to information provided for by the Parliament under section 33A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by Court from the ambit of disclosure.

7. The provision made in section 75A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of spouse or dependent children, the Parliament ought to have made a provision for furnishing this information at the time of filling the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(a).

9. The Election Commission has to issue revised instructions to ensure implementation of Section 33A subject to what is laid down in this judgement regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, direction No.4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.

2. Therefore, in pursuance of the said order dated 13th March, 2003 of the Hon'ble Court, the Commission has made a detailed order on 27th March, 2003, under article 324 of the Constitution, containing norms and modalities to carry out and give effect to the directions of the Hon'ble Supreme Court reproduced in para 1 above. A copy of the said order bearing No.3/ER/2003/JS.II, dated 27th March, 2003, is forwarded herewith for information and strict compliance by all concerned.

3. A perusal of the Commission's Order will show that the Commission has prescribed, in para 16 of the Order, an affidavit (Annexure-1 to the said Order) which will have to be filed by each candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or Legislative Council of a State. The consequences of failure on the part of the candidate to furnish the said affidavit have also been spelt out clearly in para 16(3) of the order. The manner of dissemination of the information furnished by the candidate in the said affidavit has also been specified in paras 16(4) and 16(5) of the order.

4. The copies of the Commission's Order and its Annexure should be immediately supplied to all the District Election Officers, Returning Officers, Assistant Returning Officers and other election authorities concerned. They should get the copies of this order and its annexure printed or photocopies in sufficient number and they should supply a copy each of the order and the format of the affidavit along with the form of the nomination paper as and when any intending candidate is supplied with a form of the nomination paper. Failure of any election related officer to do so would be viewed seriously.

5. If any candidate fails to file the said affidavit alongwith his nomination paper, he shall be reminded to do the needful by the Returning Officer by a written memorandum. A standard draft of such reminder to the candidate is annexed hereto as Annexure-A to this letter. This reminder should be issued immediately to the candidate or his proper presenting the nomination paper.

6. copies of this Order should also be supplied to all political parties with a request to bring its contents to the notice of all candidates set up by them. The matter should also be given widest publicity through all media of mass communication, print as well as electronic media.

7. The receipt of the letter may kindly be acknowledged.

Yours faithfully,

(A.K. MAJUMDAR)

SECRETARY

STANDARD DISTRIBUTION

Annexure-A

Memo No. \_\_\_\_\_ Dated \_\_\_\_\_

From: Returning Officer for \_\_\_\_\_

To,

\_\_\_\_\_  
(Name of the candidate)

Sub: Election to \_\_\_\_\_ from constituency \_\_\_\_\_ - filing of the required affidavit.

You have filed your nomination paper for the above election today, but you have not filed, along with your nomination paper, the affidavit prescribed by the Election Commission vide its Order No.3/ER/2003/JS-II, dated 27th March, 2003. A copy each of the said Order and the format of the requisite affidavit is enclosed for your ready reference.

2. You are required hereby to furnish the requisite information in the prescribed affidavit, duly sworn before a Magistrate of the first Class or a Notary Public or Oath Commissioner appointed by the High Court.

3. It should be noted that the requisite affidavit must be furnished by you immediately and positively before \_\_\_\_\_ hrs. on \_\_\_\_\_ (time and date fixed for scrutiny of nomination).

4. You may also note the consequences of not filing the requisite affidavit as explained in para 16(3) of the above referred Order of the Commission.

(Returning Officer)

1 ELECTION COMMISSION OF INDIA  
Nirvachan Sadan, Ashoka Road, New Delhi - 110 001.  
No. 3/ER/2003/JS-II Dated : 27th March, 2003

## ORDER

1. Whereas, the superintendence, direction and control, inter alia, of all elections to Parliament and to the Legislature of every State are vested in the Election Commission by Article 324 (1) of the Constitution of India;

2. And whereas, the Hon'ble Supreme Court of India had, by its order dated 2nd May, 2002, in Civil Appeal No.7178 of 2001 - Union of India Vs Association for Democratic Reforms and another, held as follows: -

'(1) The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

(2) The limitation on plenary character of power is when the Parliament or state legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, art 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions Commission can fill the vacuum till there is legislation on the subject. In Kanhiya Lal Omar's case (AIR 1986 SC 111), the court construed the expressions 'superintendence, direction and control' in art 324(1) and held that a direction may mean an order issued to a particular individual or a precept which may have to follow and it may be a specific or a general order and such phrase should be construed

2 liberally empowering the Election Commission to issue such orders.

(3) The word 'elections' includes the entire process of election which consists of several stages and it embraces many steps, some of which have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate (sic) (elector) according to his thinking and opinion. As stated earlier, in Common Cause case [(1996) 2 SCC 752], the court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for reelection. If on affidavit a candidate is required to disclose the assets held by him at the time of election, voter can decide whether he could be re-elected even in case where he has collected tons of money.

(4) To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or reelection. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

(5) The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to art 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under:-

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3

(6) Cumulative reading of plethora of decisions of this court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this court would have ample jurisdiction under art 32 read with arts 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest.

(7) Under our Constitution, Art 19(1)(a) provides for freedom of speech and expression. Voters' speech or expression in case of election would include casting of votes that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter's (little man/citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers.';

3. And whereas, the Hon'ble Supreme Court, by its aforesaid order dated 2nd May, 2002, had directed as follows: -

'The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under art 324 of the Constitution of India from each candidate seeking election to Parliament or a state legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:-

(1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine?

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balances etc) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.

(5) The educational qualifications of the candidate.';

4. And whereas, the Hon'ble Supreme Court, in its aforesaid order dated 2nd May, 2002, further observed that 'the Election Commission has from time to time issued instructions in order to meet with the situation where the field is unoccupied by the legislation' and had further directed that 'the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months';

5. And whereas, the Election Commission had, in pursuance of the above referred Judgement and Order dated 2nd May, 2002 of the Hon'ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, directed by an Order dated 28th June, 2002, inter alia, in para 14 of the said Order as follows:-

'(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a council, shall furnish full and complete information in regard to all the five matters, specified by the Hon'ble Supreme Court and quoted in para 5 above

(reproduced in para 3 herein), in an affidavit, the format whereof is annexed hereto as Annexure-1 to this order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and

the nomination of the candidate concerned shall be liable to rejection by the returning officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(4) Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the returning officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him:

Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the returning officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations under section 36 (2) of the Representation of the People Act 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character.

(5) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

(6) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.;

6. And whereas, the President of India promulgated the Representation of People (Amendment) Ordinance, 2002 (No.4 of 2002) on the 24th August, 2002 further to amend the Representation of the People Act, 1951 inserting Sections 33A and 33B and 125A and amending Section 169 of the Representation of the People Act, 1951;

7. And whereas, by virtue of Section 33B of the said Ordinance, the Order of the Election Commission dated the 28th June, 2002, was rendered ineffective and the said Section 33B read as under:-

‘Section 33B.- Notwithstanding anything contained in any judgement, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder.’;

8. And whereas, the Government of India by notification dated 3rd September, 2002 amended the Conduct of the Elections Rules, 1961 to give effect to the said Ordinance;

9. And whereas, the Association for Democratic Reforms, People’s Union for Civil Liberties, and Lok Satta, filed three separate writ petitions before the Hon’ble Supreme Court of India challenging the constitutional validity of the Presidential Ordinance dated 24th August, 2002;

10. And whereas, the by Notification dated the 28th December, 2002, the Representation of the People Act, 1951 was amended by the Representation of the People

(Third Amendment) Act, 2002 which substituted the aforesaid Ordinance dated 24th August, 2002;

11. And whereas, the said petitioners filed applications to treat the said writ petitions as challenging the constitutional validity of the Representation of the People (Third Amendment) Act, 2002;

12. And whereas, the Hon’ble Supreme Court in its order/judgement, dated the 13th March, 2003 declared Section 33B of the Amended Act as illegal, null and void; 13. And whereas, the following directions were issued in the Judgement of Hon’ble Mr. Justice P.V. Reddi, which was concurred by Mr. Justice D.M. Dharmadhikari:-

6. The right to information provided for by the Parliament under Section 33A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by Court from the ambit of disclosure.

9. The Election Commission has to issue revised instructions to ensure implementation of Section 33A subject to what is laid down in this judgement regarding the cases in which cognizance has been taken. The Election Commission’s orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, direction No.4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.’;

14. And whereas, the Judgement of Hon’ble Mr. Justice M.B. Shah, also held that Section 33B was illegal, null and void and further that the Election Commission would be required to revise its instructions in the light of the directions therein as under:- ‘It is true that the aforesaid directions issued by the Election Commission is not under challenge but at the same time Prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Association for Democratic Reforms case (supra) and as provided under the Representation of the People Act and its 3rd Amendment.’;

15. And whereas, by virtue of the Judgement dated the 13th March, 2003 of the Supreme Court declaring Section 33B of the Representation of the People Act, 1951 to be illegal, null and void, the earlier instructions of the Election Commission dated 28th June, 2002 would continue to be operative subject to the aforementioned directions of the Supreme Court, and are therefore required to be revised and reissued;

16. Now, therefore, the Election Commission, in pursuance of the above referred order dated 13th March, 2003, of the Hon’ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, of superintendence, direction and control, inter alia, of conduct of elections to Parliament and State Legislatures, hereby issues, in supersession of its earlier order dated 28th June, 2002, its revised directions as follows: -

(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a council, shall furnish full and complete information in regard to

the matters specified by the Hon'ble Supreme Court and quoted in paras 13 and 14 above, in an affidavit, the format whereof is annexed hereto as Annexure-1 to this order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the returning officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(4) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

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(5) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

17. For the removal of doubt, it is hereby clarified that the earlier direction contained in para 14 (4) of the earlier order dated 28th June, 2002, in so far as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information is not enforceable in pursuance of the order dated 13th March, 2003 of the Apex Court. It is further clarified that apart from the affidavit in Annexure-1 hereto referred to in para 16

(1) above, the candidate shall have to comply with all the other requirements as spelt out in the Representation of the People Act, 1951, as amended by the Representation of the People (Third Amendment) Act, 2002, and the Conduct of Elections Rules, 1961, as amended by the Conduct of Elections (Amendment) Rules, 2002. 18. In so far as elections to the Legislative Assembly and Legislative Council of the State of Jammu and Kashmir are concerned, the directions of the Election Commission contained in the preceding para 16 shall be deemed to have been issued under the provisions of section 138 of the Constitution of Jammu and Kashmir which are akin to Article 324 (1) of the Constitution of India and vest the superintendence, direction and control of the conduct of all elections to either House of the Legislature of that State in the Election Commission. 19. All Returning Officers shall ensure that the copies of affidavit prescribed herein by the Commission shall be delivered to the candidates along with the forms of nomination papers as part of the nomination paper.

By order,

(A.K.MAJUMDAR)  
SECRETARY

ELECTION COMMISSION OF INDIA

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Annexure-I

Affidavit to be furnished by candidate alongwith nomination paper  
Before the Returning Officer  
for election to \_\_\_\_\_ (name of the House)  
from \_\_\_\_\_ constituency

( name of the constituency )

I, \_\_\_\_\_, son/daughter/wife of \_\_\_\_\_  
aged \_\_\_\_\_ years, resident of \_\_\_\_\_,  
candidate at the above election, do hereby solemnly affirm and state on oath as under:-

(Strike out whichever not applicable)

(1) The following case(s) is/are pending against me in which cognizance has been taken by the court:-

(i) Section of the Act and description of the offence for which cognizance taken :

(ii) The Court which has taken cognizance :

(iii) Case No. :

(iv) Date of order of the Court taking cognizance :

(v) Details of appeal(s) / application(s) for revision, etc., if any, filed against above order taking cognizance :

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(2) That I give hereinbelow the details of the assets (immovable, movable, bank balance, etc.) of myself, my spouse and dependents:

A. Details of movable assets.

(Assets in joint name indicating the extent of joint ownership will also have to be given)

S.No.  
Description Self Spouse(s)  
Name(s):  
Dependent-1  
Name:  
Dependent-2  
Name:  
Dependent-3,  
etc.  
Name:

(i) Cash

(ii) Deposits in  
Banks,  
Financial  
Institutions and  
Non-Banking  
Financial  
Companies

(iii) Bonds,  
Debentures and  
Shares in  
companies

(iv) Other Financial  
instruments  
NSS, Postal  
Savings, LIC,  
Policies, etc.

(v) Motor Vehicles

(details of  
make, etc.)

(vi) Jewellery

(give details of  
weight and  
value)

(vii) Other assets,  
such as values  
of claims /  
interests

Note : Value of Bonds / Shares / Debentures as per the latest market value in Stock Exchange in respect of listed companies and as per books in the case of non listed companies should be given.  
Dependent here means a person substantially dependents on the income of the candidate.

B. Details of Immovable assets

[Note : Properties in joint ownership indicating the extent of joint ownership will also have to be indicated]

S.No.  
Description Self Spouse(s)  
Name(s) :  
Dependent-1  
Name:  
Dependent-2  
Name:  
Dependent-3,  
etc.  
Name:

(i) Agricultural Land  
- Location(s)  
- Survey number(s)  
- Extent (Total measurement)  
- current market value

(ii) Non-Agricultural Land  
- Location(s)  
- Survey number(s)  
- Extent (Total measurement)  
- current market value

(iii) Buildings (commercial and  
residential)  
- Location(s)  
- Survey / door number(s)  
- Extent (Total measurement)  
- current market value

(iv) Houses / Apartments, etc.  
- Location(s)  
- Survey / door number(s)  
- Extent (Total measurement)  
- current market value

(v) Others

(such as interest in property)  
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(3) I give hereinbelow the details of my liabilities / overdues to public financial  
institutions and government dues :-

[Note : Please give separate details for each item]

S.No. Description Name and address of Bank /  
Financial Institution(s) /  
Department(s)  
Amount outstanding  
as on .....

(a)  
(i) Loans from Banks

(ii) Loans from financial  
institutions

(iii) Government dues (other than  
income tax and wealth tax)

(No Due Certificate to be  
enclosed in case holding or  
having held any public office)



(b)  
(i) Income Tax including  
surcharge [Also indicate the  
assessment year upto which  
Income Tax Return filed.  
Give also Permanent Account  
Number (PAN)]

(ii) Wealth Tax [Also indicate the  
assessment year upto which  
Wealth Tax return filed.]

(iii) Sales Tax [Only in case of  
proprietary business]

(iv) Property Tax  
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(4) My educational qualifications are as under :-

(GIVE DETAILS OF SCHOOL AND UNIVERSITY EDUCATION)

(Name of School / University and the year in which the course was completed should  
also be given.)

DEPONENT

VERIFICATION

I, the deponent abovenamed, do hereby verify and declare that the contents of this  
affidavit are true and correct to the best of my knowledge and belief; no part of it is false  
and nothing material has been concealed therefrom.

Verified at \_\_\_\_\_ this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

DEPONENT