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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ORANGE**
10

11 MARK BIXBY,
12
13 Petitioner,

14 v.

15 ROBIN ESTANISLAU, Huntington Beach
City Clerk; BOB PAGE, Orange County
16 Registrar of Voters,
17 Respondents.

18 THE CITY OF HUNTINGTON BEACH, a
Municipal Corporation,
19
20 Real Party in Interest.

Case No.

Assigned for All Purposes to:
Hon.

PETITION FOR WRIT OF MANDATE

IMMEDIATE ACTION REQUIRED

Election Law Matter Entitled to Calendar
Preference (Code Civ. Proc., § 35; Elections
Code, § 13314(a)(3))

Action Filed: November 22, 2023
Trial Date: None Set

21
22 Petitioner MARK BIXBY petitions this court for an alternative writ of mandate and a
23 peremptory writ of mandate, directed to Respondents ROBIN ESTANISLAU, Huntington Beach
24 City Clerk and BOB PAGE, Orange County Registrar of Voters, and by this verified petition alleges:
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1 **INTRODUCTION**

2 Undoubtedly, the right of suffrage is a fundamental matter in a free
3 and democratic society. Especially since the right to exercise the
4 franchise in a free and unimpaired manner is preservative of other
5 basic civil and political rights, any alleged infringement of the right
6 of citizens to vote must be carefully and meticulously scrutinized
7 (*Reynolds v. Sims* (1964) 377 U.S. 533, 561-562.) Here, the Huntington Beach City Council (the
8 “City Council”) has placed on the forthcoming March primary ballot a charter amendment that
9 would substantially burden the right to vote, requiring citizens to present a voter identification before
10 they can vote, in contravention of the state Constitution. Such an infringement of the right to vote
11 is beyond the authority of the City. Accordingly, the Court must strike this unconstitutional and
12 illegal charter amendment from the ballot.

13
14 **PARTIES**

15 1. Petitioner MARK BIXBY is a registered voter and resident of the City of Huntington
16 Beach (the “City”).

17 2. Respondent ROBIN ESTANISLAU is now and was at all times herein the City Clerk
18 of the City of Huntington Beach. She is the elections official of the City of Huntington Beach.
19 There is a special municipal election to be held March 5, 2024, in the City of Huntington Beach,
20 which will include Charter Amendment Nos. 1 and 2 (as defined *infra*), unless this Court issues the
21 requested relief.

22 3. Respondent BOB PAGE is now and was at all times herein the Registrar of Voters
23 for the County of Orange. He is the elections official of the County of Orange. Pursuant to
24 Resolution No. 2023-43 of the Huntington Beach City Council, the special municipal election in
25 Huntington Beach is consolidated with the statewide general election, and the City Clerk was
26 directed to and is coordinating with the Registrar of Voters to provide all election materials to voters
27 in Huntington Beach. There is a special municipal election to be held March 5, 2024, in the City of
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1 Huntington Beach, which will include Charter Amendment Nos. 1 and 2, unless this Court issues
2 the requested relief.

3 4. Real party in interest THE CITY OF HUNTINGTON BEACH (the “City”) is a
4 municipal corporation. The Huntington Beach City Council (the “City Council”) is the governing
5 body of the City. Because the City Council adopted the resolution proposing the two Charter
6 Amendments at issue in this Petition, the City is the “person or official who authored the material
7 in question,” the City is therefore the real party in interest pursuant to Section 9295(b)(3) of the
8 Elections Code.

9
10 **BACKGROUND**

11 5. The City of Huntington Beach (the “City”) has called a Special Municipal Election
12 to be held on March 5, 2023. That special election includes a charter amendment that will
13 substantially burden the right to vote of Californians living within the City of Huntington Beach by
14 allowing the City to require voters to show some form of (yet to be determined) voter identification
15 before they vote.

16 6. Charter cities like Huntington Beach have home rule authority over certain local
17 issues, including municipal elections. This authority, however, is not unlimited, and a charter
18 provision must yield to state law where, as here: (1) the provision conflicts with state law; (2) the
19 subject of the provision is a matter of statewide concern; and (3) the conflicting state law is narrowly
20 tailored and does not unnecessarily interfere with municipal governance. (*Jauregui v. City of*
21 *Palmdale* (2014) 226 Cal. App. 4th 781, 794-96 (2014); see also *City of Huntington Beach v.*
22 *Becerra* (2020) 44 Cal. App. 5th 243, 256 [holding that even issues listed in the California
23 Constitution as municipal affairs “must give way to inconsistent state laws addressing issues of
24 statewide concern”].)

25 7. First, a local voter ID law that imposes requirements on top of the statewide process
26 conflicts with the state’s detailed voter verification framework. (*City of Huntington Beach v.*
27 *Becerra, supra*, 44 Cal. App. 5th at p. 270 [“Charter city law is contradictory to state law when it is
28 inimical thereto”].) Second, it is well settled that voting rights and the integrity of local elections

1 are matters of statewide concern. (*Johnson v. Bradley* (1992) 4 Cal. 4th 389, 409 [holding that “the
2 integrity of the electoral process, at both the state and local level, is undoubtedly a statewide
3 concern”]; *Jauregui, supra*, 226 Cal. App. 4th at p. 799-801 [voting rights, including protections
4 against voting restrictions and vote dilution, are state interests “that go to the legitimacy of the
5 electoral process”].) Finally, the state’s conflicting provisions are narrowly tailored to enhance the
6 integrity of the electoral process and to ensure that eligible individuals can cast a ballot free of
7 unnecessary burdens.

8 8. In addition, a municipal voter ID law is a violation of the state Constitution. Under
9 the California Constitution, “[a] United States citizen 18 years of age and resident in this State may
10 vote.” (Cal. Const. Art. II, § 2, subd. (a).) The right to vote is not limited to statewide elections,
11 nor can the right be made contingent on additional burdens that local governments may seek impose.

12 9. Restrictions on the right to vote are subjected to strict scrutiny. (*Thompson v. Mellon*
13 (1973) 9 Cal.3d 96, 99, fn. 2.) The governmental agency bears the burden of establishing both that
14 it has a compelling interest which justifies the law and that the restrictions are narrowly tailored to
15 avoid any unnecessary intrusion on into those fundamental rights. (*Ibid.*) Here, the City has no
16 compelling interest to justify such a measure, no factual predicate to seek to restrict the right to vote,
17 nor has its vague charter amendment been narrowly tailored to avoid any such intrusion into the
18 fundamental right to vote.

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FACTUAL BACKGROUND

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10. On October 17, 2023, a divided Huntington Beach City Council adopted Resolution
No. 2023-42, to call a special election for the City of Huntington Beach (the “City”) for March 5,
2024. Under the resolution, the special municipal election would include ballot measures for three
charter amendments.

1 11. Charter Amendment No. 1 purports to allow the City to require “Voter
2 Identification” of voters in City elections.¹

3 12. Charter Amendment No. 2 purports to limit the types of flags that can be displayed
4 on City property.

5 13. Based on information and belief, the City Attorney was directed to file an impartial
6 analysis of Charter Amendment Nos. 1 and 2, and certain members of the City Council were
7 authorized to file arguments for and against, and rebuttal arguments for and against, Charter
8 Amendment Nos. 1 and 2.

9 14. Based on information and belief, the City Attorney’s impartial analysis and the
10 arguments in support of and in opposition to Charter Amendment Nos. 1 and 2 were due to
11 Respondent Estanislau on Wednesday, November 1 , 2023. Based on information and belief, the
12 rebuttal arguments for and against Charter Amendment Nos. 1 and 2 were due to Respondent
13 Estanislau on November 13, 2023. On November 14, 2023, Resolution No. 2023-42 and the
14 aforementioned election materials, were made available for public examination, commencing the
15 10-day period of review pursuant to Section 9295 of the Elections Code.

16 15. A true and correct copy of Resolution No. 2023-42, is attached hereto as **Exhibit A**.
17 Based on information and belief, Exhibit A was sent to Petitioner’s counsel by a member of
18 Respondent Estanislau’s staff on Friday, November 17, 2023. In addition, a copy of Exhibit A
19 appeared on the City of Huntington Beach’s Election Information website, at
20 https://www.huntingtonbeachca.gov/government/elected_officials/city_clerk/election_voter_info,
21 until at least Monday, November 20, 2023. The resolution is signed by Huntington Beach Mayor
22 Tony Strickland, with signatures by the Huntington Beach City Manager as having “reviewed and
23 approved” and “initiated and approved” the resolution, and a signature by a representative for the
24 Huntington Beach City Attorney’s office as “approved as to form.” The resolution is consecutively
25

26 ¹ As a practical matter, this would necessarily include general and statewide elections, since general
27 municipal elections are “held in the City on the first Tuesday after the first Monday in November in
28 each even-numbered year,” (Huntington Beach City Charter, § 700), the same date as statewide
General Elections (Elec. Code, §§ 1001, 1200.)

1 paginated. The last page is an attestation by Respondent Estanislau, reciting the roll call vote and
2 attesting that the resolution was adopted by the City Council.

3 16. Exhibit A does not contain the charter amendment language for Charter Amendment
4 No. 1 or Charter Amendment No. 2, as required by Section 9223 of the Elections Code.

5 17. Based on information and belief, a member of Respondent Estanislau’s staff sent to
6 Petitioner’s counsel another document, purporting to be Resolution No. 2023-42, a true and correct
7 copy of which is attached hereto on **Exhibit B**. According to Respondent Estanislau’s staff, Exhibit
8 B is a “corrected” version of Resolution 2023-42, which had been “revised due to a clerical
9 oversight,” without any intervening action by the City Council. Exhibit B differs materially from
10 Resolution No. 2023-42, as reflected in in Exhibit A. Exhibit B contains a new page 5, which does
11 contain the charter amendment language for Charter Amendment No. 1 and Charter Amendment
12 No. 2.

13
14 **CHARTER AMENDMENT NO. 1 VIOLATES STATE LAW**
15 **AND EXCEEDS THE CITY’S AUTHORITY**

16 18. The City’s proposal to require voter identification at the polls squarely conflicts with
17 state law and is invalid, notwithstanding a charter city’s “home rule” authority to legislate on
18 municipal affairs. (See, e.g, *Cal. Federal Savings & Loan Assn. v. City of Los Angeles* (1991) 54
19 Cal.3d 1; *Jauregui, supra*, 226 Cal.App.4th 781; *City of Huntington Beach v. Becerra, supra*, 44
20 Cal.App.5th 243.)

21 19. Under state law, identifying information, as well as other specified information, is
22 required when registering to vote and must be validated by elections officials. (Elec. Code, §§ 2188,
23 subd. (b), 2196, subd. (a)(7); Cal. Code Regs. tit. 2, §§ 19073, 20107.) An applicant must certify to
24 the truth and correctness of the content of the application, under penalty of perjury. (Elec. Code,
25 § 2188, subd. (e).) An individual who registers to vote knowing that they are ineligible to do so is
26 subject to criminal penalties. (Elec. Code, § 18100.)

27 20. The Elections Code further provides that, at the time of voting, a registered voter
28 wishing to vote in person need only provide their name and address; no further identification is

1 required. (Elec. Code, § 14216, subd. (a).) The Elections Code also sets forth a detailed process
2 for resolving questions of voter identity or eligibility at the polls. A voter’s identity or eligibility to
3 vote may be questioned only by an election worker, only on narrow grounds, and only with evidence
4 constituting probable cause to justify such a challenge. (*Id.*, § 14240.) A challenged voter need
5 only take a sworn oath of affirmation to remedy the challenge. (*Id.*, §§ 14243, 14244, 14245,
6 14246.) All doubts are to be resolved in favor of the challenged voter. (*Id.*, § 14251.)²

7 21. This framework strikes a careful balance: it guards the ballot box against ineligible
8 and/or fraudulent voters, while at the same time simplifying and facilitating the process of voting so
9 as to avoid suppressing turnout and disenfranchising qualified voters. It also makes clear that the
10 job of local elections officials is to supervise voting at the polls, not to take over voter-eligibility
11 functions performed by the county registrar and the Secretary of State.

12 22. Charter Amendment No. 1 would destroy this careful balance by placing the onus on
13 the voter to establish their identity and right to vote with some form of identification at the time they
14 cast their ballot. By requiring additional documentation to establish a voter’s identity and eligibility
15 to vote at the time of voting—a higher standard of proof than set out in the Elections Code—Charter
16 Amendment No. 1 conflicts with state law. Indeed, Charter Amendment No. 1 would arguably
17 constitute “mass, indiscriminate, and groundless challenging of voters,” in violation of Elections
18 Code section 18543.

19 23. Notably, these provisions of state law are also in conformity with the state’s plans to
20 implement the Help America Vote Act (“HAVA”), Pub. L. No. 107-252, 116 Stat. 1666 (2002),
21 codified at 52 U.S.C. §§ 20901-21145. HAVA was an election integrity and voting rights act
22 adopted by Congress and signed by President Bush in 2002 in response to the numerous problems
23 in the 2000 Presidential Election in Florida. HAVA sets federal standards for voting equipment,
24 voter registration databases, and verification of voter identification, and provides federal funding
25 for voting technology and administration. The Secretary of State administers the state’s
26

27 _____
28 ² As additional protections to the integrity of elections, any person who illegally casts a ballot is
subject to criminal prosecution. (Elec. Code, § 18500.)

1 implementation and ongoing compliance with HAVA. (See [https://www.sos.ca.gov/elections/help-](https://www.sos.ca.gov/elections/help-america-vote-act)
2 [america-vote-act.](https://www.sos.ca.gov/elections/help-america-vote-act))

3 24. The state laws outlined above address a matter of statewide concern: ensuring the
4 fundamental right to vote without imposing unnecessary obstacles that may reduce voter
5 participation or disproportionately burden low-income voters, racial and ethnic minorities, the
6 elderly, or people with disabilities, ensuring the state’s compliance with federal mandates, and
7 maintaining the state’s eligibility for federal funding for election administration. Courts have long
8 recognized that protecting the integrity of the electoral process, at both the state and local level, is a
9 matter of statewide concern (*Jauregui, supra*, 226 Cal.App.4th at p. 801), as is “the protection of
10 the constitutional rights of California residents.” (*City of Huntington Beach v. Becerra, supra*, 44
11 Cal.App.5th at p. 275.)

12 25. The City has not identified any factual basis for Charter Amendment No. 1, much
13 less a basis supported by uniquely local concerns. State law already requires prospective voters to
14 verify their identity—at the registration stage. It also sets forth a detailed process for resolving
15 disputes over a voter’s identity or eligibility at the polls, and contains ample provisions for dealing
16 with rare cases of fraudulent or otherwise illegal voting. Falsified, unsubstantiated, and purely
17 hypothetical concerns about voter fraud, or concerns that state law does not strike an appropriate
18 balance in this area, are insufficient to justify Charter Amendment No. 1.

19
20 **CHARTER AMENDMENT NO. 1 RESULTS IN DISCRIMINATION AGAINST SENIOR**
21 **CITIZENS, VOTERS WITH DISABILITIES, AND MINORITIES.**

22 26. In addition to the Charter Amendment being beyond what is constitutionally allowed,
23 voter ID laws discriminate against minorities, senior citizens, and voters with disabilities. Research
24 over the past decade consistently shows that, when implemented, voter ID laws reduce turnout for
25 individuals without proper identification, and those voters are disproportionately members of these
26 protected groups. (See, e.g., *The Impacts of Voter Suppression on Communities of Color*, Brennan
27 Center for Justice (Jan. 10, 2022), [https://www.brennancenter.org/our-work/research-](https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color)
28 [reports/impact-voter-suppression-communities-color](https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color) [collecting studies]; Vanessa M. Perez, Ph.D.,

1 Americans with Photo ID: A Breakdown of Demographic Characteristics, Project Vote (Feb. 2015),
2 [https://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-](https://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf)
3 [Research-Memo-February-2015.pdf](https://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS-WITH-PHOTO-ID-Research-Memo-February-2015.pdf) [finding that voters of color and low-income individuals are
4 less likely to have photo ID]; Impact of Voter ID Laws on People with Disabilities, Vote Riders
5 (Oct. 2019), <https://www.voteriders.org/impact-of-voter-id-laws-on-people-with-disabilities/>
6 [citing studies showing that the elderly and voters with disabilities are less likely to have photo ID].)

7 **CHARTER AMENDMENT NO. 1 FAILS THE STRICT SCRUTINY TEST**

8 27. Charter Amendment No. 1 substantially and severely burdens the fundamental right
9 to vote by restricting the ability to cast a regular ballot to only those who possess voter ID that the
10 City may find acceptable. This creates an unnecessary obstacle to the voting for the population of
11 Californians living in Huntington Beach who lack an acceptable form of photo ID, and by requiring
12 civic organizations to expend and divert resources educating their members and the public about the
13 new Voter ID Restrictions.

14 28. Because the Voter ID Restrictions impose a severe, substantial, and heavy burden on
15 fundamental right to vote protected by the California Constitution, they are subject to strict scrutiny.
16 These restrictions cannot satisfy any level of judicial scrutiny, however, as they are neither necessary
17 nor narrowly tailored to advance any compelling local interest.

18 **THE SPECIAL ELECTION FOR CHARTER AMENDMENT**

19 **NOS. 1 AND 2 VIOLATES THE ELECTIONS CODE**

20 29. Finally, the City has failed the basic requirements of the Elections Code in calling
21 and administering the election for Charter Amendment Nos. 1 and 2.

22 30. Pursuant Section 9223 of the Elections Code, “[w]henever any . . . measure is
23 required by this article to be submitted to the voters of a city at any election, the elections official .
24 . . shall cause the . . . measure to be printed. A copy of the ordinance or measure shall be made
25 available to any voter upon request.” Here, the text of Charter Amendment Nos. 1 and 2 were never
26 made available until at least November 21, 2023, on the second-to-last business day of the public
27 examination period required by statute. (Elec. Code, § 9295.) Upon request by Petitioner’s counsel,
28 Respondent Estanislau’s office provided the election information that did not have the measure’s

1 language, and only provided “corrected” copies with the language of the measure several days later.
2 For more than a month after Resolution No. 2023-42 was adopted, voters did not have access to the
3 measure language that was to be submitted, even while insiders wrote the impartial analysis and the
4 arguments and rebuttals for and against the measures.

5 31. Moreover, a substantial question of fact exists as to whether Exhibit B is actually
6 Resolution No. 2023-42. Exhibit A, which was publicly available for at least one month, was signed
7 by the Mayor, the City Manager, and the City Attorney. It was consecutively paginated and included
8 an attestation by Respondent Estanislau as to its authenticity. The contention that four different city
9 officials signed it, only to discovery a month later that this critical election document was incorrect,
10 seems dubious at best. Moreover, having signed and attested to the document, even if in error,
11 Exhibit A became prima facie evidence of he City council’s action. Respondent Estanislau cannot
12 now, with no further action by the City Council, declare that a different document was in fact
13 Resolution No. 2023-42, and was the document signed by the Mayor, the City Manager, and the
14 City Attorney.

15
16 **PRE-ELECTION REVIEW AND REMOVAL OF**
17 **UNCONSTITUTIONAL BALLOT MEASURES IS APPROPRIATE**

18 32. Pre-election review by the courts of unconstitutional ballot measures are appropriate.
19 (*AFL v. Eu* (1984) 36 Cal.3d 687, 695-697 [citing *Brosnahan v. Eu* (1982) 31 Cal.3d 1, 5 (Mosk, J.,
20 concurring and dissenting)].) In both *AFL v. Eu, supra*, and *Legislature v. Deukmejian* (1983) 34
21 Cal.3d 658, 666, the Supreme Court endorsed the standards set out by Justice Mosk for when ballot
22 measures should be removed from the ballot.

23 If it is determined that the electorate does not have the power to adopt
24 the proposal in the first instance or that it fails to comply with the
25 procedures required by law to qualify for the ballot, the measure must
be excluded from the ballot.

26 Thus, for example, election officials have been ordered not to place
27 initiative and referendum proposals on the ballot on the ground that
28 the electorate did not have the power to enact them since they were
not legislative in character (e.g., *Simpson v. Hite* (1950) 36 Cal.2d
125, 129-134 []; *Fishman v. City of Palo Alto* (1978) 86 Cal. App.3d
506, 511-512 []; cf. *Farley v. Healey* (1967) 67 Cal.2d 325, 328-329

1 []), the subject matter was not a municipal affair (e.g., *Riedman v.*
2 *Brison* (1933) 217 Cal. 383, 387 []; *Mervynne v. Acker* (1961) 189
3 Cal. App.2d 558, 565-566 []), or the proposal amounted to a revision
of the Constitution rather than an amendment thereto (*McFadden v.*
Jordan (1948) 32 Cal.2d 330, 349-351 []).

4 (*Brosnahan, supra*, 31 Cal.3d at p. 6 [Mosk, J. [emphasis added].])

5 The presence of an invalid measure on the ballot steals attention, time
6 and money from the numerous valid propositions on the same ballot.
7 It will confuse some voters and frustrate others, and an ultimate
8 decision that the measure is invalid, coming after the voters have
voted in favor of the measure, tends to denigrate the legitimate use of
the initiative procedure.

9 (*AFL v. Eu, supra*, 36 Cal.3d at p. 697.)

10 33. As set forth above, the City has no authority to restrict the right to vote enshrined in
11 the state constitution. The eligibility of voters and the integrity of elections are not mere municipal
12 matters, over which the City has authority, but statewide matters that touch on constitutional rights.
13 “Here [] the challenge goes to the power of the electorate to adopt the proposal in the first instance.
14 This challenge does not require even a cursory examination of the substance of the initiative itself.
15 The question raised is, in a sense, jurisdictional.” (*Legislature v. Deukmejian, supra*, 34 Cal.3d at
16 p. 667.)

17 34. Furthermore, the City has violated the Elections Code in attempting to place on the
18 ballot both Charter Amendments Nos. 1 and 2 by failing to properly adopt the charter amendment
19 language and failing to properly post the charter amendment language for public examination as
20 required by the Elections Code.

21 35. Additionally, “when a substantial question has been raised regarding [a ballot
22 measure’s] validity and the ‘hardships from permitting an invalid measure to remain on the ballot’
23 outweigh the harm potentially posed by ‘delaying a proposition to a future election,’” it is
24 appropriate to review the measure and remove it from the ballot before allowing the vote of the
25 public. (*Planning & Conservation League v. Padilla* (July 18, 2018, No. S249859) ___ Cal.5th ___
26 [2018 Cal. LEXIS 5200, at *1] [citing *Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th
27 486, 494; *AFL v. Eu, supra*, 36 Cal.3d at p. 697. Here, there is no harm in removing Charter
28 Amendment Nos. 1 and 2 from the March 5, 2024, ballot. Even by its purported terms, Charter

1 Amendment No. 1 will not take effect until the 2026 municipal elections. Meanwhile, a regular
2 municipal election is scheduled to be held on November 5, 2024. In fact, because the November
3 2024 election is scheduled for the same time as the Presidential election, turnout for the November
4 election is likely to be significantly higher than turnout for the primary. Thus, if the Court ultimately
5 decides to allow the measure to be placed before the voters, more residents of Huntington Beach
6 will be able to weigh in on this critical question related to their right to vote.

7
8 **FIRST CAUSE OF ACTION**

9 **(Petition for Writ of Mandate)**

10 36. Petitioner repeats and re-alleges paragraphs 1 through 35, as if fully set forth herein.

11 37. Petitioner respectfully requests that this court issue an alternative writ of mandate,
12 and then a peremptory writ of mandate, or an injunction, commanding Respondents to remove from
13 the March 5, 2024, Huntington Beach Special Municipal Election ballot:

14 a. Charter Amendment No. 1 (which reads, to wit: “Shall proposed Charter Amendment
15 No. 1, which provides that commencing in 2026, for all municipal elections, the City:
16 may require Voter Identification for elections; provide more in-person voting
17 locations; and monitor ballot drop-boxes, be approved?”); and

18 b. Charter Amendment No. 2 (which reads, to wit: “Shall proposed Charter Amendment
19 No. 2, which provides that the only flags to be displayed by the City on City property
20 are the United States Flag, the State of California Flag, the County of Orange Flag,
21 the City of Huntington Beach Flag, the POW-MIA Flag, the six Armed Forces Flags,
22 the Olympic Flag during the Summer Olympic Games, and any other flag if
23 authorized by a unanimous vote of the City Council, be approved?”).

24 38. For the reasons set forth above, Charter Amendment Nos. 1 and 2 violate the
25 California Constitution, violate the California Elections Code, are matters of statewide concern that
26 are preempted by state law, and/or violate the procedures for holding elections for charter
27 amendments as set forth in the Elections Code. Accordingly, Charter Amendment Nos. 1 and 2 are
28

1 “inconsistent with the requirements of” the Elections Code, and should be stricken from the March
2 5, 2024, Huntington Beach Special Municipal Election ballot.

3 39. Petitioner has no plain, speedy or adequate alternative remedy to the issuance of a
4 writ of mandate. Unless the writ of mandate is immediately granted the election will occur prior to
5 the hearing of this matter, and the voters will suffer injury.

6 40. Issuance of the writ at this time will not substantially interfere with the conduct of
7 the election.

8
9 WHEREFORE petitioner prays as follows:

10 1. That the court issue an alternative writ, and then a peremptory writ of mandate under
11 the seal of this court commanding Respondents to remove Charter Amendment Nos. 1 and 2 from
12 the March 5, 2024, Huntington Beach Special Municipal Election ballot;


13 2. That the Court award costs of suit, to the extent permitted under law;

14 3. That the Court award Petitioner attorneys’ fees to the extent permitted under law;

15 4. That the Court order such other and further relief as the court may deem just and
16 proper.

17
18 DATED: November 22, 2023

BROWER LAW GROUP, APC

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20 By: 
21 Lee K. Fink

22 Attorneys for Petitioner
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VERIFICATION

I have read the foregoing PETITION FOR WRIT OF MANDATE and know its contents.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are 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 on November 22, 2023.

Mark Bixby

Print Name of Signatory

Mark D. Bixby

Signature