LAW OFFICES OF
BRADLEY W. HERTZ
22815 Ventura Boulevard # 405
Los Angeles, CA 91364
Telephone: (818) 593-2949
Email: brad@bradleyhertzlaw.com

June 11, 2026

The Honorable Patricia Guerrero, Chief Justice
and The Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Re: *Attorney General of the State of California v. Chad Bianco, as Sheriff, etc. et al.* - Case No. S295901

Dear Chief Justice Guerrero and Associate Justices:

On June 1, 2026, the Court directed the parties to file letter briefs by June 11, 2026 "regarding the effect, if any, of Senate Bill No. 73 (2025–2026 Reg. Sess.) on the issues pending in this matter."

On behalf of Respondents Chad Bianco, as Sheriff, etc. et al. (collectively, the "Sheriff"), this letter asserts that Senate Bill No. 73 ("SB 73," the "Legislation," or the "Act") has no effect on the issues pending in this matter and provides no basis for the writ relief that Petitioner Attorney General of the State of California (the "Attorney General" or "Petitioner") seeks.

Even though SB 73 was passed as urgency legislation and took effect on May 27, 2026, this was months after the search warrants issued, the ballots were seized, and this Court's April 8, 2026 stay was ordered. The Act has no effect on the issues pending in this matter. It does not retroactively invalidate the warrants, undo the completed seizure of ballots and related documents, alter this Court's stay, or create a new ministerial duty enforceable by mandate.

Setting prospectivity and retroactivity issues aside, any argument based on SB 73 necessarily pertains only to Elections Code section 15551(d)[1], as it is the only provision that arguably bears on the completed seizure of voted ballots. That provision has only two possible constructions.

If section 15551(d) is construed to permit compliance with judicial process—as the canon of constitutional avoidance counsels—then the Sheriff's conduct was authorized by three search warrants and subsequent court orders, and the Act has no application here.

If, on the other hand, section 15551(d) forbids compliance with judicially-issued search warrants, then the statute is unconstitutional as applied. Such an interpretation would place election materials beyond the reach of the courts, materially impair the judiciary's power to issue warrants, and penalize compliance with judicial process.

There is no third possibility. Under the first interpretation, SB 73 does not reach this case. Under the second, it cannot constitutionally support the relief the Attorney General seeks. Either way, SB 73 does not provide any support for the issuance of a writ of mandate or any other relief being sought by Petitioners.

In this case, the Court need not resolve any facial challenge to SB 73. It need only conclude that the Legislation neither affects the validity of the warrants nor alters the authority of this Court or the Superior Court to supervise materials seized pursuant to judicial process.

I. SB 73 Postdates the Warrants, the Seizure of Documents, and This Court's Stay; It Operates Prospectively and Creates No Ministerial Duty Enforceable by Mandate.

The search warrants were issued and the seizures of voted ballots occurred in February and March 2026 and the search and seizure process was completed on or about March 24, 2026. This Court's April 8, 2026 Order

[1] All statutory references are to the California Elections Code, unless otherwise stated.

granted review, issued an Order to Show Cause, stayed the Sheriff's investigation, and directed preservation of the seized materials, including consideration of a special master and other protective measures. SB 73 did not take effect until May 27, 2026. Every operative act in this case thus preceded the Act's existence.

California law presumes that statutes operate prospectively only. *Evangelatos v. Superior Ct.* (1988) 44 Cal.3d 1188, 1207–08 [presumption against retroactive operation absent a clear indication of contrary legislative intent]; *Myers v. Philip Morris Cos.* (2002) 28 Cal.4th 828, 840–41 [presumption overcome only by an express retroactivity provision or a clear and compelling implication of retroactive intent]. That presumption is not overcome merely because a later enactment is invoked in a pending proceeding or carries an urgency clause.

The dispositive question is whether applying the new law would attach new legal consequences to completed events, impair rights possessed when a party acted, increase liability for past conduct, or impose new duties respecting completed transactions. *McClung v. Emp. Dev. Dep't.* (2004) 34 Cal.4th 467, 472–77 [applying the inquiry under California law and distinguishing a true clarification from a retroactive change]; *Landgraf v. USI Film Prods.* (1994) 511 U.S. 244, 269–70, 280 [framing the inquiry as whether the new provision attaches new legal consequences to events completed before its enactment].

Moreover, the Legislation does not purport to be retroactive. Its urgency recital is forward-looking: it states only that immediate effect was necessary "[i]n order for this act to apply to the statewide primary election occurring on June 2, 2026." SB 73, 2025–2026 Reg. Sess., ch. 10, § 14 (Cal. 2026). That purpose says nothing of February or March warrant activity, and it could not, consistent with the Constitution, annul judicial orders already entered.

Even if SB 73 could be characterized as a mere clarification of existing law, the characterization would not change the analysis. A legislative declaration of an existing statute's meaning binds no court; it is "neither binding nor conclusive in construing the statute," because the Legislature "has no authority to interpret a statute"—"[t]hat is a judicial task." *McClung*, 34

Cal.4th at 473. A clarification, moreover, alters nothing: it professes only the meaning the law already bore. On that premise, the operative question would remain what was required by Penal Code sections 1523 and 1536 and Elections Code section 15551 when the Sheriff acted—an interpretive question for this Court, which, as Part III explains hereinbelow, is answered in favor of compliance with judicial process. A statute that merely clarifies the law cannot retrospectively render unlawful what the law it clarifies permitted.

For the same reason, SB 73 cannot manufacture the clear, present, and ministerial duty that a writ of mandate requires. Cal. Civ. Proc. Code §§ 1085, 1086. Mandate lies only to compel an act the law specially demands, and only where the petitioner shows a clear, present, and ministerial duty in the respondent and a clear, present, and beneficial right in the petitioner; a ministerial act is one the officer must perform in a prescribed manner, without regard to his own judgment as to its propriety. *Kavanaugh v. W. Sonoma Cnty. Union High Sch. Dist.* (2003) 29 Cal.4th 911, 916.

The writ petition seeks to compel the Sheriff to surrender a lawfully initiated criminal investigation to the Attorney General's operational control—relief addressed to conduct that this Court has already stayed. A statute enacted after the Attorney General's demand, after the Court of Appeal's denial of relief, and after this Court's April 8, 2026 stay cannot retroactively create a duty that did not exist when compliance was demanded. And an enactment whose application turns on prospectivity, constitutional avoidance, the meaning of "custody," and the continuing force of judicial warrants cannot create the prescribed, nondiscretionary obligation that mandate exists to enforce.

II. SB 73's "Court-Order" Language Is Localized; Its Effect, If Any, Reduces to Elections Code Section 15551(d), Whose Enforcement Provisions Are Merely Derivative.

Even if the Court reaches the Act's text, the analysis narrows quickly. SB 73 contains no global command conditioning all law-enforcement access to election materials on a court order. Rather, it deploys court-order language locally, provision by provision. Section 15553(a) prohibits permitting a law-enforcement agent to "access, disrupt, modify, or take possession" of rosters,

combined rosters, or voter lists "unless authorized by a court order or to investigate a violation of Section 18560." Section 19230(b) bars such access to "certified voting technology" "unless authorized by a court order." And section 18545(b)(2) exempts from criminal liability one who arranges for personnel to be stationed near a polling place or county elections office "pursuant to a court order." Each clause modifies the prohibition in which it appears.

In this case, the seizure involved packages of voted ballots taken under judicial warrants; the only provision of the Act that speaks in direct terms to that conduct is section 15551(d): "In no event shall the package or its contents be taken from the custody of the elections official."

The civil and criminal penalty provisions are derivative of subdivision (d) by their own terms. The civil-penalty provision reaches only one who takes such a package, or its contents, from election-official custody "in violation of subdivision (d) of Section 15551." *Id.* § 18564.5(a)(7). The criminal provision reaches only one who "knowingly" does so "in violation of subdivision (d) of Section 15551." *Id.* § 18568(i). Accordingly, unless a warrant execution violated subdivision (d), neither provision is reached.

Therefore, the sole relevant consideration for this case is a single interpretive question: what does section 15551(d) mean?[2]

[2] The Act's remaining provisions supply no answers that are favorable to the Attorney General, because they do not govern this conduct. Section 15007 forbids a peace officer from "interfer[ing] in any manner" with election administration, subject to an exception for "urgent threats to public health and safety" and a clause preserving validly exercised federal authority. It is not a ballot-custody rule, and, to the extent it can be read to condemn a magistrate-authorized seizure, it would make the execution of judicial process turn on a standardless notion of "interference"—confirming and exacerbating the same constitutional infirmities addressed hereinbelow. Sections 18544 and 18545 concern the stationing of armed or uniformed personnel near polling places and elections offices. Those provisions are collateral to the question before the Court.

III. The First Horn of the Attorney General's Dilemma: If Section 15551(d) Yields to Judicial Process, the Warrants and Court Orders Satisfy All Legal Requirements and SB 73 Has No Effect Here.

In connection with SB 73, the Attorney General finds himself on the proverbial horns of a dilemma. If, notwithstanding section 15551(d)'s seemingly absolute command that "[i]n no event shall the package or its contents be taken from the custody of the elections official," the Act is construed to permit compliance with judicial process, then the Sheriff's conduct was authorized by three search warrants and subsequent court orders, and the Act has no application here.

First, a search warrant is a court order. California law explicitly defines it as such: a search warrant is "an order in writing" signed by a magistrate and directed to a peace officer, commanding the search for and seizure of specified property. Cal. Penal Code § 1523. Property seized under a warrant is retained "subject to the order of the court" and thus remains under judicial control. *Id.* § 1536.

Second, the Sheriff did not engage in unilateral executive self-help. He acted under three judicial warrants issued in February and March 2026; when questions arose about handling the seized ballots, he returned to court on March 19, 2026 to seek the appointment of a special master to oversee any counting; and on April 8, 2026, this Court assumed supervision, staying the investigation and directing preservation of the ballots. The process was judicial from beginning to end. A warrant being a court order, and the Sheriff having acted under three warrants, the seizure fell within the exception. There was no violation of section 15551(d), and the derivative civil and criminal provisions never engage.

Section 15551(d) is susceptible to a construction that permits compliance with judicial process, and section 11 and ordinary principles of constitutional avoidance require the Court to adopt that construction. Respondents do not contend that this is the only reading the provision will bear, or even its most natural one; they urge only that the text fairly permits it, and that the

avoidance canon obliges the Court to choose it rather than confront the serious constitutional questions the contrary reading would raise.

Several features of the Act confirm that the saving construction is well within the range the text permits. It follows, first, from the Act's own design: the Legislature wrote custody-preservation rules into its companion access provisions—for rosters and voter lists, and for certified voting technology alike—each qualified by an express court-order accommodation. §§ 15553(a), 19230(b). That the Act defers to court orders throughout those provisions makes a construction of subdivision (d) that likewise accommodates a court's order a comfortable fit within the surrounding scheme, well within what the text will bear.

It follows, second, from the structure of section 15551 itself. Subdivision (a) provides that, once a contest or criminal prosecution has commenced, the package "shall be subject to the order of the court" in which it is pending. Subdivisions (b) and (c) require the official to "hold the ballots . . . in custody subject to the inspection of" the appropriate committee of Congress or the Legislature. *Id.* § 15551(b), (c). Accordingly, the ballots remain in the official's custody yet are simultaneously subject to the order of a court and to inspection by a superior authority. On that reading, custody and access are distinct, and subdivision (d) addresses only the first: it fixes where the ballots remain and need not be read to place them beyond the reach of a court that may issue a warrant or otherwise direct controlled inspection and counting through judicial process. So construed, subdivision (d) still does real work—it forbids uncontrolled self-help removal—without colliding with the judicial power.

It follows, third, from the settled rule that statutes on the same subject must be reconciled if reasonably possible, with a later or more specific enactment displacing an earlier one only when the two cannot be harmonized. *Garcia v. McCutchen*, (1997) 16 Cal.4th 469, 478. SB 73 contains no language repealing or disabling Penal Code sections 1523 or 1536, and so grave a departure from ordinary judicial process will not ordinarily be inferred from silence. *See id.* at 482.

It follows, fourth and finally, from the Legislature's own command. The Act directs that its provisions "be construed and applied" consistent with the California and United States Constitutions. SB 73, 2025–2026 Reg. Sess., ch. 10, § 11 (Cal. 2026). Where a statute is susceptible of two constructions, one valid and one constitutionally infirm, this Court adopts the former if the text fairly permits. *Dyna-Med, Inc. v. Fair Emp. & Hous. Comm'n*, 43 Cal.3d 1379, 1386–87 (1987) [adopting the construction that preserves a statute's validity where the text fairly permits]; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [construing statutory language to effectuate the Legislature's intent and the enactment's evident purpose].

Because the text fairly permits a construction that accommodates a court's order, section 11 and the avoidance doctrine counsel adopting it, and the Court may resolve this matter on that ground alone.

IV. The Second Horn of the Attorney General's Dilemma: If Section 15551(d) Has No Exception for a Court's Warrant, It Is Unconstitutional as Applied and Void for Vagueness in Its Civil-Penalty Application—and Still Supplies No Basis for Mandate.

A. An Absolute Prohibition on Compliance with Judicial Warrants Materially Impairs the Judicial Power.

The second possible interpretation of Section 15551(d) is that "in no event" means exactly what it says, including with respect to judicial warrants and court orders. Under that construction, the statute is unconstitutional if applied here.

The judicial power of the State is vested in its courts. Cal. Const. art. VI, § 1; *id.* art. III, § 3. The Legislature may impose reasonable restrictions on the courts' exercise of their functions, but it may not defeat or materially impair the exercise of those functions. *Superior Ct. v. Cnty. of Mendocino* (1996) 13 Cal.4th 45, 58. Issuing a warrant, compelling its execution, and controlling the evidence seized under it are core judicial functions, and a court retains authority over warrant-seized property under section 1536 and its inherent powers. *People v. Superior Ct. (Laff)* (2001) 25 Cal.4th 703, 713–14; *see id.* at 735–37 [court may appoint a special master to perform subordinate judicial

duties in reviewing seized materials]; *People v. Superior Ct. (Loar)* (1972) 28 Cal.App.3d 600, 607–10. [An officer who seizes and holds property under a warrant does so on behalf of the court; his possession is, in contemplation of law, the court's possession].

If applied here, the statute would condition the efficacy of judicial process upon the consent of the Registrar of Voters – the very office whose materials are under investigation, undermining the separation of powers precisely where it is most needed. *See Plaut v. Spendthrift Farm, Inc.* (1995) 514 U.S. 211, 227 [rejecting legislative action that would deprive prior judicial action of legal effect]; *People v. Bunn* (2002) 27 Cal.4th 1, 16) [distinguishing permissible prospective legislation from legislation that nullifies the effect of a judicial determination]; *Mandel v. Myers* (1981) 29 Cal.3d 531, 547–50 [holding that the Legislature may not accomplish through legislation what amounts to reversal of a judicial determination].

B. The Act's Civil-Penalty Scheme Is Impermissibly Vague as Applied to Court-Supervised Process.

The same construction would also offend due process, and most acutely in the Act's civil-penalty application. Due process forbids penalizing conduct under a standard so indeterminate that persons of ordinary intelligence must guess at its meaning and enforcement is left to ad hoc judgment. *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108–09 [a penal standard must give fair notice and constrain arbitrary enforcement]; *Kolender v. Lawson* (1983) 461 U.S. 352, 357–58 [the more important aspect of the doctrine requires minimal guidelines to govern enforcement]; *FCC v. Fox Television Stations, Inc.* (2012) 567 U.S. 239, 253–54 [the fair-notice requirement applies to civil penalties]; *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115–17 (1997) [California's reasonable-specificity formulation]; *Williams v. Garcetti* (1993) 5 Cal.4th 561, 567–68 [applying the standard to a penal enactment].

Even granting an absolute bar, the Act leaves its relevant terms undefined. From its text, it is not clear whether court-supervised, on-site preservation under seal removes ballots "from the custody of the elections official," or whether a special master's review does; it does not mark the

boundary between such handling and the "interfere[nce] in any manner" that section 15007 separately forbids. Yet it attaches to the answer a civil penalty of up to $50,000 for each act. Cal. Elec. Code § 18564.5(a)(7), (b). That the meaning of these terms has divided the State's officials and able counsel throughout this litigation is itself proof that the standard fails to give fair notice.

The civil exposure carries no scienter requirement, so the vagueness is gravest there. The companion crime requires that one "knowingly" take the package from custody (*id.* § 18568(i)), which softens the concern as to the act of taking; but a knowledge element does not cure the indeterminacy of the predicate legal standard, for an officer may knowingly execute a warrant in the good-faith belief that he acts lawfully and still face liability if subdivision (d) is an absolute bar. A construction that leaves so much to guesswork while penalizing the guess is not one this Court should adopt.

C. Any Constitutional Defect is Readily Remedied Through a Narrow As-Applied Holding.

Recognizing the defect would not require disturbing the Act as a whole. It contains an express severability clause. SB 73, 2025–2026 Reg. Sess., ch. 10, § 12 (Cal. 2026). The narrow and natural remedy, if the Attorney General's construction is accepted, would be to hold subdivision (d) unconstitutional only as applied to compliance with judicial warrants and court-supervised process, leaving its ordinary operation as a rule of election custody and polling-place security fully intact. Section 12 forecloses the false choice between sustaining and striking the Act in its entirety.

D. Regardless of Construction, SB 73 Creates No Ministerial Duty Enforceable by Mandate.

However construed, moreover, SB 73 affords the Attorney General no ministerial duty enforceable by mandate. It does not amend article V, section 13, of the California Constitution; it does not amend Government Code section 12560; it does not repeal Penal Code sections 1523 or 1536; and it does not vacate the warrants or alter this Court's April 8 stay. Whether the Act is read

to preserve judicial process or, impermissibly, to override it, the result is the same: it furnishes no clear, present, ministerial duty running from the Sheriff to the Attorney General, and thus no basis for the writ.

V. The Court Should Answer the June 1, 2026 Order Narrowly.

The issues pending in this matter concern the Attorney General's asserted power to halt or commandeer a County Sheriff's lawfully initiated criminal investigation, and the judicial safeguards appropriate to materials seized under warrant. SB 73 alters none of that. The Court may therefore answer the June 1, 2026 order without reaching a facial challenge: subdivision (d) is the only provision that could bear on the completed seizure; the civil and criminal provisions are derivative of it; the remaining provisions are collateral or material-specific; and subdivision (d), properly construed, leaves the warrants, the seizure, the stay, and any future court-supervised handling undisturbed.

That answer vindicates election integrity rather than threatening it. The Sheriff does not seek uncontrolled access to ballots or unsupervised counting. Instead, he seeks recognition that judicially authorized criminal process remains judicially authorized criminal process. The contrary position would replace court supervision with election-official immunity and make the custodian of potentially relevant evidence the final arbiter of whether that evidence may be reached at all. That is not the law SB 73 should be read to create; and if it were, the law could not stand.

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CONCLUSION

For the foregoing reasons, SB 73 has no effect on the issues pending in this matter under the only construction the Constitution permits. Everything the Attorney General might draw from the Act reduces to section 15551(d). If that provision yields to a court order, the search warrants must satisfy it, and the Act does not reach this case. If it admits no exception even for a court's warrant, it is unconstitutional as applied and void for vagueness in its civil-penalty application. Under either reading, SB 73 supplies no basis for the writ, and the Court should so hold.

Sincerely,

/s/ Bradley W. Hertz

Bradley W. Hertz

CERTIFICATE OF SERVICE

I am over the age of 18 years and not a party to the within entitled action; my business address is 22815 Ventura Boulevard # 405, Los Angeles, California 91364.

On June 11, 2026, I served a copy of the foregoing document described as:

Letter to The Honorable Chief Justice and Associate Justices of the Supreme Court of California

on the interested party(ies) in this action by-email or electronic service [C.C.P. § 1010.6; CRC 2.250-2.261] or U.S. Mail, as indicated on the attached service list.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 11th day of June, 2026 in Los Angeles, California.

/s/ *Bradley W. Hertz*

Bradley W. Hertz

SERVICE LIST

Helen H. Hong, Esq. State of California Department of Justice 600 W. Broadway, Suite 1800 San Diego, CA 92101 Email: helen.hong@doj.ca.gov	Counsel for Petitioner (Electronically)
Court of Appeal Fourth Appellate District 3389 12th Street Riverside, CA 92501	(Via U.S. Mail)
Superior Court Clerk Riverside County P.O. Box 431 Riverside, CA 92502	(Via U.S. Mail)