

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

<b>DATE/TIME</b>	<b>June 19, 2020, 10:00 a.m.</b>	<b>DEPT. NO</b>	<b>21</b>
<b>JUDGE</b>	<b>HON. SHELLEYANNE W. L. CHANG</b>	<b>CLERK</b>	<b>E. HIGGINBOTHAM</b>
<b>ALASTAIR MACTAGGART, CELINE MACTAGGART, and RICHARD ARNEY,</b>  <b>Petitioners,</b>  <b>v.</b>  <b>ALEX PADILLA, in his official capacity as Secretary of State of California,</b>  <b>Respondent.</b>		<b>Case No.: 34-2020-80003402</b>	
<b>Nature of Proceedings:</b>		<b>RULING ON SUBMITTED MATTER RE: PETITION FOR WRIT OF MANDATE</b>	

This matter came on for hearing on June 19, 2020. The Court did not issue a tentative ruling, and instead ordered the parties to appear and posed questions it wished the parties to address as part of their oral presentations. Having considered the filings and arguments of the parties, the Court now rules as set forth herein.

In light of the expedited manner of this election writ proceeding, the Court will not undertake a recitation of the facts of this matter. The Court also reiterates its comments made during oral argument that it understands that Petitioners as well as Respondent and his staff worked diligently with regard to the subject initiative, and unfortunately were confronted with numerous obstacles unique to the COVID-19 pandemic. Indeed, the submissions by both parties underscore the challenges they faced and the extreme measures they took to overcome them during this unprecedented time in our Country's history. Neither side can be faulted for their actions.

In *Costa v. Superior Court*, although factually inapposite, the California Supreme Court noted the "judicial policy to apply a liberal construction" to the people's "constitutionally enshrined initiative power" and that "if doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1013.) Accordingly, when courts encounter minor defects that do not impact the integrity of the electoral process "as a realistic and practical matter" it is inappropriate to prevent the electorate from voting on a measure due solely to such defect. (*Id.*) Further, *Costa* noted that the "substantial compliance" doctrine applies to both constitutional and statutory provisions that set forth procedural requirements relating to the initiative or referendum process... California

decisions uniformly have recognized that the substantial compliance doctrine applies both to constitutional and statutory provisions relating to elections.” (*Id.* at FN 20.)

The Court is mindful of our California Supreme Court’s emphasis on the importance of the initiative power in our State’s political system and the application of the “substantial compliance” doctrine to procedural election provisions in both statute and the Constitution to safeguard that process, and federal precedent ordering states to make accommodations for ballot measures that otherwise risk failing to qualify for the ballot as a result of the COVID-19 safety measures. (See *Fair Maps Nev. v. Cegavske*, 2020 U.S. Dist. LEXIS 94696 (D. Nev. May 29, 2020); *SawariMedia LLC v. Whitmer*, 2020 U.S. Dist. LEXIS 102237 (E.D. Mich. June 11, 2020.) As the *Fair Maps Nev.* court noted, “[i]f there is any time where business as usual is impossible, this is it.” (*Fair Maps Nev.*, at \*43.) Accordingly, the Court finds it is not unprecedented for a court to permit deviations from strict statutory deadlines in light of the extreme and unique circumstances presented by the COVID-19 pandemic.

Petitioners have presented a compelling demonstration of irreparable harm if the petition for writ of mandate is denied. While Respondent argues the initiative, should it fail to qualify for the ballot by June 25, 2020, can simply be placed on the November 2022 ballot, such a delay in the ability of more than 931,000 California voters who signed petitions to exercise their constitutionally guaranteed initiative power is indeed an irreparable harm. The Court notes that the subject matter of this initiative involves the constitutional right to privacy declared inalienable and guaranteed by Article I, section 1 of the California Constitution. With this “inalienable” right at stake, the Court does not find compelling Respondent’s argument that the issuance of a writ would interfere with other statutory Election Code deadlines, including public comment, solicitation of ballot arguments, submission of ballot arguments, etc. While the Court recognizes that issuance of a writ would create a change of circumstances for Respondent, the Court does not find any “harm” to be significant. The balance of hardships favors the Petitioners here.

The Court emphasizes that it bases this ruling on the specific facts before it and the specific practical impediments posed for Petitioners as well as Respondent as a result of the COVID-19 pandemic. The Court underscores that its ruling is limited to this case.

The Court finds that issuance of a writ of mandate is appropriate, and therefore the petition for writ of mandate is **GRANTED**. The parties requested the opportunity to work together to select the specific remedy and to craft language for a formal order and writ of mandate. The Court finds the appropriate remedies shall include one of the following: 1. a writ of mandate directing the Respondent to notify the counties to complete the random sample process for the subject initiative on or before June 25, 2020; or 2. a writ of mandate directing Respondent to give the counties until June 26, 2020 to complete the random sample process, at which time, if the initiative otherwise qualifies, Respondent will certify the initiative; or 3. any other remedy the parties find suitable that is consistent with the Court’s ruling.

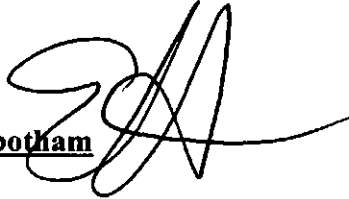
The parties shall meet and confer and thereafter submit a formal order, judgment, and writ of mandate to the Court for issuance.

### Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: June 19, 2020

E. Higginbotham, Deputy Clerk /s/ E. Higginbotham

A handwritten signature in black ink, appearing to be 'E. Higginbotham', written over the typed name in the signature line.

James C. Harrison  
Olson Remcho, LLP  
1901 Harrison Street, Ste. 1550  
Oakland, CA 94612

Natasha A. Sagar Sheth  
Benjamin Glickman  
Ryan Hanley  
California Department of Justice  
455 Golden Gate Ave., Ste. 11000  
San Francisco, CA 94102