No. S274313

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

RYAN E. STONE, a voter, taxpayer, and resident of California, CALIFORNIA COMMERCE CLUB, INC., THE BICYCLE CASINO, L.P., HAWAIIAN GARDENS CASINO, OCEANS 11 CASINO, INC., PLAYER'S POKER CLUB, INC., STONES SOUTH BAY CORP., CELEBRITY CASINOS, INC., and SAHARA DUNES CASINO, L.P.,

Petitioners,

v.

DR. SHIRLEY WEBER, in her official capacity as the Secretary of State of the State of California,

Respondent.

SUPERIOR COURT OF SACRAMENTO, COALITION TO AUTHORIZE REGULATED SPORTS WAGERING, a California recipient committee, and MARK MACARRO; EDWIN ROMERO, ANTHONY ROBERTS, and JEFF GRUBBE,

Real Parties in Interest.

Original Writ: Sacramento County Superior Court
Case No.: 34-2020-80003404
Hon. James Arguelles *granted* July 17, 2020;
modified September 15, 2020

PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF

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CERTIFICATE OF INTERESTED PARTIES OR PERSONS

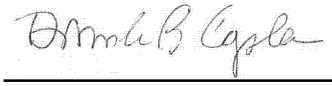
In addition to Real Parties Coalition to Authorize Regulated Sports Wagering, a California Recipient Committee; Mark Macarro; Edwin Romero; Anthony Roberts; and Jeff Grubbe, the following entities have a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves under Rule 8.208, California Rules of Court:

1. Pechanga Band of Luiseño Mission Indians
2. Barona Band of Mission Indians
3. Yocha Dehe Wintun Nation
4. Agua Caliente Band of Cahuilla Indians
5. Rincon Band of Luiseño Mission Indians
6. Santa Ynez Band of Chumash Mission Indians
7. Sycuan Band of the Kumeyaay Nation
8. Soboba Band of Luiseño Indians
9. San Manuel Band of Mission Indians

Dated: May 13, 2022

Respectfully submitted,

OLSON REMCHO LLP

By: 

Deborah B. Caplan

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INTRODUCTION

Petitioners in this case operate "cardrooms" – gambling venues that compete with tribal gaming sites. Although the Petition purports to be protecting the right of initiative, it seeks to remove the proposed California Sports Wagering Regulation and Unlawful Gambling Enforcement Act ("Initiative") from the November, 2022 general election ballot. That Initiative would expand in-person gaming at tribal casinos and racetracks, but not cardrooms. Rather than oppose the Initiative on the merits, the cardrooms have filed a series of unsuccessful lawsuits trying to remove it from the ballot.[1]

The trial court decision now being challenged was made in September, 2020, when California was experiencing its first Covid-19 surge. Although perhaps forgotten by some, it was a time when persons did not leave their homes, businesses were either shuttered or having employees work remotely, and even the government and the judicial system was having difficulty functioning.

Real Parties (Petitioners in the trial court case) had obtained almost a million signatures on their initiative petition when the statewide Covid shutdown was imposed in March, 2020. Signature-gathering – along with so many other activities

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[1] This Court declined to take the first case. (*Hollywood Park Casino Co., LLC v. Weber,* petn. for writ of mandate/prohibition & application for stay denied Feb. 23, 2022, (S272366).) The second was dismissed by the Los Angeles Superior Court. (*Hollywood Park Casino Co., LLC v. Weber* (Super. Ct. Los Angeles County, 2022, No. 22STCP00767.) This is the third.

– was prohibited. State law requires initiative proponents to turn in the requisite number of signatures within 180 days or the initiative fails and proponents must start over. (Elec. Code, § 9014(b).) Real Parties filed a petition for writ of mandate in Sacramento County Superior Court, arguing that the 180-day limit for petition circulation, coupled with the state's Covid restrictions, substantially impaired the exercise of their right to petition under the California and U.S. Constitutions. (Real Parties' Request for Judicial Notice ("RPI RJN"), Exh. B at pp. 13-14.) Their petition was accompanied by a memorandum of law identifying multiple cases granting similar relief due to Covid restrictions, and supported by an extensive request for judicial notice and declarations about the specific ways in which the Covid restrictions restricted Real Parties' ability to obtain signatures. Real Parties named the Secretary of State as Respondent as required by Elections Code section 13314.

After two hearings attended by both counsel for Real Parties and the Office of the Attorney General on behalf of the Secretary of State, the trial court found that Real Parties' constitutional rights were being impaired and that the circulation deadline had to be extended. ***Petitioners do not contest this finding, nor that an extension of the circulation period was appropriate relief.*** The trial court also acknowledged that the Covid restrictions were ongoing and it reserved jurisdiction to provide a further extension if necessary. ***Petitioners do not dispute that the court reserved jurisdiction specifically to allow a further extension if the Covid restrictions***

continued, nor that the Covid restrictions continued through the Fall of 2020.

Despite these facts, Petitioners argue that the trial court's exercise of its reserved jurisdiction was impermissible and its further extension of time for circulation of the Initiative was therefore "void." Based on this alleged procedural error made almost two years ago, and without any showing that the trial court decision was substantively wrong, they request removal of a statewide initiative from the ballot that was certified as eligible for the ballot a year ago.

Petitioners have selectively shaded the facts to try to fit their legal theories, which have no merit. The courts have been clear that they have authority to reserve jurisdiction to modify writ relief as necessary to effectuate the court's judgment. The second extension in this case was not a material or substantial change in the judgment, it was only an extension of the relief provided to effectuate the court's determination that the constitutional impairment required an adjustment of the deadline. In fact, this Court similarly reserved jurisdiction when it modified certain election-related deadlines due to delays in the census that were caused by Covid. (*Legislature v. Padilla* (2021) 9 Cal.5th 867, 881.) And when a further extension was requested because of intervening events, that relief was granted. (*Legislature v. Weber* (Sep. 22, 2021, S262530) ___ Cal.5th ___ [2021 Cal. LEXIS 6687, at *1].)

Indeed, election-related (and other) deadlines were being moved all over the country by courts and executive orders

as institutions attempted to cope with the pandemic. Although Petitioners imply that the extension of time in this case was unusual, Covid-related extensions were granted in at least three separate cases for three separate petitions circulating at the time of the shutdown – two initiatives and the gubernatorial recall. Petitioners' claim that the trial court's judgment was defective because it was based on stipulated facts rather than a hearing is incorrect; the court itself requested the stipulation because of challenges facing the courts during the Covid restrictions, and it made all the necessary findings to support the extension. Finally, the claim that Petitioners should have been named as real parties in the trial court because they might be impacted by the initiative is wrong as a matter of law, but it also raises the question of why persons who claim to be following this Initiative so closely waited almost 18 months to seek relief.

Even if there were a procedural error at some point in the trial court, such an error would not render the amended order "void" and would not justify Petitioners waiting more than 18 months to collaterally attack it for the first time in this Court. Petitioners have provided no explanation as to why they filed their Petition in this Court at this time. As Petitioners themselves admit, the judicial action complained of occurred in *September, 2020,* petitions were submitted to the counties in late 2020, and Respondent Secretary of State ("Secretary") certified the measure as eligible for the November 8, 2022 General Election ballot in *May, 2021*. Petitioners do not deny that they were aware of the extension (in fact, notices of the

extended deadlines were publicly posted on the Secretary's website after both the July and September, 2020 orders), and they offer no explanation for their extraordinary delay in attempting to correct the perceived "procedural" error or why relief has never been sought from the court that entered the relief about which they complain. Finally, they offer no credible evidence that Covid restrictions in Fall, 2020 did not continue to adversely affect signature-gathering or that the trial court's extension was substantively flawed in any way.

Petitioners clearly oppose the Initiative and that is their prerogative. They have already spent millions of dollars to oppose it, and unsuccessfully attempted to circulate a petition for their own competing initiative. Having abandoned that attempt, they have been left with trying to remove the Initiative from the ballot. The request for this Court to exercise its original mandamus jurisdiction to remove the Initiative from the ballot as a way of "correcting" an alleged procedural error made in 2020 in the midst of extraordinary circumstances – which Petitioners never sought to correct –is simply a political Hail Mary pass that must be rejected.

This Court has indicated that considerable caution must be exercised before intervening to withhold an initiative eligible for the ballot from an imminent election. (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1007.) That reticence fully applies here, particularly in light of Petitioners' excessive delay in acting and their failure to offer any evidence that an extension

entered to respond to the state's Covid restrictions was based on any mistake of law or fact.

STATEMENT OF FACTS

Real Parties began circulating petitions in support of the Initiative in January, 2020. (PET0002.)[2] By Mid-March, they had obtained almost a million signatures. On March 19, the Governor imposed a stay-at-home (or shelter-in-place) order for the entire state. (*Ibid.*) Petition circulation was not permitted and signature-gathering came to a virtual standstill. (*Ibid.*) This order remained in effect for 49 days. (PET0003.)

Faced with a July 20, 2020 deadline to turn in all signatures, Real Parties filed a Petition for Writ of Mandate June 9, 2020 alleging that the 180-day circulation requirement coupled with the State's Covid-19 restrictions was impairing their ability to exercise their First Amendment rights to circulate their petitions in support of the proposed Initiative.[3] (RPI RJN, Exh. B.) Although the strict shelter-in-place order had been lifted, it was replaced by significant statewide restrictions deemed necessary to respond to the epidemic: most public venues remained closed, county elections offices remained closed (which

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[2] Real Parties use "Pet. at p. x" to refer to the Petition and Memorandum. They use "PETXXX" to refer to the exhibits offered in support of the Petition.

[3] At the time the Petition was filed, the Initiative had obviously not qualified and there were no official "opponents." The Secretary of State was named as respondent as required by Elections Code section 13314.

prevented verification of signatures for accuracy), social distancing was still required throughout the state (requiring persons to stay six feet apart and making signature-gathering extremely difficult), and the number of persons willing to act as petition circulators had dropped dramatically. (PET0003.) In response to a request for an expedited hearing, the court issued a series of questions to the parties and scheduled a hearing. (RPI RJN, Exh. C.) Satisfied that an expedited hearing was appropriate, the court scheduled a hearing and issued a briefing schedule. (RPI RJN, Exh. A at pp. 19-20.)

Their petition was accompanied by a memorandum of law identifying multiple cases granting similar relief in the context of elections deadlines due to Covid restrictions, a request for judicial notice containing the specific California restrictions and legislative history regarding the history and purpose of the 180-day requirement, and declarations from Real Parties' signature-gathering company about the specific ways in which the Covid restrictions restricted Real Parties' ability to obtain signatures. (PET00072-PET000231.) Evidence indicated that, prior to Covid, Real Parties had been obtaining approximately 100,000 – 200,000 signatures per week and were on track to obtain the necessary number by May 1, 2020 but, because of the restrictions, they were only able to obtain approximately 10% of the weekly signatures that they had been obtaining prior to Covid restrictions. (PET000228.)

After reviewing Real Parties' pleadings and supporting evidence, the Court concluded that Real Parties'

rights under the state and federal Constitutions were being impaired, that strict scrutiny was appropriate, and that "[t]o avoid a First Amendment violation, the 180-day deadline must be extended." (RPI RJN, Exh. E at p. 6.) Petitioners acknowledge as much. (Pet. at p. 9 [court's judgment "largely based on the Governor's COVID "shelter-in-place" order which prevented petitioning for an extended period of time"].) Petitioners do not challenge the Court's finding that there was an ongoing First Amendment violation, nor that an extension of the 180-day circulation period was necessary to remedy that violation. (See *id.* at p. 12.)

In terms of a remedy for this violation, Real Parties asked for either an extension of "not less than 90 days" *or* a suspension of the 180-day period from the March 19, 2020 shelter-in-place order until all counties were out of the tier 1 and 2 restrictions. (RPI RJN, Exh. B at p. 15.) The judge chose a third path. He excluded the period of the statewide shut-down (49 days) but he also reasoned that since Real Parties had been able to obtain 10% of the pre-shut-down signatures after the May 17 partial re-opening, the period from that date through June 18 (the date of Real Parties' evidence) should be extended by 90%. (RPI RJN, Exh. E at p. 12.) These two numbers were added to extend the period by 84 days, or until October 12, 2020. Since this formula expressly only reflected restrictions through June 18, 2020, the Court essentially indicated that further relief would be available for impairment *after* June 18, but the precise extension would depend on the extent of the continued

impairment, as described in his order. (RPI RJN, Exh. E at pp. 2 & 12; see also *id.*, Exh. A at p. 38 ["there's nothing to prohibit you from coming back and saying, 'Okay, here's our evidence, it didn't work out, we need another 60 days.' And then I can say, 'Okay, I have facts in evidence that justify that extension.'"].) This approach was reflected in the court's July 2, 2020 order:

> The degree to which official Covid-19 restrictions *will thwart Petitioners' ability going forward* to qualify their initiative for the November 2022 ballot is speculative, and the court will not move the deadline absent a showing that a constitutional violation is likely to occur. The court, however, will retain jurisdiction in this matter so that the parties may seek further judicial relief without having to file a new case.
>
> (PET0007, emphasis added.)

The judgment likewise reflected the court's intent: "The Court's Final Ruling incorporated herein is not intended to preclude any party from seeking additional relief should circumstances warrant such relief, and the Court hereby retains jurisdiction for that purpose." (RPI RJN, Exh. E at p. 2.)[4] The Court therefore found that the State's restrictions through June, 2020 had resulted in the impairment of Real Parties' First Amendment rights and rights under the California Constitution

[4] Petitioners refer throughout the Petition to the July 17, 2020 judgment, but did not include the judgment, which incorporated the July 2, 2020 order, in their Appendix of Exhibits. The July 17, 2020 judgment is included as RPI RJN, Exhibit E.

to propose an initiative and it consciously retained jurisdiction for the purpose of extending that deadline in the event that continuing Covid restrictions continued to adversely impact Real Parties' ability to exercise their First Amendment rights after June, 2020. It did so because *the extension provided in the court's judgment to address the constitutional impairment would have been of little value if the same restrictions continued to prevent petition circulation during the extension granted in the judgment*.

Petitioners allege – without any evidentiary support – that some sort of "back-room" deal was made by "friendly" parties. (Pet. at p. 27.) There is no basis for this allegation and it grossly distorts the facts. In fact, the court held two substantial hearings in order to explore both legal and factual aspects of Real Parties' request.[5] (RPI RJN, Exh. A.) ***Nor was the court's reasoning unique to this Initiative or Real Parties***. In separate matters, the court also extended the circulation deadline for petitions in support of a proposed plastics tax initiative (*Sangiacomo v. Padilla* (Super. Ct. Sacramento County, 2020, No. 34-2020-80003413) as well as the deadline for petitions in

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[5] In fact, as Petitioners acknowledge, the trial court rejected an initial stipulation and scheduled the matter for hearing in order to explore various aspects of the request and potential relief. (Pet. at p. 33; see also RPI RJN, Exh. A at pp. 29-30.) The longer period of time requested in the initial stipulation was based on the Secretary's concerns that an extension until October or November, 2020, would require the counties to verify signatures during the November, 2020 election season – an election season in which county elections officials were already facing Covid challenges. (See *id.* at pp. 40-47.)

support of the proposed recall of Governor Gavin Newsom. (*Heatlie v. Padilla* (Super. Ct. Sacramento County, 2020, No. 34-2020-80003499.)[6] In all cases, the trial court retained jurisdiction to allow the parties to seek additional relief if necessary – just as the court did here.

The Covid situation did in fact worsen after the judgment, as California experienced a surge in summer, 2020. This development also affected the courts. It is easy to forget now how the courts were overwhelmed as a result of Covid in 2020, but virtually every aspect of the judicial system was adversely impacted. As a result of various closures, the courts faced significant backlogs and personnel shortages, and were anxious to resolve matters expeditiously and without the need for a hearing (then on Zoom or similar platforms) where possible. (Caplan Dec., ¶ 4.) Although Real Parties initially requested a hearing for a motion to extend the October 12, 2020 deadline, the parties were encouraged *by the court* to work together to produce

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[6] Petitioners argue that enforcement of the 180-day deadline was necessary to "level the playing field." (Pet. at p. 8.) But the deadline for *all* petitions still circulating in June of 2020 were extended by the courts based on the Covid restrictions – and for varying periods depending on circumstances. In the gubernatorial recall case, the court extended a 160-day deadline for an additional 120 days – an extension of approximately 75%. The Initiative circulation extensions together extended the time by a comparable percentage (approximately 80%).

a set of agreed-upon facts in lieu of a hearing. (*Id*. at p. 11.)[7] They did so, and were able to stipulate to the following facts (PET00010- PET00011):

- By July 13, 2020, the California Department of Public Health had reimposed statewide restrictions for most public places, malls, places of worship, etc.

- In late August, the Governor replaced county-based restrictions with a new "Blueprint," which included restrictions according to various "tiers," which were in turn based on the incidence of Covid. *At that time, almost 90% of the state's population was in Tier 1 – the tier with the most restrictions*.

- Real Parties had only been able to increase the number of signatures marginally – from 10% at the time of the June, 2020 briefing to 16% between June, 2020 and August 31, 2020.

- The continuing restrictions interfered with Real Parties' First Amendment rights "in the same ways identified by the Court in its July 17, 2020 judgment and order."

Contrary to the claim in the instant Petition, the parties did not – and in particular the Secretary of State did not – stipulate to extend the statutory deadline; they stipulated to the

[7] There is absolutely no truth to Petitioners' claim that the stipulation was used "by design" to exclude the public. (Pet. at p. 44.) It was done solely to assist the court in avoiding an unnecessary hearing during Covid. (Caplan Dec., ¶¶ 12-15.)

factual circumstances regarding Covid restrictions and their impact on Real Parties' ability to engage in signature gathering subsequent to the July, 2020 order and judgment.

Petitioners' claim that the court made no findings for the September 15 order is incorrect. (Pet. at p. 27.) The parties submitted a set of stipulated facts upon which the order was based. The claim that the Secretary's Office "refuse[d] to defend" or "accept[ed] without objection" Real Parties' claims also mischaracterizes what occurred. (Pet. at p. 7.) With the exception of the status of Real Parties' signature-gathering, all stipulated facts were based on matters in the public record regarding Covid and Covid-related restrictions. With respect to Real Parties' efforts, counsel provided the substance of a Declaration to be offered in support of the motion (Caplan Dec., ¶ 13); the Declaration became unnecessary but its substance was incorporated into the stipulated facts.

Based on the stipulated facts, the Court found:

> Petitioners have made a sufficient showing that the COVID-19 restrictions imposed by the State continue to significantly interfere with petitioners' ability to engage in signature-gathering activities for their proposed initiative in the same manner identified by the Court in its July 17, 2020 judgment and order.
>
> * * *
>
> The Court therefore orders that its July 17, 2020 judgment should be amended to reflect the additional time. . .

(PET00013.)

Finally, Petitioners are also wrong when they claim that that the court did not find that "an additional constitutional violation is likely to occur" as required by the first order and judgment. (Pet. at p. 37.) While slightly different phrasing was used, the court clearly found that "the COVID-19 restrictions imposed by the State continue to significantly interfere with [Real Parties'] ability to engage in signature-gathering activities for their proposed initiative in the same manner identified by the Court in its July 17, 2020 judgment and order." (PET00013.)

Despite Petitioners' attempts to characterize the actions of the parties in the trial court as nefarious, a review of the record demonstrates exactly what was happening at that time and why the relief granted was appropriate. As with so many of aspects of life in 2020, the election process was adversely affected by Covid and Covid restrictions. Relief was not only appropriate, but necessary. Because the courts were similarly adversely impacted by Covid, the trial court encouraged the parties to resolve issues by stipulation to the extent they could and the parties did so, although the court retained its authority to review the stipulated facts and grant further relief. Both orders were posted on the Secretary's website, along with the new dates. (RPI RJN, Exhs. F & G.) And, all of this information has been in the public domain for almost two years.

ARGUMENT

I.

THE SEPTEMBER 15, 2020 ORDER WAS WITHIN THE COURT'S DISCRETION AND DID NOT ADJUDICATE "ADDITIONAL SUBSTANTIVE ISSUES"

A. The Trial Court Acted Properly In Reserving Jurisdiction And Extending The Circulation Deadline

Petitioners' extraordinary request to remove a statewide measure from the ballot turns almost completely on their argument that the court was not permitted to retain jurisdiction to further extend the circulation deadline because doing so was an impermissible "substantive" change in the July 17, 2020 judgment. (Pet. at p. 37.) This argument is contrary to both the law and facts.

The critical finding in the trial court was the finding that the 180-day deadline had to be extended in order to prevent a constitutional violation. In terms of a remedy, the court developed a formula to determine the extent of the impairment through June 18, 2020. The court extended the circulation deadline in accordance with that level of impairment, but the court also retained jurisdiction to further extend the deadline to the extent the impairment continued after the court's ruling. The stipulated facts submitted by the parties therefore addressed whether the circumstances present in the court's July 2 order continued to be present, and the level of impairment, i.e., they reflected that Covid restrictions still significantly impaired Real

Parties' signature-gathering efforts, but signatures had increased from 10% of the pre-Covid rate to 16%. (PET00010-00011.) And the parties applied the court's July 2, 2020 formula to calculate that the impairment through August 31, 2020 (two weeks prior to the stipulation) would correlate to an increase of 62 days for circulation. (PET00011.)

According to Petitioners, any additional extension of the circulation deadline required the filing of a new action, even though the court specifically reserved jurisdiction to avoid that requirement. (Pet. at p. 37.) In effect, Petitioners argue that when the court issued its writ of mandate in this case, it had no authority to retain this jurisdiction to extend the deadline. It most certainly did.

California Constitution, article VI, section 10 vests the authority over writ proceedings in this Court, courts of appeal and superior courts. Under this authority, the courts retain "broad discretion" to take into account various considerations and factors in deciding "what relief is appropriate in such a proceeding and when it should be ordered." (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 460.) It is well settled that a court that issues a writ of mandate retains continuing jurisdiction to make any orders necessary for complete enforcement of the writ.

(*Los Angeles Internat. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348, 1355.)[8]

A court's continuing jurisdiction to enforce a writ includes the power to remedy any inadequacy in the measures taken to correct a constitutional violation. In *Molar v. Gates* (1979) 98 Cal.App.3d 1, the trial court found that a county jail's practice of denying female inmates the same facilities and privileges as male inmates violated the equal protection clauses of the state and federal Constitutions, and it issued a writ commanding the sheriff and the board of supervisors to end the discriminatory treatment of female inmates. (*Id.* at pp. 11-25.) The appellate court affirmed that the court's continuing jurisdiction over the writ allowed it to remedy "any inadequacy in the measures taken to correct the existing invidious discrimination." (*Id.* at p. 25.)

A case cited by Petitioners makes the same point. In *Palo Alto-Menlo Park Yellow Cab Co. v. Santa Clara County Transit Dist.* (1976) 65 Cal.App.3d 121, 130, the court found that

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[8] The authority to ensure compliance, though partially codified in section 1097 of the Code of Civil Procedure, is an inherent power of a court issuing a writ. In *Hobbs v. Tom Reed Gold Min. Co.* (1913) 164 Cal. 497, 501, this Court concluded that "[a]mple power to compel obedience [with a writ] is conferred by section 1097 of the Code of Civil Procedure, although, doubtless, the power would exist in the absence of such express grant." Petitioners suggest that there had to be willful disobedience, but the courts' authority to provide for compliance with their orders is not dependent on willfulness or persistent refusal. (*King v. Woods* (1983) 144 Cal.App.3d 571, 578.)

an order denominated as interlocutory was actually a final judgment. It nonetheless affirmed the trial court's modification of the judgment, noting that it was "nevertheless modifiable as to remedy." Although addressing injunctive relief, a writ of mandate is similarly an equitable proceeding in which the court is vested with wide discretion. (*Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 764.) The courts' authority to supervise the execution of its orders, and even to modify them in ways affecting the details of performance, has long been recognized. (*Ibid.*) In the contexts of writs, the courts also possess authority to retain jurisdiction where the exercise of authority depends on developments occurring after the assumption of jurisdiction. (*Vandermost v. Bowen*, *supra,* 53 Cal.4th at p. 493, fn. 2 (concurrence of Liu, J.).) For instance, in *Legislature v. Reinecke* (1972) 6 Cal.3d 595, 603-604, this Court adopted temporary legislative maps for the 1972 election but retained jurisdiction to draw new maps for subsequent elections if the Legislature failed to enact valid maps during the 1972 legislative session. (*Ibid.*) When the Legislature failed to enact valid maps in 1972, this Court, exercising its continued jurisdiction, appointed three special masters to propose new maps. (*Legislature v. Reinecke* (1973) 9 Cal.3d 166, 168.)

In this case, the trial court retained jurisdiction because it understood that continuing Covid restrictions were likely to continue to impact signature-gathering, but the extent of impairment could not be predicted. The circumstances here are not unlike the circumstances in *Legislature v. Padilla*, *supra*,

9 Cal.5th at p. 881, where the Legislature requested, and this Court granted, an extension of certain redistricting deadlines due to Covid-related delays in obtaining final census data:

> We recognize, however, that the dynamic nature of the global pandemic may lead the federal government to further postpone its delivery of the census data. In the event of further federal delay, we conclude the relevant state deadlines should be shifted accordingly, for the reasons outlined here. Thus, while we today grant a minimum four-month adjustment to the relevant deadlines, we also order that the deadlines be further extended by the length of any additional delay in release of the federal census data beyond four months. In the event that an additional extension of time risks interference with the timeline for conducting elections, appropriate parties may seek further relief in this court.

In response to a subsequent motion filed by the Redistricting Commission, this Court granted a further extension, stating that "[o]ur decision in *Padilla* anticipated that even after issuance of a peremptory writ of mandate, interested parties could return to this court for further relief as circumstances might warrant, and we expressly authorized them to do so." (*Legislature v. Weber* (Sep. 22, 2021, S262530) ___ Cal.5th ___ [2021 Cal. LEXIS 6687, at *2].) Indeed, the Court cited its writ authority under California Constitution, article VI, section 10 and *Vandermost v. Bowen*, *supra*, in support of its authority to modify its earlier ruling.

Petitioners cite several non-writ cases in which modifications of judgments were sought to address completely

new and/or unlitigated matters; those cases are inapt in the writ context, where the courts retain continuing jurisdiction. But even applying the rule in the cases provided by Petitioners, the trial court's modification was permissible.

Petitioners acknowledge that "when a decree or judgment reserves jurisdiction to change or modify mere procedural provisions, as distinguished from material adjudications of substantial issues, it is not an abuse of discretion for the court to extend the time limit." (*Lesser & Son v. Seymour* (1950) 35 Cal.2d 494, 500, citing *Gibson v. River Farms Co.* (1942) 49 Cal.App.2d 278, 283; *see also Gold v. Gold* (2003) 114 Cal.App.4th 791, 805-806.)

In this case, Real Parties sought a determination that the 180-day circulation period, coupled with the State's Covid restrictions, unlawfully impaired their right to engage in advocacy for an initiative in violation of both the State and Federal Constitutions. The trial court found such an impairment, and that extension of the deadline was required. This was the "material adjudication of the substantial issues" in that case – one that Petitioners do not dispute. While Petitioners try to paint the extension here as materially changing the adjudication of substantial issues, this characterization is simply unsupported by the facts or the case law.

In *Orban Lumber Co. v. Fearrien* (1966) 240 Cal.App.2d 853, the case primarily relied upon by Petitioners, the judgment enforced a 10-year logging contract and an extension of the contract was included in order to offset the

period during which plaintiff had been in litigation and subject to an injunction prohibiting logging. Plaintiff subsequently requested an additional extension that had nothing to do with the litigation but was based on unrelated problems that plaintiff/defendant had in obtaining certain approvals. The extension essentially sought relief for matters not addressed in the underlying litigation. (*Id*. at p. 855.) Likewise, in *C.J.A. Corp. v. Trans-Action Financial Corp*. (2001) 86 Cal.App.4th 664, 672, plaintiff had obtained a judgment of judicial foreclosure and later sought to modify the judgment to obtain a money judgment instead, injecting issues into the modified ruling that had not been litigated in the proceedings.[9]

Far from constituting a material change in the judgment, or the adjudication of some issue outside the judgment, the modification tracked the court's judgment precisely – extending the circulation period only as necessary to apply the court's stated formula to the intervening period. And this is exactly what the court found in its September 15, 2020 order, i.e., that the stipulated facts constituted a "sufficient showing" that the Covid restrictions "continue[d] to significantly interfere with" Real Parties' exercise of their First Amendment rights "in the

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[9] Nor does *Bernardi v. City Council* (1997) 54 Cal.App.4th 426, 439, support Petitioners' argument. In that case, a party requested modification of the fiscal cap and debt deadline included in a long-final validation judgment. The court found that these terms were integral parts of the validation judgment and the requested modification would require a re-litigation of the entire validation proceeding. (*Id.* at pp. 437-438.)

same manner identified by the Court in its July 17, 2020 judgment and order." (PET00013.)

Petitioners claim that this was a "*new* ruling granting *additional* substantive relief" and is "null and void on its face" because the court "did not maintain the jurisdiction to issue this modified judgment." (Pet. at p. 10, emphasis in original.) The first claim misstates the rule. Every extension of time grants additional relief; the question is whether the court is "adjudicating" new substantive issues in the amendment. Nothing of the sort was done here – the relief granted was within both the scope of the pleadings and the scope of the retained jurisdiction.[10] And Petitioners' second claim – that the court did not retain jurisdiction to modify the judgment is clearly contrary to the record as the court expressly reserved jurisdiction specifically to extend the deadline.

B. The September 15 Order Was Not Entered *Ex Parte*

Petitioners apparently make the alternative argument that the September 15 amended judgment was impermissibly entered *ex parte*. (Pet. at pp. 10, 38-39.) It was not. Not only did the parties negotiate the stipulated facts and

[10] Petitioners attempt to show that new "substantive issues" were raised because the state had changed from statewide Covid-restrictions to the four-tier "Blueprint," or that Real Parties were able to obtain 16% of pre-Covid restriction signatures rather than 10%, as pled initially. These changes are not substantive and, more importantly, they were precisely the type of changed circumstances for which the court reserved jurisdiction.

present them to the court, but counsel for both parties were included on all email correspondence with the court. (Caplan Dec., ¶ 15.) A negotiated agreement presented to the court for its approval with the knowledge and participation of all parties to the case is not obtained *ex parte*.

It is true that no hearing took place, but Petitioners identify no basis for arguing that a hearing was legally required in this instance. As noted above, resolution of this matter by stipulation was not done for any reason other than to accommodate the court during a period in which the courts were heavily impacted by Covid.

In *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 43, cited by Petitioners, the incorrect name of the defendant in a default judgment was amended by a non-party assignee of the plaintiff to reflect the actual (intended) defendant without any notice to that person or any evidence submitted to the court to support the accuracy of the modification. This is a far cry from the trial court's ruling in this case, which was based on stipulated facts submitted by both parties to the action.

II.

THE SEPTEMBER 15, 2020 MODIFIED JUDGMENT IS NOT VOID AND IS NOT SUBJECT TO COLLATERAL ATTACK IN THIS COURT AT THIS TIME

A. The September 15, 2020 Order Is Not "Void" And May Not Be Collaterally Attacked In This Court At This Time

Petitioners argue that the modified judgment entered September 15, 2020 is void because the trial court acted in excess of its jurisdiction. (Pet. at p. 37.) Even if the modified judgment was issued in error, that does not render it void, nor is it subject to collateral attack at this late date in this Court.

Petitioners argue that a judgment entered without jurisdiction is void, but they conflate an alleged procedural error that is arguably in excess of the court's jurisdiction with a lack of fundamental jurisdiction. As this Court has explained, the term "jurisdiction," "has so many different meanings that no single statement can be entirely satisfactory as a definition." (*People v. Am. Contractors Indem. Co.* (2004) 33 Cal.4th 653, 660 ["*American Contractors*"], citing *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.) Where a court lacks "jurisdiction" in the "fundamental sense," i.e., a complete absence of power to hear or determine the case, any ensuing judgment is void and vulnerable to direct or collateral attack at any time. (*American Contractors*, *supra*, 33 Cal.4th at p. 660.) However, the phrase "lack of jurisdiction" can also describe a situation in which, although the court has jurisdiction in the fundamental sense, it has no "jurisdiction" (or power) to act except in a

particular manner, or to give certain kinds of relief, or to act without observing certain procedural prerequisites. (*Id*. at p. 661.) When a court has fundamental jurisdiction but acts in excess of its jurisdiction in the latter sense, its act or judgment is not void but merely voidable. (*Ibid*.)

"[M]ost procedural errors are not jurisdictional." (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 55.) "Moreover, the presumption in the California Constitution is that [a procedural error] is subject to harmless error analysis and must have resulted in a 'miscarriage of justice' in order for the judgment to be set aside." (*Id*. at p. 57, citing Cal. Const., art. VI, § 13; see also Code Civ. Proc., § 475.)

Petitioners do not dispute that the trial court possessed fundamental jurisdiction over the parties or the subject matter; indeed, they acknowledge the validity of the trial court's July 17, 2020 Judgment. (Pet. at p. 12.) They claim only that the trial court made a procedural mistake and exceeded its authority by accepting the parties' stipulated facts and issuing a modified judgment. (Pet. at p. 37.) Even if the trial court did err in modifying the judgment in this manner – and Real Parties dispute that contention – *its judgment is not void*. Thus, the trial court's modified judgment continues to be a valid and final determination of the rights of Real Parties to engage in petition circulation beyond 180 days.

B. No Circumstances Justify This Court Setting Aside The Trial Court's Ruling At This Time

When a court enters a judgment or order alleged to be in excess of its jurisdiction, the proper challenge is by a motion to vacate the judgment, or by appeal. (*American Contractors*, *supra*, 33 Cal.4th at p. 661.) Unlike a void judgment, a voidable judgment must be set aside within six months under Code of Civil Procedure section 473. (*Lee v. An* (2008) 168 Cal.App.4th 558, 626.) That was obviously not done here.

Collateral attacks, like this Petition, are disfavored unless "unusual circumstances were present which prevented an earlier and more appropriate attack." (*Pacific Mut. Life Ins. Co. v. McConnell* (1955) 44 Cal.2d 715, 727; see also *Conservatorship of O'Connor* (1996) 48 Cal.App.4th 1076, 1088.) The general rule disfavoring collateral attacks has particular vitality where, as here, the collateral attack seeks to have this Court remove a statewide initiative from the ballot on the eve of its certification for the ballot based on an alleged error of the trial court that occurred approximately 18 months ago and which could easily have been cured if the matter had been brought to the attention of the trial court or Real Parties.

As in *American Contractors*, *supra*, 33 Cal.4th at p. 663, this is a case in which no exceptional circumstances precluded an earlier or more appropriate attack on the judgment, nor do Petitioners identify any. The most significant defect in their Petition is the absence of any explanation for their failure to bring an earlier challenge to the judgment.

The cardrooms have apparently been following the Initiative since at least March, 2020.[11] Several of the cardrooms, including Petitioners, contributed $7 million in loans to the committee.[12] Campaign reports filed by the committee also reveal that the cardrooms expended over $500,000 between March and November, 2020, on political consultants, attorneys (including election counsel, Bell, McAndrews & Hiltachk, LLP, counsel in the current Petition) and pollsters.[13] Petitioners were therefore spending half a million dollars on election lawyers and consultants during the precise period during which Real Parties sought court orders extending their time for collecting signatures.

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[11] Multiple cardrooms, including some Petitioners, were involved in the creation of a campaign committee at that time to oppose RPI's initiative. (Cal. Sect. of State, Cal-Access Website, Campaign Finance Activity, Statement of Organization Recipient Committee, https://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=2463440&amendid=1.) Petitioner's counsel in the current action, Thomas Hiltachk and Brian Hildreth, served as treasurer and assistant treasurer of the campaign committee, respectively. (*Ibid.*)

[12] Cal. Sect. of State, Cal-Access Website, Campaign Finance Activity, Recipient Committee Campaign Statement (Jan. 1, 2020 – Mar. 31, 2020), https://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=2470221&amendid=0.

[13] Cal. Sect. of State, Cal-Access Website, Campaign Finance Activity, Recipient Committee Campaign Statement (April 1, 2020 – June 30, 2020), https://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=2486107&amendid=0; Cal. Sect. of State, Cal-Access Website, Campaign Finance Activity, Recipient Committee Campaign Statement (July 1, 2020 – Sept. 30, 2020), https://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=2520614&amendid=0.

Importantly, Petitioners do not claim that they were unaware of the trial court's actions, nor could they. After the court's initial judgment, the Secretary of State's Office posted the new deadline along with a link to the judgment on its public website and noted: "Circulation deadline extended per Court Order." (RPI RJN, Ex. F.)[14] Similarly, when the judgment was amended, the Secretary posted the new deadline along with a link to the modified judgment. (RPI RJN, Ex. G.) In addition, the mere continuing presence of signature-gatherers in public places after July 20, 2020 would have alerted anyone interested in the Initiative that the circulation deadline must have been extended, and put them on notice to inquire why. Petitioners' current counsel is one of the premier election law firms in the state *and was counsel to the committee opposing the Initiative during this time.* (Bell, McAndrews & Hiltachk, LLP, https://www.bmhlaw.com/.) The committee's consultants are likewise highly experienced and well-regarded. They were also surely aware that all petitions for the Initiative were turned into the counties in December, 2020, which would have prompted some inquiry (assuming nothing had earlier). It defies credulity that Petitioners paid over half a million dollars to their attorneys

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[14] The litigation was also well-publicized in the news. See, e.g., McGreevy, *Tribal Casinos Sue California For More Time To Qualify Legal Sports Betting Measure Amid Coronavirus*, L.A. Times (June 9, 2020), https://www.latimes.com/california/story/2020-06-09/coronavirus-tribal-casinos-sports-betting-measure-lawsuit.

and consultants over the course of 2020 – all persons knowledgeable about the 180-day circulation period, the Secretary's website regarding the status of initiatives, and the county verification process – and yet never were informed about the status of the Initiative. Petitioners nevertheless waited until a month before the Initiative is to be certified for the ballot to challenge the trial court's order.

In addition to the extraordinary delay, it is also noteworthy that, even now, Petitioners do not present any evidence that would provide a factual basis for setting the judgment aside; indeed, in suggesting that Real Parties had to file a new action rather than taking this "procedural short-cut," *Petitioners virtually concede that the same substantive relief could have been granted if done in a slightly different way.* Although they suggest that they could have "challenged the claims" of Real Parties in various ways (Pet. at pp. 13, 44), that claim is unsupported by any actual evidence. Nor, if they believed that the trial court would have come to a different conclusion if presented with their information, do they explain why they failed to make any attempt to present that information to the trial court. In attempting to act by extraordinary writ in this Court, Petitioners are essentially trying to set aside a final judgment while avoiding the evidentiary showing that would be necessary to obtain such relief.

In fact, the claims they now make about signature-gathering in 2020 are unmoored from the reality of Covid during that period. While it is true that the Initiative began circulation

in January, 2020, by mid-March it had obtained slightly over 971,000 signatures – more than 300,000 per month. (PET0002.) It needed 997,139 valid signatures to qualify. (PET0001.) Although Real Parties were very close to the number of required signatures, they calculated that they needed to obtain approximately 1.4 million signatures to account for invalid signatures that invariably appear on all petitions. (PET0001-0002; see also *Vandermost v. Bowen*, *supra*, 53 Cal.4th at p. 449 [2008 study showed that up to 40% of signatures can be disqualified in verification process].) Rather than lagging behind or "having trouble" obtaining signatures, as Petitioners claim, the Initiative was obtaining signatures at a higher rate than other initiatives circulating at the same time. (PET000228.) At the time of the Covid shutdown, Real Parties estimated that they were on track to have enough signatures by May 1, 2020 – approximately six weeks later. (*Ibid.*) After the Covid shelter-in-place order and subsequent orders, this proved impossible because Covid restrictions in summer, 2020 limited signatures to 10,000 to 12,000 per week (approximately 10% of pre-Covid rate). (PET000228-000229.)[15]

[15] Petitioners claim that Real Parties started "late." While it is true that the recommended deadline for the November, 2020, election was May 1, 2020, Petitioners were well on their way to meeting that when the shutdown occurred. But they always had the option of taking their full 180 days (July 20, 2020); the only consequence was that they would have been on the 2022 ballot. The Covid shutdown made both impossible.

Petitioners' claim (again, without any evidence) that Covid might not have been the "real reason" that Real Parties were unable to obtain sufficient signatures is belied by the evidence presented and the findings of the trial court in its July 1, 2020 judgment – which Petitioners do not challenge – and the fact that other petitions circulating during this period were experiencing the same problems, and obtained similar extensions of the circulation period based on those circumstances. In fact, the court found that Covid was still impairing the ability to circulate petitions to a similar extent in October, 2020 when it extended the circulation period for the gubernatorial recall. If Petitioners really believed that additional information could have changed the trial court's decision, they could have moved to intervene or participate as amici, they could have filed a motion to set aside the judgment within the relevant statutory time limits, they could perhaps have sought writ relief. They did nothing.[16]

In reliance on the trial court's modified judgment, Real Parties continued signature-gathering at substantial expense. The Initiative was certified as eligible for the November, 2022 ballot in May, 2021. Real Parties have also incurred additional expenses since that time preparing for the November election campaign. Petitioners' failure to make any

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[16] Petitioners also seem preoccupied with why Real Parties did not collect signatures at tribal gaming venues. The basis for this claim is unclear; in fact, signature-gathering did take place at some venues.

effort to challenge the trial court's ruling in a timely way is not only highly prejudicial to Real Parties but also to the more than a million California voters who signed the petition.

III.

PETITIONERS WERE NOT INDISPENSABLE PARTIES TO THE SUPERIOR COURT PROCEEDINGS

Petitioners contend that the cardrooms were indispensable parties because the Initiative could affect them and that Real Parties' failure to name them as real parties in interests in the trial court renders the modified judgment void.[17] Real Parties did not name the cardrooms in the trial court action because they were not indispensable parties.

Indispensable parties are parties "whose interests, rights, or duties will *inevitably* be affected by any decree which can be rendered in the action." (*Serrano v. Priest* (1976) 18 Cal.3d 728, 752-753, citing *Bank of California v. Superior Court* (1940) 16 Cal.2d 516, 521.) The suit in the trial court was solely about whether the 180-day initiative petition circulation period was unconstitutional in light of state and local Covid restrictions that initially precluded signature-gathering altogether, and later severely limited the ability of Real Parties (the Initiative's proponents) to circulate their petition. At that

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[17] Petitioners were not named in the initial proceedings in the trial court but they do not challenge the validity of that judgment. (Pet. at p. 12.) They do not explain how the initial judgment could be valid despite their absence, but the modified judgment was void because of their absence.

stage in the petition circulation process, the proposed Initiative had obviously not yet qualified. There may be parties who do not like what an initiative petition is proposing; they may even believe they may be adversely affected by it. But, at the pre-qualification stage, an extension of time does not necessarily or inevitably injure anyone as the initiative remains to be qualified. Other than the proponents and elections officials, no other persons have any official status with respect to a petition in circulation. Nor do Petitioners identify any such status.

While this Court has recognized the right of the official *proponents* of an initiative measure to intervene or appear as real parties in interest in pre-election litigation involving their proposed initiative (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1146), no court has ever held that the *opponents* of a proposed initiative have any cognizable interest or are indispensable parties during litigation during the circulation period. (See, e.g., *Songstad v. Superior Court* (2001) 93 Cal.App.4th 1202, 1206, fn. 2 [rejecting the standing of an initiative opponent to challenge the circulating title and summary].)

Petitioners claim that they should have been named as real parties in the trial court "as their *interest* is unquestionably raised in [a] case concerning a ballot measure seeking to regulate their industry." (Pet. at p. 43, emphasis added.) Apart from the obvious problems that would arise if indispensable party status is based on one's "interest" or even possible regulation, it inaccurately characterizes the Initiative. The Initiative would expand certain forms of gaming at tribal

casinos and allow for in-person sports gaming at tribal casinos and racetracks. It does not directly name or regulate cardrooms.

Even Petitioners concede that their real concern is not any regulation but, rather, the Initiative's private enforcement provision. (Pet. at p. 30.) That provision authorizes persons or entities that become aware of any person engaging in behavior prohibited by state gaming laws to file a civil action in court seeking penalties of up to $10,000 per violation and request a court order to stop the illegal behavior. (PET000266-000267 [proposed Bus. & Prof. Code, § 19990].)

Although cardrooms are not named, Petitioners contend that this provision is aimed solely at cardrooms. (Pet. at p. 30.) The only basis provided for this claim is that Petitioners were sued by two tribes over alleged illegal gambling several years ago. (Pet. at p. 18.) The language of the provision makes it clear that it applies to *any* illegal gambling in the state, including entities not authorized by law to offer sports wagering or other new gaming activities authorized by this Initiative. As described by the Initiative's Purposes and Intent section, "[t]hese increased enforcement measures will ensure that all lawful gambling is free from criminal and corruptive elements and that it is conducted honestly and competitively by suitable operators and hold gambling enterprises accountable without burdening local law enforcement." (PET000262.) Petitioners' subjective belief that this provision is aimed at them does not change the fact that the Initiative simply does not regulate them or specifically subject cardrooms to any new liabilities.

Even if it did, that would not make all members of the regulated industry indispensable parties in litigation, especially at the pre-qualification stage, and nothing in the law supports such a conclusion. At the time Real Parties sought the extension in the trial court, the Initiative was not qualified. They sought the second extension approximately six weeks before the October 12, 2020 deadline initially set by the trial court. Whether the Initiative would have had sufficient valid signatures if Real Parties had submitted in October, 2020 is unknown, but it cannot be said definitively that the Initiative would not have qualified without the second extension. It certainly could have, as Real Parties had several hundred thousand signatures more than required but the validity of those signatures was unknown. Whether the Initiative would ultimately be approved by voters was (and is) unknown. If approved, whether cardrooms will be subject to the private enforcement action more than other entities, and whether any particular cardroom will engage in conduct that subjects it to potential liability is all completely speculative. While any or all of these things may certainly be *possible*, given the highly contingent nature of each element, it certainly cannot be said that any cardroom's "interests, rights, or duties will *inevitably* be affected by" a judgment merely extending the circulation period for 62 days. (*Serrano v. Priest*, *supra*, 18 Cal.3d at pp. 752-753, emphasis added.)

The cases cited by Petitioners to prove that the cardrooms should be treated as indispensable parties instead show the opposite. In *Sierra Club, Inc. v. California Coastal*

Commission (1979) 95 Cal.App.3d 495, 501, the court held that a lawsuit challenging a developer's permit authorizing a project must have named the developer because setting aside the permit "would directly affect, and undoubtedly injure, [the developer's] interests." In *Save Our Bay, Inc. v. San Diego Unified Port District* (1996) 42 Cal.App.4th 686, 695, the court concluded that a proceeding challenging the adequacy of a land use project's environmental impact report must include the landowner whose land was to be acquired to complete the project. The court held that the landowner was directly affected by the lawsuit because it could be injured by any outcome and the acquirer could cancel the purchase of the land upon a legal challenge to the project. (*Id.* at pp. 691, 696.)

There is nothing about the extension of time that *directly* affected the rights or interests of Petitioners in any legal sense. If the fact that a person is interested in or opposed to a proposed initiative petition, or that they think they might be adversely affected by such a petition, requires them to be named as an indispensable party, there would be literally no end, and no way to determine, "truly indispensable parties" in election litigation. Even Petitioners are unclear about who exactly Real Parties were required to name in the trial court proceedings, and why. Petitioners are a few of the almost 100 cardrooms in California. (Pet. at p. 17.) Why would these Petitioners be named – simply because they were the subject of litigation several years ago?

In contrast, proponents for each initiative are readily identified and have been determined to have a protectable interest in their initiative. (See *Perry v. Brown*, *supra*, 52 Cal.4th at p. 1146.) Other than proponents, Real Parties are unaware of any court that has required persons simply having an interest in a proposed initiative or potentially affected by one to be named as a real party, particularly at the circulation phase. Even Elections Code section 13314, which provides the broadest mechanism for seeking writ relief in connection with elections matters, does not require persons to be named as real parties based on their interest in a measure, or the possibility that they might be affected by it. That provision requires only the Secretary of State to be named.[18]

Notwithstanding that the cardrooms were not indispensable parties in the trial court, nothing prevented Petitioners from attempting to intervene in the trial court or otherwise participate in the litigation. Yet at every stage of that litigation, Petitioners were silent. For all the reasons discussed above in connection with Petitioners' failure to take action earlier, Petitioners surely knew about the extensions and could have taken action to advocate for their interest.

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[18] Other Elections Code provisions require persons to be named if they have a specific, identifiable interest – for example, where they authored the materials to be challenged. (See, e.g., Elec. Code, §§ 9092, 9190, 9295.)

CONCLUSION

Petitioners argue that the public interest requires the Initiative to be removed from the ballot. The opposite is true. In 2020, the state was experiencing a once-in-a-century pandemic that caused the shutdown of everyday life as previously experienced. Countless deadlines and requirements had to be extended or suspended to accommodate competing interests, including the constitutional rights of parties seeking to act by initiative. The trial court's decision was substantively and procedurally correct and it was consistent with the ways in which other initiatives were treated during the same period. Petitioners had notice of the court's actions almost two years ago; if they had any concerns, they failed to articulate them to the appropriate court in a timely manner. The request to remove an initiative from the ballot that was signed by more than a million voters and certified as eligible for the ballot a year ago based solely on Petitioners' claim that they "could" possibly have submitted some unidentified evidence in 2020 goes beyond any reasonable exercise of this Court's original jurisdiction.

Dated: May 13, 2022

Respectfully submitted,

OLSON REMCHO LLP

By: _____
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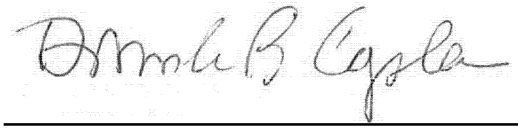
BRIEF FORMAT CERTIFICATION PURSUANT TO RULE 8.204 OF THE CALIFORNIA RULES OF COURT

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 9,336 words as counted by the Microsoft Word 365 word processing program used to generate the brief.

Dated: May 13, 2022



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PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 555 Capital Mall, Suite 400, Sacramento, CA 95814.

On May 13, 2022, I served a true copy of the following document(s):

Preliminary Opposition To
Petition For Writ Of Mandate
Or Other Extraordinary Relief

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I declare, under penalty of perjury, that the foregoing is true and correct. Executed on May 13, 2022, in Sacramento, California.

Heather Perryman

(00464661)