S274313

Case No.

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

PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF – IMMEDIATE STAY REQUESTED

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SUPREME COURT OF THE STATE OF CALIFORNIA

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
California Rules of Court, rules 8.208, 8.490(i), 8.494(c), 8.496(c), or 8.498(d)

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,
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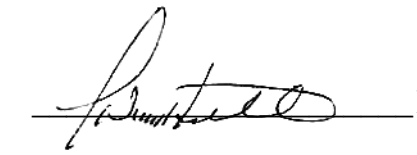
Real Parties In Interest.

Please check here if applicable:

☒ There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.



Date: April 29, 2022

Printed Name: Thomas W. Hiltachk
State Bar No: 131215
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Party Represented: Petitioners

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PETITION FOR WRIT OF MANDATE

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT**:**

By this verified petition, Petitioners allege as follows:

INTRODUCTION

This Court must ensure the sanctity of the constitutionally-protected petition and election process is preserved. To allow a law to stand or a petition to be voted on that has not been properly qualified under the laws of California undermines the entire legal process. Only this court has the ability to fully determine the Constitutional requirements that must be met in order to create new laws in this state.

This case strikes at the heart of a clear and unambiguous provision of the Elections Code. Section 9014(b) imposes a 180-day limit on the number of days an initiative proponent seeking to amend our State Constitution may collect petition signatures. Despite this clear statutory requirement, the initiative constitutional amendment at issue here was submitted to the 58 county elections officials more than 300 days after petition circulation was permitted to commence.

How can that be? As indicated more fully below, Respondent Secretary of State refused to defend the statute and chose to accept, without objection, the claims made by the Real Parties here, that two separate extensions of time were warranted and necessary in light of certain COVID restrictions in place during the initiative qualification period. The second extension of time was issued by a legally defective amendment to the judgment granting the first extension of time. The trail court's initial judgment was modified following a "stipulation" signed by Respondent in

what amounted to a clear breach of the Secretary of State's ministerial duty to strictly uphold elections deadlines. Indeed, one of the purposes of enforcing a uniform deadline for the filing of petitions is that it levels the playing field so that all participants in the process play by the same rules. (*Hartman v. Kenyon* (1991) 227 Cal.App.3d 413, 420 [Observing that the Legislature's purpose in eliminating the ability to file petitions after the deadline was to promote "finality, certainty and uniformity"].)

Here, Real Party In Interest Sacramento Superior Court improperly substantively modified a prior judgment after Respondent Secretary of State inexplicably stipulated to a *second* extension of the 180-day petition circulation deadline – for a *single* political effort seeking to amend the California Constitution. The disregard of Elections Code deadlines frustrates the public's interest in the faithful, even-handed and disinterested application of clear rules for fair elections as those rules are set forth in the Code.

Indeed, Superior Courts in California are precluded from substantively modifying relief after judgment is entered. (See 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 82, p. 611 ["jurisdiction reserved is to modify procedural provisions, not to materially change the adjudication of substantial issues"].) This has been the rule in California for decades.

> [The permissible modification of a judgment] turns on whether the modification sought involves a change in mere procedural provisions or whether it entails a material adjudication of substantial issues. In the former situation the trial court acts within its authority in modifying the judgment; in the latter, it does not have the power to modify. Accordingly, it has been held 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 in accord with equity to enable a party to the action to fulfill the specified terms of the judgment or decree.

(*Orban Lumber Co. v. Fearrien* (1966) 240 Cal.App.2d 853, 856 (internal citations omitted).)

This matter challenges the Sacramento Superior Court's issuance of a modified judgment in the same case which granted Real Parties In Interest a *second* extension of time to continue circulating their constitutional amendment initiative petition. This second extension of *63 days* came after the same court, in the same case extended the 180-day deadline for Real Parties by 84 days. Petitioners request this Court declare the modified judgment below void, issue a writ of mandate commanding Respondent Secretary of State to refrain from taking any further action relative to the placing of Real Parties' initiative on the statewide ballot, and direct Respondent and Real Parties to show cause before this Court why the requested writ should not be issued.

The Lower Court's Initial Judgment: On July 17, 2020, the Sacramento Superior Court rendered its judgment in *Macarro, et al. v. Padilla* (Case No. 34-2020-80003404) allowing petitioners in that matter (Real Parties In Interest in the present matter) an extra 84 days to circulate their signature petitions for the purpose of qualifying their statewide gambling initiative. (See Petitioners' Appendix of Exhibits and **Exh. A** thereto [Sacramento County Superior Court July 17, 2020 ruling in *Macarro, et al. v. Padilla*].) This Judgment was largely based on the Governor's COVID "shelter-in-place" order which prevented petitioning for an extended period of time.

The Court's ruling stated expressly that the court was retaining jurisdiction over the case, but that the order could only be modified upon "a showing that a constitutional violation is likely to occur." (*Id.*)

The Court's Modified Judgment: Just two months later, on September 15, 2020, the court rendered a modified judgment and extended the signature gathering deadline by another 63 days. This ruling was entered *without* notice, *without* a hearing, without *any* argument from *any* adverse party, and without the introduction of *any* evidence. The only thing submitted supporting the September 15 ruling was a signed stipulation between the Secretary of State and the petitioners. (Petitioners' Appendix of Exhibits and **Exh. B** thereto [Sacramento County Superior Court September 15, 2020 ruling in *Macarro, et al. v. Padilla*].) The Secretary of State agreed to the stipulation despite her statutory responsibility for enforcing the Elections Code as the State's chief elections official.

Notably, petitioners in the case below initially noticed a hearing for October 9, 2020 on their request for a modified judgment. However, the matter never reached the hearing stage. Instead, the case was resolved by stipulation, and judgment entered on September 15, 2020, *more than three weeks prior to the noticed hearing* date. This early resolution obviously guaranteed the court would not hear any opposition to petitioners' writ petition. This also effectively accomplished obtaining a modified judgment by *ex parte* means in violation of California law.

Far from a procedural modification, the court's September 15 ruling was in fact a *new* ruling granting *additional* substantive relief to the petitioners (63 additional days past the court's initial 84-day extension). Because the court did not maintain the jurisdiction to issue this modified judgment, the September 15 ruling is null and void on its face.

The net effect of the Court's two rulings was to grant Real Parties In Interest more than ***300 days*** to circulate their signature petitions. The State Legislature has determined that the maximum time to circulate a statewide signature petition is ***180 days***. (Elec. Code § 9014(b) ["…a petition shall be filed with the county elections official **not later than 180 days** from the official summary date, and a county election official shall not accept a petition for the proposed measure after that period"] (emphasis added).)

Despite this clear statutory requirement, Respondent Secretary of State Weber is expected to place Real Parties' initiative constitutional amendment on the 2022 General Election ballot, even though Real Parties submitted their petition to county election officials months after the Elections Code's statutory deadline.

The Underlying Dispute: To call *Macarro v. Padilla* a "dispute" overstates the matter, since all appearances are that the Secretary of State capitulated to every request made by petitioners in the case below. Nonetheless, the court judgments at issue here came about from Respondent's predecessor, former Secretary of State Alex Padilla and his legal counsel, former Attorney General Becerra, who simply agreed to Real Party's request for **two** separate extensions of time **totaling 147 additional days to collect signatures for its petition**.

These extensions were granted by judgments signed by the Honorable Sacramento Superior Court Judge James P. Arguelles. The request for the first extension was based on the 49-day period that the Governor had ordered all non-essential workers to "shelter-in-place" in response to the COVID-19 pandemic sweeping the state at the time. Judge Arguelles noted that the Governor's order effectively prohibited the collection of petition signatures during that period. (Petitioners' Appendix

of Exhibits and **Exh. A** thereto.)

Petitioners are not challenging the validity of the court's initial judgment, despite that fact that neither the Respondent Secretary of State, nor his counsel, the Attorney General, bothered to defend the law that they had both sworn to uphold, and for which Petitioners could have reasonably expected them to do. (Real Parties also did not name any parties adverse to the underlying initiative measure.) Rather, Petitioners are challenging the legality of the second extension of time granted by Judge Arguelles on September 15, 2020, by modified judgment.

After the Court's first ruling granting an additional 84 days to collect signatures (past the statutory 180-day signature collection deadline), Real Parties were still unable to collect enough petition signatures to submit their initiative to elections officials. Knowing they were short, Real Parties short-cut the procedural process for seeking new relief and simply proposed a "Stipulation Requesting that July 17, 2020 Judgment be Amended to Extend the Deadline for Filing Petition Signatures."

Respondent Secretary of State agreed. Without a hearing, without any submission of evidence justifying the request, without any showing or finding that a constitutional violation had occurred or was about to occur, and without any opposition, the trial court granted an additional extension request **totaling 63 additional days**. (Appendix of Exhibits and **Exh. B** thereto.) As indicated more fully below, the modified Superior Court judgment was void and violated basic principles of civil procedure (and the due process rights of Petitioners).

The result of this "backroom" litigation is that an initiative proposing to amend our state Constitution was allowed to qualify for the ballot despite the absence of the statutorily required evidence of voter

interest and support required of all other measures.

Equally problematic is that none of the State's 58 county elections officials charged with the specific duty at issue under the Elections Code were allowed to defend the law. Petitioners, who's interest in the subject matter of the initiative was well-known to Real Parties, were also not notified or named as real parties in interest, and thus were not allowed to defend the law or challenge the factual assertions made by petitioners in that matter. No one challenged the claims made by declaration and/or counsel. No one was allowed to offer other explanations as to why voters might by less-interested in the proposed constitutional expansion of Indian-gaming, which would have explained the trouble collecting the requisite number of signatures in the statutorily-prescribed time period. Indeed, no one asked why the Tribes could not collect petition signatures from the thousands of daily customers at their own casinos, many of which never closed or closed only for a short period of time during the pandemic. Simply put, no one defended the law or the factual assertions made by the parties below.

Timing: This matter requires preelection review "because the question at issue [here] is whether the initiative measure has satisfied the constitutional or statutory prerequisites necessary to qualify for the ballot, it is logical and appropriate for a court to consider such a claim prior to the election, because if the threshold procedural prerequisites have not been satisfied the measure is not entitled to be submitted to the voters." (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1006.)

THE PARTIES

1. Petitioner RYAN E. STONE is a registered voter, taxpayer, and resident of California. He is also the owner of Petitioner Stones South Bay

Corporation.

2. Petitioners CALIFORNIA COMMERCE CLUB, INC., doing business as Commerce Casino; THE BICYCLE CASINO, L.P.; HAWAIIAN GARDENS CASINO; OCEANS 11 CASINO, INC.; PLAYER'S POKER CLUB, INC.; STONES SOUTH BAY CORP., doing business as Seven Mile Casino; CELEBRITY CASINOS, INC., doing business as Crystal Casino; and SAHARA DUNES CASINO, L.P, doing business as Elsinore Hotel and Casino, are all licensed card clubs which have been the subject of litigation by several of the Real Parties In Interest attempting to restrict or eliminate Petitioners' legal gaming activities in furtherance of their desire to monopolize all California gaming. Petitioners are collectively referred to as the "*Rincon* Defendants" as they were all named defendants in an action entitled *Rincon Band of Luiseno Mission Indians v. Flynt* (2021) 70 Cal.App.5th 1059.

3. Respondent Dr. SHIRLEY WEBER is the Secretary of the State of the State of California. On May 27, 2021, WEBER determined that the Initiative's proponents had gathered enough verified signatures to demonstrate eligibility for final ballot certification on June 30, 2022. (Petitioners' Appendix of Exhibits and **Exh. C** thereto [Secretary of State May 27, 2021 Notice of Measure Eligibility for Ballot].) Unless this Court intervenes, WEBER will be required by law to certify the Initiative and to cause it to be printed on the November 2022 election ballot no later than September 1, 2022. (Cal. Const., art. II, § 8, subd. (c); Elec. Code § 9033(b)(2).)

4. Real Party in Interest, COALITION TO AUTHORIZE REGULATED SPORTS WAGERING (hereafter "COALITION"), a California corporation "sponsored by California Indian Gaming Tribes," is

the primary-formed "committee" organized to receive contributions and make expenditures supporting the qualification of the Initiative. To date, the COALITION has received at least $12.5 million in contributions from the treasuries of several Gaming Tribes and has spent at least $12.2 million in support of the Initiative.[1] (See Petitioners' Appendix of Exhibits and **Exh. D** thereto [Campaign Finance Reporting for Coalition to Authorize Regulated Sports Wagering].)

5. Real Party in Interest MARK MACARRO is the Chairman of the Pechanga Band of Luiseno Mission Indians and one of the proponents of the Initiative. The Pechanga Band owns and operates the Pechanga Resort and Casino in Riverside County.

6. Real Party in Interest EDWIN ROMERO is the Chairman of the Barona Band of Mission Indians and one of the proponents of the Initiative. The Barona Band owns and operates the Barona Resort and Casino in San Diego County.

7. Real Party in Interest ANTHONY ROBERTS is the Chairman of the Yocha Dehe Wintun Nation and one of the proponents of the Initiative. The Yocha Dehe Wintun Nation owns and operates the Cache Creek Casino Resort in Yolo County.

8. Real Party in Interest JEFF GRUBBE is the Chairman of the Agua

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[1] The federally-recognized Indian Tribes in California who have contributed financially to the Coalition to Authorize Regulated Sports Wagering or whose Chairmen have signed on to the Initiative as a proponent in their individual capacities include: the Pechanga Band of Luiseño Mission Indians, the Barona Band of Mission Indians, the Yocha Dehe Wintun Nation, the Agua Caliente Band of Cahuilla Indians, the Rincon Band of Luiseño Mission Indians, the Santa Ynez Band of Chumash Mission Indians, the Sycuan Band of the Kumeyaay Nation, the Soboba Band of Luiseño Indians, and the San Manuel Band of Mission Indians (collectively, the "California Indian Gaming Tribes").

Caliente Band of Cahuilla Indians and one of the proponents of the Initiative. The Agua Caliente Band owns and operates three casinos-the Agua Caliente Rancho Mirage, the Agua Caliente Palm Springs, and the Agua Caliente Cathedral City-in Riverside County.

JURISDICTION

9. Pursuant to Elections Code section 13314(a)(l), "Any elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter..." Similarly, any voter or taxpayer may seek a writ of mandate pursuant to Code of Civil Procedure sections 1085 - 1086, alleging that a public official has violated, or is about to violate, a present and ministerial duty.

10. The California Constitution, Code of Civil Procedure and case law authority provide that original writs of mandate may be taken by the Supreme Court. (Cal. Const., art. VI, § 10; Code Civ. Proc. §§ 1085, 1086; and see *Gage v. Jordan* (1944) 23 Cal.2d 794, 800 [Mandamus is a proper remedy to remove initiative measure from ballot that failed to obtain requisite number of signatures within statutory time period].)

FACTUAL ALLEGATIONS

11. In California, gambling is highly regulated and generally limited to licensed card clubs, licensed horse-racing establishments, the state-run lottery, and tribal casinos. (Cal. Const. Art. IV, §19.)

12. Tribal casinos are permitted to offer a wide-range of gambling options, including slot machines, lottery games, and banked card games, on Indian lands, and pursuant to compacts between the State and the gaming tribe. (Cal. Const. Art. IV, §19(f).) There are approximately 65 tribal

casinos operating in 28 counties, but most tribal casinos are some distance from urban areas. It is estimated that tribal casinos generate over $8 billion in net revenue to the gaming tribes after paying out winnings. (https://lao.ca.gov/handouts/crimjust/2019/Gambling-Overview-022619.pdf)

13. Gaming in card clubs (also known as cardrooms) are authorized by state law (the "Gambling Control Act") and regulated by California Gambling Control Commission and the Department of Justice's Bureau of Gambling Control. Unlike tribal casinos, card clubs may not have slot machines or offer banked or percentage games. A "banked" game is a game in which the "house" (*e.g.*: the casino or gambling establishment) takes all comers, pays all winners, and collects from all losers, which allows the house to receive the opportunity to profit from such games, through the statistical advantage held by the "house." Instead, licensed card rooms can only offer "player-dealer" games, in which the players bet against one another and each player chooses who much of the risk to take (they are not required to take all comers). A card club is not permitted to participate in the play of the game – they are not the "house." Rather, the dealer/house rotates amongst the players. There are approximately 88 licensed card clubs, less than 75 of which currently operate in 32 counties. Card clubs are more frequently located near urban areas. It is estimated that the card club industry generates approximately $850 million in net revenue after winnings, about one-tenth of the amount generated by tribal gaming, in California. (https://lao.ca.gov/handouts/crimjust/2019/Gambling-Overview-022619.pdf.)

14. The gaming tribes have a long history of trying to obtain a monopoly on all legal gaming in California. This has included litigation designed to

eliminate or severely restrict gaming conducted in licensed cardrooms. Most notably for this matter, two Gaming Tribes that have contributed significant funds to Real Party COALITION, the Rincon Band of Luiseno Mission Indians and the Santa Ynez Band of Chumash Mission Indians, attempted to bring claims under the Unfair Competition Law (Bus. & Prof. Code §§ 17200 *et. seq*.) alleging that the player-dealer games approved by the Bureau of Gambling Control are really illegal banked games. The Superior Court for San Diego County dismissed the case for lack of standing, and the Court of Appeal affirmed. *(Rincon Band of Luiseno Mission Indians v. Flynt* (2021) 70 Cal.App.5th 1059, petition for review filed Dec. 6, 2021, No. S272136.) In a published opinion, the Fourth District unanimously held that the Rincon and Chumash Tribes were "sovereign governmental entities," not "persons," as is required to bring a private action for public nuisance or an action under the UCL. (*Id*. at pp. 1089-1090, 1100-1101.) Review of the *Rincon* opinion was denied by this Court on February 16, 2022.

15. In 2018, the United States Supreme Court declared the federal ban on sports wagering unconstitutional. (*Murphy v. NCAA* (2018) 138 S.Ct. 1461.) Soon after, states began legalizing sports wagering, including on-line or app-based sports wagering. Such an expansion of sports wagering in California would pose an additional threat to the gaming tribes near-monopoly on gambling in California.

16. On November 19, 2019, Real Parties in Interest herein proposed to amend the State Constitution by an initiative measure, self-titled the "California Sports Wagering Regulation and Unlawful Gambling Enforcement Act." The initiative, if enacted would achieve three significant benefits for Real Parties, further expanding their monopoly on

gambling in California. First, it authorizes sports wagering to be permitted in person at tribal casinos, and just four horse-racing tracks in the state. Second, it authorizes tribal casinos to offer roulette and dice games (previously prohibited). And finally, it includes a specific provision to get around the standing problem Real Parties encountered in the *Rincon* decision. Section 5.2 of the initiative would amend the Business and Professions Code to include a private enforcement provision that would allow any "person or entity" to sue "any person" suspected of violating the criminal gambling laws, seeking extremely large monetary penalties. The proposed statute has no requirement to show actual harm to file suit. By authorizing an "entity" to sue under this provision, Real Parties addressed the standing issue they confronted in the *Rincon* decision.

17. Petitioners only interest in Real Party's initiative, is the inclusion of the private enforcement provision, which is clearly intended to allow Real Party's to file and prosecute costly lawsuits against the licensed card clubs in an attempt to eliminate the economic viability of the Gaming Tribes' only remaining competition for California's gaming market. This interest was well-known and understood by Real Parties at the time they submitted their initiative petition to the Attorney General.

18. Real Parties received the "official summary" from the Attorney General on January 21, 2020, which authorized them to start the process of circulating their initiative petition seeking the signature of California voters, and commenced the 180-day circulation period provided in Elections Code section 9014(b). Thereafter, they commenced the process of collecting signatures on their petition. Real Parties intended to qualify their measure for the 2020 General Election ballot. In order to do so, Real Parties needed to submit 997,139 valid signatures of registered voters. (Cal.

Const. Art. II, § 8(b).)

19. Real Parties attempt to qualify their initiative for the 2020 General election ballot was ambitious, because it started the qualification process very late. In fact, Real Parties began the process three months after Respondent's "suggested last day for proponents to submit proposed [initiative] measure to the Attorney General and request a circulating title and summary." (See Petitioners' Appendix of Exhibits and **Exh. E** thereto [Secretary of State's "Suggested Deadlines to Qualify Initiatives for the November 2020 General Election"].)

20. By mid-March, the COVID-19 pandemic was sweeping across the country. On March 19, 2020, the Governor and the State Public Health Director ordered all residents in the state to "shelter-in-place" (*i.e.*: to stay home). The directive included some exceptions for "essential services," but petitioning was not listed among the permissible exceptions.

21. Over time, many of the restrictions were lifted by about May 7, 2020, the State authorized the counties to allow most workplaces to re-open subject to mask and social-distance directives. Shortly thereafter, the State's COVID-19 website indicated that permissible activities now included "the collection of signatures to qualify candidates or measures for the ballot." Thus, the "shelter-in-place" directive (*i.e.:* the prohibition on signature gathering/petitioning) was in place for 49 days.

22. Real Parties resumed collecting signatures on their petition. Notably, while many large entertainment venues were closed during the "shelter-in-place" orders and even in the weeks that followed, many of Real Parties casinos continued their operations. As sovereign tribal governments, they stated that they were not bound by the Governor's directives. The Tribes' decision to reject the State's directives was

newsworthy and widely publicized:

https://www.nytimes.com/2020/05/28/us/california-virus-casinos.html; https://www.nbclosangeles.com/news/coronavirus/tribal-casinos-announce-reopenings-coronavirus/2365450/; https://www.casino.org/news/california-casinos-asked-by-gov-newsom-to-reconsider-reopening/; https://spectrumnews1.com/ca/la-west/news/2020/05/22/four-regional-casinos-set-to-reopen-friday--despite-govenor-s-plea; https://syvnews.com/news/local/govt-and-politics/chumash-casino-resort-unaffected-by-state-order-closing-nontribal-card-rooms/article_abe0bb17-dc6b-54f6-905c-f127ccc849dd.html; https://www.jamulcasinosd.com/jamul-casino-to-begin-phased-re-opening-on-may-18-2020/

23. At some point, Real Parties determined that their desire to qualify for the 2020 General election ballot was not going to be successful. Thus, Real Parties were faced with two legal choices: 1) abandon the current effort and resubmit a new initiative in time to qualify for the 2022 ballot; or 2) continue with the current effort and submit signatures within 180 days of the official summary date, and hope to qualify their initiative for the 2022 General Election ballot. Real Parties chose a third option.

24. On June 9, 2020, Real Parties filed a petition for Writ of Mandate against Respondent Secretary of State in Sacramento Superior Court (Case No. 34-2020-80003404-CU-WM-GDS). (See Petitioners' Appendix of Exhibits and **Exh. F** thereto [Relevant pleadings from *Macarro, et al. v. Padilla*].) In that action, Real Parties sought a court order extending the 180-day signature gathering deadline in Elections Code section 9014(b) by at least 90-days – 41 days more than what was restricted during the initial stay-at-home order. On June 25, 2020, Real Parties filed its Memorandum

of Points and Authorities, a Request for Judicial Notice, and a Declaration in support of its Petition. The hearing on the Petition was set for July 2, 2020, in Department 17, the Honorable James P. Arguelles presiding. (*Id*.)

25. Respondent *Secretary of State Padilla filed no opposition* to the petition for writ of mandate. Instead, on July 1, 2020, Secretary Padilla, by and through his counsel, Attorney General Becerra, filed a "Stipulation for Order Granting Writ of Mandate" rather than any opposition or responsive pleading. (*Id*.) Shockingly, the proposed Stipulation would have allowed an additional 175 days (nearly double the statutory time period) to collect petition signatures. (*Id*.)

26. Judge Arguelles rejected the proposed stipulated judgment. (Petitioners' Appendix of Exhibits and **Exh. A**, p. 4, fn. 2 thereto.) Instead, he granted an extension of time beyond the 180-day statutory period based on the 49-day "shelter-in-place" order, and an additional 35 days to account for the "reduction" in signature gathering production that followed despite the state's lifting of many COVID restrictions. (Petitioners' Appendix of Exhibits and **Exh. A**.) Judge Arguelles also retained jurisdiction "so that the parties may seek further judicial relief without having to file a new case." (*Id*.) However, Judge Arguelles also stated that "the court will not move the deadline [further] absent a showing that a constitutional violation is likely to occur." (*Id*.)

27. Despite the additional 84 days provided by the first "judgment," Real Parties were still unable to collect enough petition signatures needed to qualify their measure for the 2022 ballot. Thus, on September 15, 2020, Real Parties and Respondent filed another proposed "Stipulation Requesting that July 17, 2020 Judgment be Amended to Extend Deadline for Filing Signatures." (Petitioners' Appendix of Exhibits and **Exh. B**

thereto.) The Stipulation proposed an additional 63 days beyond the prior court order, until December 14. 2020. (*Id*.) Judge Arguelles signed the proposed order extending the time as requested by Stipulation. (*Id*.) No declaration was filed in support of the Stipulation, no hearing was held, no analysis of the Election Code or the Constitution occurred, and obviously, no one opposed the order. In total, the court **added 147 days** to the statutory period of 180 days to collect the requisite number of initiative petition signatures, without objection from anyone.

28. Real Parties submitted their petition to each of the county election officials in November, 2020, finishing up on November 24, 2020 – 308 days after receiving the official summary. (Petitioners' Appendix of Exhibits and **Exh. C** thereto [Secretary of State Notice of May 27, 2021].)

29. On May 27, 2021, Respondent determined that Real Party's initiative had become eligible for the 2022 General Election Ballot, noting that "the Secretary of State will certify the initiative as qualified for the November 8, 2022, General Election ballot, unless withdrawn by the proponent(s) prior to certification pursuant to Elections Code section 9604(b).) (*Id*.)

30. As of the date of this Petition, Real Parties have not indicated that they will withdraw their initiative by the June 30, 2022 deadline prescribed by Elections Code section 9604(b). Thus, absent action by this Court, Respondent will certify the initiative for the 2022 General Election ballot on June 30, 2022. Thereafter, the process of preparing and printing the State's Voter Information Guide and voter ballots will commence. According to the Respondent's calendar, the Voter Information Guide will be printed on or about August 15, 2022, while voter ballots can be printed by county election officials starting on or about September 1, 2022. (Elec.

Code, § 9082; and see Petitioners' Appendix of Exhibits and **Exh. G** thereto [Secretary of State's Election Calendar for the November 8, 2022 Statewide General Election].)

31. Petitioners have no other speedy or adequate remedy at law. Petitioners constitutional right to due process was violated in the underlying trial court proceedings when Respondent declined to defend the validity of Elections Code section 9014, and chose not to question or challenge the factual allegations made by Declaration and counsel in those proceedings. Further, Real Parties were well aware that their initiative proposes a direct threat to businesses in the card club industry and that the Petitioners herein were particularly at risk to the threat of litigation authorized by their initiative, having been defendants in the *Rincon* case. Petitioners herein were at a minimum the Real Parties in Interest in the underlying trial court proceeding, and in the absence of **any** opposition by Respondents, should have been indispensable parties.

PRAYER FOR RELIEF

Wherefore, Petitioners hereby request:

1) That the Court declare as void for all purposes the modified judgment issued by the trial court and entered September 15, 2020.

2) That a writ of mandate or other stay/order to show cause issue under seal of this Court commanding Respondent, and her officers, agents and all other persons acting on her behalf to desist and refrain from taking any further action relative to the placing of Real Parties' initiative on the statewide ballot, and further directing Respondent and Real Parties to show cause before this Court, at a time and place then or thereafter specified by Court order, why the requested writ should not be issued;

3) An award of attorney's fees and costs; and

4) Such other relief that the Court deems just and proper.

Dated: April 29, 2022 Respectfully Submitted,

BELL, McANDREWS & HILTACHK, LLP

By: _____
THOMAS W. HILTACHK
BRIAN T. HILDRETH
PETER V. LEONI
Attorneys for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE

INTRODUCTION

The general rule in California is that superior court litigation is concluded upon entry of judgment. When judgment is entered, the superior court no longer maintains jurisdiction to reopen or retry the case. (See, *e.g.*, *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701.) This rule is relaxed slightly in cases where the trial court has rendered a judgment in the form of an equitable decree. In such an instance, however, the trial court may *only* reserve jurisdiction to administer *implementation* of its decree. (See *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570, 573-574.) Importantly, a reservation of jurisdiction will not allow a court to "materially change a substantial adjudicated portion" of the judgment. (*Orban Lumber Co. v. Fearrien* (1966) 240 Cal.App.2d 853, 858.)

Here, the Sacramento Superior Court rendered its final judgment in *Macarro, et al. v. Padilla* (Case No. 34-2020-80003404) on July 20, 2020. The judgment nullified the California Elections Code's 180-day limit for circulating signature petitions, by extending that time period for a single initiative by *exactly* 84 days. (See Petitioners' Appendix of Exhibits and **Exh. A** thereto [Sacramento County Superior Court July 17, 2020 ruling in *Macarro, et al. v. Padilla*].) Yet, two months later and without any notice to any potentially interested parties, on September 15, 2020, the court issued a *new* judgment in the same case, extending the signature gathering deadline by *another* 63 days. (Petitioners' Appendix of Exhibits and **Exh. B** thereto [Sacramento County Superior Court September 15, 2020 ruling in *Macarro, et al. v. Padilla*].) This 63-day extension of the statutory deadline

found in Elections Code section 9014(b) was a material change to the earlier judgment and was made without any findings, much less a finding that "a constitutional violation is likely to occur" as the trial court's first judgment provided.

Although inconsequential to the rule against multiple judgments, this modified judgment was based on a back-room stipulation of friendly parties, without an evidentiary hearing of any kind. (*Id.*) The Secretary of State agreed to the stipulation despite the Secretary's statutory responsibility to enforce the Elections Code as the State's chief elections official. The omission of indispensable parties below, however, is highly relevant to the enforceability of lower court's ruling. Not one person or entity representing the industry which the ballot measure purports to regulate was named as a party. Neither the facts nor the interpretation of law was contested by any party in the lower court, and because the modified judgment was rendered more than three weeks before the scheduled hearing, no adverse interested party even had the opportunity to be heard by the court.

As will be shown, the Superior Court's modified judgment dated September 15, 2020 is void on its face and unenforceable, and thus this Court must direct the Secretary of State to reject Real Parties' initiative. The trial court action was also improper because indispensable real parties received no notice of the proceedings. Finally, Secretary of State Alex Padilla, as the State's chief elections official in 2020, violated his ministerial duty when he entered into a stipulation to waive a mandatory Elections Code deadline statute (§ 9014(b) [prescribing 180 days to circulate statewide initiative petitions]). As a matter of law, the Secretary of State had no discretion to quietly stipulate to extend a statutory deadline

to favor an initiative proponent.

FACTS

A. Tribal Casinos, Gambling, And Cardrooms In California.

In California, gambling is highly regulated and generally limited to licensed card clubs, licensed horse-racing establishments, the state-run lottery, and tribal casinos. (Cal. Const. Art. IV, §19.)

Tribal casinos are permitted to offer a wide-range of gambling options, including slot machines, lottery games, and banked card games, on Indian lands, and pursuant to compacts between the State and the gaming tribe. (Cal. Const. Art. IV, §19(f).) There are approximately 65 tribal casinos operating in 28 counties, but most tribal casinos are some distance from urban areas. It is estimated that tribal casinos generate over $8 billion in net revenue to the gaming tribes after paying out winnings. (https://lao.ca.gov/handouts/crimjust/2019/Gambling-Overview-022619.pdf.)

Gaming in card clubs (also known as cardrooms) are authorized by state law (the "Gambling Control Act") and regulated by California Gambling Control Commission and the Department of Justice's Bureau of Gambling Control. Unlike tribal casinos, card clubs may not have slot machines or offer banked or percentage games. A "banked" game is a game in which the "house" (e.g.: the casino or gambling establishment) takes all comers, pays all winners, and collects from all losers, which allows the house to receive the opportunity to profit from such games, through the statistical advantage held by the "house." Instead, licensed card rooms can only offer "player-dealer" games, in which the players bet against one another and each player chooses who much of the risk to take (they are not

required to take all comers). A card club is not permitted to participate in the play of the game—they are not the "house." Rather, the dealer/house rotates amongst the players. There are approximately 88 licensed card clubs, less than 75 of which currently operate in 32 counties. Card clubs are more frequently located near urban areas. It is estimated that the card club industry generates approximately $850 million in net revenue after winnings, about one-tenth of the amount generated by tribal gaming, in California. (https://lao.ca.gov/handouts/crimjust/2019/Gambling-Overview-022619.pdf)

The gaming tribes have a long history of trying to obtain a monopoly on all legal gaming in California. This has included litigation designed to eliminate or severely restrict gaming conducted in licensed cardrooms. Most notably for this matter, two Gaming Tribes that have contributed significant funds to Real Party COALITION, the Rincon Band of Luiseno Mission Indians and the Santa Ynez Band of Chumash Mission Indians, attempted to bring claims under the Unfair Competition Law (Bus. & Prof. Code §§ 17200 *et. seq*.) alleging that the player-dealer games approved by the Bureau of Gambling Control are really illegal banked games. The Superior Court for San Diego County dismissed the case for lack of standing, and the Court of Appeal affirmed unanimously holding that the Rincon and Chumash Tribes were "sovereign governmental entities," not "persons," as is required to bring a private action for public nuisance or an action under the UCL. *(Rincon Band of Luiseno Mission Indians v. Flynt* (2021) 70 Cal.App.5th 1059, 1089-1090, 1100-1101.), petition for review denied Feb. 6, 2022, No. S272136.)

In 2018, the United States Supreme Court declared the federal ban on sports wagering unconstitutional. (*Murphy v. NCAA* (2018) 138 S.Ct.

1461.) Soon after, states began legalizing sports wagering, including on-line or app-based sports wagering. Such an expansion of sports wagering in California would pose an additional threat to the Gaming Tribes' near monopoly on gambling in California.

B. Real Parties' Initiative to Amend the State Constitution.

On November 19, 2019, Real Parties in Interest proposed to amend the State Constitution by an initiative measure, self-titled the "California Sports Wagering Regulation and Unlawful Gambling Enforcement Act." The initiative, if enacted would achieve three significant benefits for Real Parties, further expanding their monopoly on gambling in California. First, it authorizes sports wagering to be permitted at tribal casinos, and just four horse-racing tracks in the state. Second, it authorizes tribal casinos to offer roulette and dice games (previously prohibited). And finally, it includes a specific provision to get around the standing problem Real Parties encountered in the *Rincon* decision. Section 5.2 of the initiative would amend the Business and Professions Code to include a private enforcement provision that would allow any "person or entity" to sue "any person" suspected of violating the criminal gambling laws, seeking extremely large monetary penalties. By authorizing an "entity" to sue under this provision, Real Parties addressed the standing issue they confronted in the *Rincon* decision. (See Petitioners' Appendix of Exhibits and **Exh. H** thereto [Proponents request for Amendment #1 to 19-0029].)

Petitioners only interest in Real Parties initiative, is the inclusion of the private enforcement provision, which is clearly intended to allow Real Parties to file and prosecute costly lawsuits against the licensed card clubs in an attempt to eliminate the economic viability of the Gaming Tribes'

only remaining competition for California's gaming market. This interest was well-known and understood by Real Parties at the time they submitted their initiative petition to the Attorney General.

Real Parties received the "official summary" from the Attorney General on January 21, 2020, which authorized them to start the process of circulating their initiative petition seeking the signature of California voters, and commenced the 180-day circulation period provided in Elections Code section 9014(b). Thereafter, they commenced the process of collecting signatures on their petition. Real Parties intended to qualify their measure for the 2020 General Election ballot. In order to do so, Real Parties needed to submit 997,139 valid signatures of registered voters. (Cal. Const. Art. II, § 8(b).)

C. Real Parties' Delayed Petition Circulation.

Real Parties attempt to qualify their initiative for the 2020 General election ballot was ambitious, because it started the qualification process very late. In fact, Real Parties began the process three months after Respondent's "suggested last day for proponents to submit proposed [initiative] measure to the Attorney General and request a circulating title and summary." (See Petitioners' Appendix of Exhibits and **Exh. E** thereto [Secretary of State's "Suggested Deadlines to Qualify Initiatives for the November 2020 November General Election"].)

By mid-March, the COVID-19 pandemic was sweeping across the country. On March 19, 2020, the Governor and the State Public Health Director ordered all residents in the state to "shelter-in-place" (*i.e.:* to stay home). The directive included some exceptions for "essential services," but petitioning was not listed among the permissible exceptions.

Over time, many of the restrictions were lifted and by about May 7, 2020, the State authorized the counties to allow most workplaces to re-open subject to mask and social-distance directives. Shortly thereafter, the state's COVID-19 website indicated that permissible activities now included "the collection of signatures to qualify candidates or measures for the ballot." Thus, the "shelter-in-place" directive (*i.e.:* the prohibition on signature gathering/petitioning) was in place for 49 days. (See Petitioners' Appendix of Exhibits and **Exh. A** thereto [Sacramento County Superior Court July 17, 2020 ruling in *Macarro, et al. v. Padilla*].)

Real Parties resumed collecting signatures on their petition. Notably, while many large entertainment venues were closed during the "shelter-in-place" orders and even in the weeks that followed, many of Real Party's casinos continued their operations. As sovereign tribal governments, they stated that they were not bound by the Governor's directives. The tribes' decision to reject the State's directives was newsworthy and widely publicized:

https://www.nytimes.com/2020/05/28/us/california-virus-casinos.html; https://www.nbclosangeles.com/news/coronavirus/tribal-casinos-announce-reopenings-coronavirus/2365450/; https://www.casino.org/news/california-casinos-asked-by-gov-newsom-to-reconsider-reopening/; https://spectrumnews1.com/ca/la-west/news/2020/05/22/four-regional-casinos-set-to-reopen-friday--despite-govenor-s-plea; https://syvnews.com/news/local/govt-and-politics/chumash-casino-resort-unaffected-by-state-order-closing-nontribal-card-rooms/article_abe0bb17-dc6b-54f6-905c-f127ccc849dd.html; https://www.jamulcasinosd.com/jamul-casino-to-begin-phased-re-opening-on-may-18-2020/

At some point, Real Parties determined that their desire to qualify for the 2020 General election ballot was not going to be successful. Thus, Real Parties were faced with two legal choices: 1) abandon the current effort and resubmit a new initiative in time to qualify for the 2022 ballot; or 2) continue with the current effort and submit signatures within 180 days of the official summary date, and hope to qualify their initiative for the 2022 General Election ballot. Real Parties chose a third option.

D. <u>The Lower Court's Two Substantive Judgments.</u>

The First Judgment: On June 9, 2020, Real Parties filed a petition for Writ of Mandate against Respondent Secretary of State in Sacramento Superior Court (Case No. 34-2020-80003404-CU-WM-GDS). (See Petitioners' Appendix of Exhibits and **Exh. F** thereto [Relevant pleadings from *Macarro, et al. v. Padilla*].) In that action, Real Parties sought a court order extending the Elections Code's 180-day signature gathering deadline by at least 90 days. On June 25, 2020, Real Parties filed its Memorandum of Points and Authorities, a Request for Judicial Notice, and a Declaration in support of its Petition. The hearing on the Petition was set for July 2, 2020, in Department 17, the Honorable James P. Arguelles presiding. (*Id*.)

On July 1, 2020, Respondent Secretary of State Padilla, by and through his counsel, Attorney General Becerra, filed a "Stipulation for Order Granting Writ of Mandate" rather than any opposition or responsive pleading. (*Id*.) Shockingly, the proposed Stipulation would have allowed an additional 175 days (nearly double the statutory time period) to collect petition signatures. (*Id*.)

Judge Arguelles rejected the proposed stipulated judgment. (Petitioners' Appendix of Exhibits and **Exh. A**, p. 4, fn. 2 thereto.) Instead,

he granted an extension of time beyond the 180-day statutory period based on the 49-day "shelter-in-place" order, and an additional 35 days to account for the "reduction" in signature gathering production that followed despite the state's lifting of many COVID restrictions. (Petitioners' Appendix of Exhibits and **Exh. A**.) Judge Arguelles also retained jurisdiction "so that the parties may seek further judicial relief without having to file a new case." (*Id*.) However, Judge Arguelles also stated that "the court will not move the deadline [further] absent a showing that a constitutional violation is likely to occur." (*Id*.)

The Modified Judgment: Despite the additional 84 days provided by the first "judgment," Real Parties were still unable to collect enough petition signatures needed to qualify their measure for the 2022 ballot. Thus, on September 15, 2020, Real Parties and Respondent filed another proposed "Stipulation Requesting that July 17, 2020 Judgment be Amended to Extend Deadline for Filing Signatures." (Petitioners' Appendix of Exhibits and **Exh. B** thereto.) The Stipulation proposed an additional 63 days beyond the prior court order, until December 14. 2020. (*Id*.) Judge Arguelles signed the proposed order extending the time as requested by Stipulation. (*Id*.) No declaration was filed in support of the Stipulation, no hearing was held, no evidence of a constitutional violations was presented as the court had earlier advised would be necessary for an additional extension of time, and obviously, no one opposed the order. In total, the court **added 147 days** to the statutory period of 180 days to collect the requisite number of initiative petition signatures, without objection from anyone.

Real Parties submitted their petition to each of the county election officials in November, 2020, finishing up on November 24, 2020 – 308

days after receiving the official summary. (Petitioners' Appendix of Exhibits and **Exh. C** thereto [Secretary of State Notice of May 27, 2021].)

On May 27, 2021, Respondent determined that Real Party's initiative had become eligible for the 2022 General Election Ballot, noting that "the Secretary of State will certify the initiative as qualified for the November 8, 2022, General Election ballot, unless withdrawn by the proponent(s) prior to certification pursuant to Elections Code section 9604(b). (Petitioners' Appendix of Exhibits and **Exh. C** thereto)

As of the date of this Petition, Real Parties have not indicated that they will withdraw their initiative by the June 30, 2022 deadline prescribed by Elections Code section 9604(b). Having obtained everything they needed to lengthen the signature gathering process from a willing Secretary of State, there is no reason to believe that this will occur. Thus, absent corrective action by this Court, Respondent Secretary of State will certify the initiative for the 2022 General Election ballot on June 30, 2022. Thereafter, the process of preparing and printing the State's Voter Information Guide and voter ballots will commence. According to the Respondent's calendar, the Voter Information Guide will be printed on or about August 15, 2022, while voter ballots can be printed by county election officials starting on or about September 1, 2022. (Elec. Code, § 9082.)

Petitioners have no other speedy or adequate remedy at law and ask this Court to declare the trial court's modified judgment void for the reasons stated below. The trial court's modified judgment was improper and its nullification means Real Parties failed to meet the time permitted for signature collection on its ballot measure. Due process was violated in the underlying trial court proceedings when Respondent declined to defend or

enforce the express statutory deadlines of Elections Code section 9014, and instead wrongfully chose to quietly exercise discretion in a situation where no such discretion existed. Moreover, being fully aware that the trial court expressly conditioned any extension on the presentation of evidence of a constitutional violation, the Secretary of State nevertheless signed off on a stipulated judgment where no evidence was presented. Petitioners herein were at a minimum the Real Parties in Interest in the underlying trial court proceeding, and in the absence of **any** opposition by Respondents, should have been served as indispensable real parties in interest.

ARGUMENT

A. The Trial Court's Modified Judgment Is Void And Unenforceable.

1. The Trial Court Lacked Jurisdiction To Adjudicate Additional Substantive Issues Under The Pretext Of A "Reservation of Judgment."

The general rule in California is that courts of equity are recognized as having the inherent power to change the mode or procedure in executing its decrees although the decree itself specifies a particular method. (*Lesser & Son v. Seymour* (1950) 35 Cal. 2d 494, 500 [Courts can reserve jurisdiction to "change or modify mere procedural provisions, as distinguished from material adjudications of substantial issues"].) Such a power to change or modify an equitable decree is limited, however, to matters of procedure only. It may not be exercised in such a fashion as to materially change a substantial adjudicated portion of the judgment. (*Orban Lumber Co. v. Fearrien* (1966) 240 Cal.App.2d 853, 858–859; *Lesser, supra,* 35 Cal. 2d at 500; and see Code Civ. Proc., § 577 ["A judgment is the final determination of the rights of the parties in an action

or proceeding"].) By contrast, jurisdiction may not be retained to materially change the adjudication of substantial issues. (*Bernardi v. City Council* (1997) 54 Cal.App.4th 426, 439 n. 12; *Palo Alto-Menlo Park Yellow Cab Co. v. Santa Clara County Transit Dist.* (1976) 65 Cal.App.3d 121, 130; *Orban Lumber, supra*, 240 Cal.App.2d at 855–856.)

The trial court's modified judgment in this matter is invalid because it results from an improper procedural shortcut. If Petitioners had wanted additional relief seeking an additional extension beyond the Election Code's prescribed 180 days the filing of a new action would have been necessary. Instead, they filed merely a post-judgment stipulation in the existing action which asked the trial court to decide new substantive issues as to the alleged *new* challenges the petitioners faced in circulating their signature petitions. The chief elections official for the State of California (the Secretary of State) offered literally no opposition to the petitioners' request to again bypass the Elections Code in favor of petitioners' own ballot measure effort.

By accepting the stipulation and issuing a modified judgment, *without* making any additional findings that "an additional constitutional violation is likely to occur," the superior court exceeded its jurisdiction. Its second order is therefore invalid. (*Orban Lumber, supra*, 240 Cal.App.2d at 856 [Although a court may retain jurisdiction to change "mere procedural provisions" of its judgment, it lacks post-judgment jurisdiction to insert "a material adjudication of substantial issues"].) Likewise, a "modification of a judgment that goes beyond the issues raised in the pleadings or pretrial proceedings is invalid." (*C.J.A. Corp. v. Trans-Action Financial Corp.* (2001) 86 Cal.App.4th 664, 672.)

Here, the stipulation supporting the modified judgment raised

substantive issues that were not raised in the earlier pleadings. For example, the lower court's initial judgment did not address the impact of August 28, 2020, when Governor Newsom announced a new four-tier "Blueprint for a Safer Economy" to replace the County Monitoring List (which came after the court's initial judgment). (Petitioners' Appendix of Exhibits and **Exh. B** thereto.) The court's initial ruling also did not address petitioners' subsequent contention that they were only able to collect approximately 16% of the signatures they would normally be able to obtain. (*Id*.)

Notably, the court's first ruling acknowledged that "[t]he degree to which official Covid-19 restrictions will thwart Petitioners' ability going forward to qualify their initiative for the November 2022 ballot is speculative…." (Petitioners' Appendix of Exhibits and **Exh. A** thereto.) The stipulation leading to the modified judgment apparently agreed regarding the "ever-changing circumstances relating to COVID-19." (Petitioners' Appendix of Exhibits and **Exh. B** thereto.)

It is these "speculative" and "ever-changing circumstances" that should have prevented a modified judgment by stipulation. (*Gold v. Gold Realty Co.* (2003) 114 Cal.App.4th 791, 805-806 ["[J]urisdiction may not be retained to materially change the adjudication of substantial issues"]; *Barnes v. Chamberlain* (1983) 147 Cal.App.3d 762, 769 ["Where an equity court acts to enforce the terms of its sale decree, the effects are procedural directions. Follow up orders do not alter the substantive rights of the parties. The terms of the decree for specific performance, which the trial court ordered and this court affirmed, remain exactly the same."].)

Finally, case law in California is clear, "[a] trial court lacks jurisdiction to amend a judgment *ex parte* in a manner not prescribed by

statute." (*Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 43.) In *Manson, Iver & York*, the Court of Appeal held that a modified judgment obtained by *ex parte* application "was entered outside of the statutorily prescribed means, was not entered to correct a clerical error, and was void and subject to attack at any time." Here, although petitioners in the case below initially noticed a hearing on their request for a modified judgment, the matter never reached the hearing stage. Instead, the case was resolved by stipulation, and judgment entered, *more than three weeks prior to the noticed hearing* date, thus guaranteeing the court would hear no opposition to petitioners' writ petition. This effectively accomplished obtaining a modified judgment by *ex parte* means in violation of California law.

2. Code of Civil Procedure Sections 1097 And 187 Do Not Permit A Second Substantive Judgment In The Same Case.

Code of Civil Procedure section 1097 provides that "[i]n case of persistence in a refusal of obedience" of a writ of mandate, a court "may make any orders necessary and proper for the complete enforcement of the writ." (See *King v. Woods* (1983) 144 Cal.App.3d 571, 574-575 [imposing fines and reporting requirements to force agency to comply with prior writ on timely adjudication of welfare applications]; *City of Carmel-by-the-Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 970 [issuing order finding that agency ignored writ]; *Professional Engineers in Cal. Government v. State Personnel Bd.* (1980) 114 Cal.App.3d 101, 104-107 [ordering State Personnel Board to set civil service salary ranges pursuant to process already set forth in prior writ].) In *Professional Engineers*, for example, the Court of Appeal emphasized that the trial court was "merely continuing to exercise its jurisdiction in attempting to enforce the original

writ." (*Professional Engineers, supra* at p. 109.) None of those cases hold that a trial court may invoke section 1097 to rule on new substantive issues and facts, such as the rapidly-changing COVID-19 environment in 2020.

In addition, the trial court's authority to "make any orders necessary and proper" for enforcement of the writ requires a showing of "persistence in a refusal of obedience," which is not present here. (Code Civ. Proc., § 1097.) This authority applies only "if a writ is issued and persistently disobeyed." (*Robles v. Employment Development Dept.* (2015) 236 Cal.App.4th 530, 546; see *City of Carmel, supra*, 137 Cal.App.3d at p. 971.) There was no showing that the Secretary of State or any of the 58 counties persistently disobeyed the initial writ.

Nor can the trial court's subsequent ruling be justified by the court's general authority to fashion procedures for the exercise of its jurisdiction. (Code Civ. Proc., § 187.) As noted above, the trial court cannot use a post-judgment procedure "to materially change the adjudication of substantial issues." (*Gold, supra*, 114 Cal.App.4th at p. 806; see *Bernardi v. City Council* (1997) 54 Cal.App.4th 426, 439 & fn. 12.) Yet, that is exactly what the trial court did.

3. As A Ministerial Officer, The Secretary of State Exceeded His Constitutional Authority By Stipulating To A Waiver Of A Mandatory Statutory Requirement.

The Secretary of State is a "ministerial officer" and is without the power to waive by stipulation any constitutional or statutory requirement. Indeed, the Secretary has only such powers as have been conferred on the office by the California Constitution or state statute. (See *Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96, 103; see also *Rixford v. Jordan* (1931) 214 Cal. 547, 551, 555 [the Secretary of State is a ministerial officer].) As

relevant here, the Secretary of State has a ministerial duty to strictly enforce the Elections Code under the authority granted to the office by the Legislature and Governor in enacting the Code. Nowhere in state law is there even an *implication* that the Secretary of State can stipulate to judgments in litigation that waive express provisions, such as deadlines, contained in the Elections Code.

In *Boone v. Kingsbury* (1928) 206 Cal. 148, 161, this Court said, that in the context of enacting regulations, "a ministerial officer may not…vary or enlarge the terms or conditions of a legislative enactment…." But stipulating to a judgment that does just that (enlarges the terms of a statutory enactment – here, the deadline for submitting petition signatures) surely violates the same principal. What's worse, is that in this matter, the Secretary of State's stipulation benefitted a *single* political effort, an initiative to regulate competitors of Tribal casinos.

Because the Secretary of State exceeded the office's ministerial powers in stipulating to an extension of express Elections Code deadlines, the trial court's modified judgment is null and unenforceable. This Court is empowered to act to correct the Secretary of State's abuse of discretion in stipulating to the challenged judgment. (*Helena F. v. West Contra Costa Unified Sch. Dist.* (1996) 49 Cal.App.4th 1793, 1799 ["Although mandate will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner, it will lie to correct abuses of discretion"]; *Fidelity & Cas. Co. v. Workers' Comp. Appeals Bd.* (1980) 103 Cal.App.3d 1001, 1009 ["It is well settled that the writ of mandate will lie to control an abuse of discretionary powers by an administrative agency"].)

There is no statute or case law that permits the relief granted by the lower court in the underlying amended judgment. As a matter of important public policy, it is within the sole authority and obligation of this court to interpret if the court has the authority to change the statutory deadlines to collect signatures for a valid petition. If so, what criteria must be met. Future petitioners and the court must know what is required in order to qualify a petition for the ballot to amend the California Constitution or enact other state laws. It should not be left to interpretation of other states or jurisdictions. This court should dictate under what circumstances the Constitution permits the electorate to act.

4. Both of The Lower Court Judgments Are Invalid for Failure To Include Indispensable Parties.

Petitioners in the instant matter should have been named as real parties in interest in the underlying matter. In *King v. King* (1971) 22 Cal.App.3d 319, 326-327, the court observed that where the absence of a truly indispensable party has precluded the trial court from rendering an effective judgment between the parties before it, the trial court can be said to lack jurisdiction of the subject matter. Likewise, in *Save Our Bay, Inc. v. San Diego Unified Port Dist.* (1996) 61 Cal.App.4th 686, the Court, citing, *Sierra Club and County of Alameda v. State Bd. of Control* (1993) 14 Cal.App 1096, 1105 held:

> The controlling test for determining whether a person is an indispensable party is, 'Where the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party. [Citations.]' More recently, the same rule is stated, 'A person is an indispensable party if his or her rights must necessarily be affected by the judgment.

(See also, *Hartman Ranch Co. v. Associated Oil Co.* (1937) 10 Cal.2d 232, 265 [“The objection that an indispensable party has been omitted may be raised at any time”].)

If a necessary party is not joined in a lawsuit, a court must “determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.” (Code Civ. Proc., § 389(b); see also *Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, 1298 [“While it is just one of the four factors listed in Code of Civil Procedure section 389, subdivision (b), to be considered in determining whether an unjoined person is an indispensable party, ***potential prejudice*** to that unjoined person ***is of critical importance***”] (emphasis added).)

Here, petitioners in the trial court action failed to name any of the dozens of entities whose businesses will be affected by the proposed constitutional amendment. At the very least, Petitioners here should have been named as real parties in interest in the case below, as their interest is unquestionably raised in case concerning a ballot measure seeking to regulate their industry through a constitutional amendment. (See. e.g., Black’s Law Dictionary 874 (6th ed. 1991) [A “real party in interest” is “a

person who will be entitled to benefits of action if successful, that is, the one who is actually and substantially interested in subject matter as distinguished from one who has only nominal, formal, or technical interest in or connection with it"].)

If such parties had been named, the court could have received evidence (1) that the reason for Real Parties' inability to timely collect the requisite number of signatures was because the measure itself wasn't popular with voters; (2) that petitioners had a ready supply of potential signers in their casinos which were open 24-hours a day, seven days a week for the most of the relevant time period here (and still were unable to collect enough signatures); and (3) that petitioners were unable to secure paid signature gatherers, *not* because of COVID, but because many had left to the state to work in other jurisdictions (like Michigan).

Importantly, when it came time for petitioners in the case below to seek their modified judgment (to extend the time to circulate their petition), they noticed a hearing on a petition for writ of mandate and set the hearing for October 9, 2020, at 11:00 AM in Department 17 of the Sacramento Superior Court. But the case would never make it to hearing. Instead, the case was resolved by stipulation, and judgment entered, *more than three weeks prior to the noticed hearing* date, thus guaranteeing the court would hear no opposition to petitioners' writ petition.

Precluding the lower court from hearing any evidence contrary to Real Parties' narrative was likely by design. Since Real Parties knew the substance of their ballot measure, which targets Petitioners' businesses, Petitioners should have been named as real parties. Real Parties' failure to name indispensable parties nullifies the lower court's judgments.

It follows from the jurisdictional tests in *Sierra Club* and *Save Our Bay*, that Petitioners were "indispensable parties" upon whom service of the Writ Petition was required. In this case, the prejudice factor is the most "critical" and carries great weight. "Equity and good conscience" require a finding that Petitioners were indispensable parties and Real Parties' failure to effect proper service upon Petitioners therefore mandates that as a matter of law the underlying judgments be dismissed.

B. The Doctrine Of Laches Is Inapplicable In The Present Matter Because A Void Judgment Is Subject to Attack At Any Time, Either Directly or By Way of an Independent Action in Equity.

A void judgment is "worthless" and subject to attack at any time and, because of this, the Doctrine of Laches is inapplicable to the present matter. (*Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1240.) In *Rochin*, the court reasoned as follows:

> A final but void order can have no preclusive effect. A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one.

(*Rochin, supra*, 67 Cal.App.4th at 1240; citing *Bennett v. Wilson* (1898) 122 Cal. 509, 513-514.)

A judgment void on its face because it was rendered when the court exceeded its jurisdiction in granting relief is subject to collateral attack at any time. (See *County of Ventura v. Tillett* (1982) 133 Cal.App.3d 105, 110 disapproved of on other grounds by *County of Los Angeles v. Soto* (1984) 35 Cal.3d 483; see also *Security Pac. Nat. Bank v. Lyon* (1980) 105 Cal.App.3d Supp. 8, 13.) "Neither laches nor statute of limitation

arguments may be invoked as a defense to a collateral attack because a judgment is a nullity when, as is the case here, want of jurisdiction appears on face of judgment or is shown by evidence aliunde." (*City of Los Angeles v. Morgan* (1951) 105 Cal.App.2d 726.)

An attack on a void judgment may also be direct, since a court has inherent power, apart from statute, to correct its records by vacating a judgment which is void on its face, for such a judgment is a nullity and may be ignored. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 574.)

Public policy dictates that this court should intervene here because if it does not, then a void judgment will result in allowing a constitutional amendment to be presented to the electorate. This court must ensure the sanctity of the petition and election process is preserved and that only items that comply with the Constitution and the laws of the state are placed on the ballot for the consideration of the citizens of California. To allow anything less undermines the entire legal process set forth to enact valid laws in this state.

CONCLUSION

Petitioners respectfully request the Court's immediate action to preserve the integrity of the Elections Code and the process for amending the Constitution for the State of California. Petitioners ask this Court to declare as void for all purposes the modified judgment issued by the trial court and entered September 15, 2020, and further that a writ of mandate or other stay/order to show cause issue under seal of this Court commanding Respondent, and her officers, agents and all other persons acting on her behalf to refrain from taking any further action relative to the placing of Real Parties' initiative on the statewide ballot.

Dated: April 29, 2022 Respectfully Submitted,

BELL, McANDREWS & HILTACHK, LLP

By: _____
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PETER V. LEONI
Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) and 8.360(b)(1) of the California Rules of the Court, the enclosed brief of 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 is produced using 13-point Times New Roman type including footnotes and contains 10,562 words, which is less than the total words permitted by the rules of the court. Counsel relies on the word count of the computer program, Microsoft Word 2010, used to prepare this brief.

Dated: April 29, 2022 BELL, McANDREWS & HILTACHK, LLP

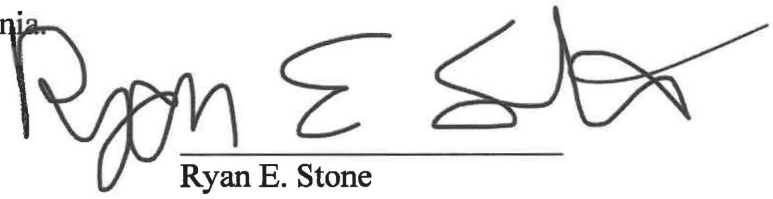
By: _____
THOMAS W. HILTACHK
BRIAN T. HILDRETH
PETER V. LEONI
Attorneys for Petitioners

VERIFICATION

I, Ryan E. Stone, am the Petitioner herein. I have read the foregoing **PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF – IMMEDIATE STAY REQUESTED** and know its contents. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 27th day of April, 2022, at Beverly Hills, California.



Ryan E. Stone