

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Bixby vs. Estanislau

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2023-01366664-CU-WM-CJC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 12/28/23, was transmitted electronically by an Orange County Superior Court email server on December 28, 2023, at 3:48:30 PM PST. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 12/28/2023

TIME: 10:00:00 AM

DEPT: C25

JUDICIAL OFFICER PRESIDING: Supervising Judge Nico Dourbetas

CLERK: J. Abarca

REPORTER/ERM: Jenny Craig CSR #11094

BAILIFF/COURT ATTENDANT: F. Camandang

CASE NO: **30-2023-01366664-CU-WM-CJC** CASE INIT.DATE: 11/22/2023

CASE TITLE: **Bixby vs. Estanislau**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 74176268

EVENT TYPE: Ex Parte

MOVING PARTY: Mark Bixby

CAUSAL DOCUMENT/DATE FILED: Ex Parte Application - Other, 12/18/2023

APPEARANCES

Peggy Z. Huang from The City of Huntington Beach, Real Party In Interest (Rpii), present.

Mark Bixby, Petitioner, present remotely.

Rebecca S. Leeds, Deputy County Counsel present remotely.

Lee Fink from Brower Law Group present.

**PETITIONERS EX PARTE APPLICATION FOR WRIT OF MANDATE OR ORDER SHORTENING TIME,
AND FOR A TEMPORARY RESTRAINING ORDER**

Hearing held, participants appearing remotely and in person.

Privately retained court reporter is present in person.

Ex Parte Application is read and considered.

Opposition and declaration are read and considered.

Oral argument heard.

The Court having read the moving papers and heard oral argument now rules as follows:

The Petition is DENIED.

The Court finds that Petitioner has standing to bring this petition. He is a registered voter and resident of the City of Huntington Beach (City). (See Elec. Code, § 13314, subds. (a)(1); Elec. Code, § 9295, subd. (b)(1); Amd. Pet. ¶ 1.).

Petitioner's argument that the Charter Amendments Nos. 1 and 2 should not be included on the March 5, 2024 ballot because they do not comply with Cal. Elec. Code §§ 9200, et seq., fails to account for the notice of extension of time for public review that was submitted when the corrected version of the Charter Amendments were made available to the public.

Petitioner's argument seeking pre-election review of the charter amendments falls short. The general rule

is that “it is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people’s franchise, in the absence of some clear showing of invalidity.” (Brosnahan v. Eu (1982) 31 Cal. 3d 1, 4.) Departure from this general rule is not warranted where “an initiative is [argued to be] unconstitutional because of its substance.” (Brosnahan, Supra. at p. 6.)

Here, Petitioner makes a substantive challenge to the constitutionality of the Resolution, rather than a jurisdictional challenge. Petitioner seeks to have the judiciary serve as an auditor of what the electorate may consider for the supposed purpose of preserving democracy. This runs counter to the general rule counseling against pre-election review of the contents of the ballot. The Petition presents no circumstances that warrant departure from the general rule or circumvention of ordinary democratic processes.

As such, this Court declines to intervene at this stage, and holds that the issues raised in the Resolution should be allowed to proceed. If this measure were to pass, and if its implementation raises an issue of constitutionality, at that point, it may be appropriate for judicial review.

At this point, the Petition seeks nothing more than an advisory opinion. Generally, it is not appropriate to seek purely advisory opinions from courts in California. (Pacific Legal Foundation v. California Coastal Com. (1982) 33 Cal. 3d 158, 170-171.). This is precisely what the Petition attempts to do. Since it is currently unknown (1) whether the Resolution will even be passed; (2) how the City will go about implementing the voter identification requirement; and (3) what effect this implementation may have on voters, the issue is not ripe for adjudication. The Court can only speculate about the potential results of a requirement for voter identification to vote in a Huntington Beach City election may have. Thus, the issue is not justiciable at this stage.

Clerk is ordered to give notice.