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COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION 3		COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 204063/251307/222137/35539/3355393 NAME: William H. Ihrke, Jennifer J. Farrell, Gerard M. Mooney, Kyle J. Berry FIRM NAME: RUTAN & TUCKER, LLP STREET ADDRESS: 18575 Jamboree Road, 9 th Floor CITY: Irvine STATE: CA ZIP CODE: 92612 TELEPHONE NO.: 714-641-5100 FAX NO.: 714-546-9035 E-MAIL ADDRESS: bihrke@rutan.com, jfarrell@rutan.com; gmooney@rutan.com; kberry@rutan.com ATTORNEY FOR (name): Petitioners CITY OF NEWPORT BEACH, AARON HARP, LENA SHUMWAY, and NEWPORT BEACH CITY COUNCIL		SUPERIOR COURT CASE NUMBER: 30-2026-01559183-CU-JR-NJC
APPELLANT/ PETITIONER: CITY OF NEWPORT BEACH, et al. RESPONDENT/ REAL PARTY IN INTEREST: SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE, et al.		
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City of Newport Beach, Aaron Harp, Lena Shumway,

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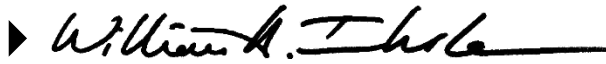
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Date: September 8, 2026

William H. Ihrke

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

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INTRODUCTION

Petitioners City of Newport Beach (the “City”), Newport Beach City Council (the “City Council”), City Attorney Aaron Harp (in his official capacity), and City Clerk Lena Shumway (in her official capacity) (collectively, “Petitioners”) bring this Petition for Writ of Mandate and for an immediate temporary stay because Respondent Superior Court of Orange County (“Respondent Court”) has issued a void and illegal writ of mandate pending appeal (9 Pet.’s Ex. 93, at p. 2703), putting Petitioners to the Hobson’s choice of either (1) complying with the writ to carry out an illegal election (and potentially rendering their appeal moot and this Court unable to provide effective relief), or (2) having the Respondent Court hold Petitioners in contempt for non-compliance, as it has already threatened to do. (*See, e.g.*, 5 Pet.’s Ex. 51, at p. 994 [“I’m not the kind of judge who sits around and makes empty threats and says, well, this is what's going to happen, and then I don't follow through with it. I have the authority to hold the parties in contempt.”].) While Petitioners have filed an appeal from the 9/2 Writ, the Superior Court’s error is absolutely clear and writ relief is warranted. Indeed, Petitioners ***urgently require*** and respectfully request

this Court’s *immediate intervention*.

The salient facts for purposes of this Petition are straightforward: At its regular meeting on August 25, 2026, the City Council exercised its constitutional and statutory discretion to place three charter amendment initiatives (the “Initiatives”) submitted by Real Parties in Interest Newport Beach Stewardship Association (“NBSA”) and its principal Marshall “Duffy” Duffield (collectively, “Proponents”) on the November 7, 2028 ballot. (7 Pet.’s Ex. 87, at p. 1901–02.) Proponents moved *ex parte* to demand an earlier election date, and on August 27, 2026, Respondent Court granted Proponents’ application and ordered the Initiatives be scheduled for the November 3, 2026 election *just two months later*. (7 Pet.’s Ex. 77, at p. 1804). This order fully resolved all the issues between the parties and granted the exact relief Proponents had sought in their petition for writ of mandate, rendering it final. (*Public Defenders’ Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409 (“*PDO*”) “[A]n order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal, even if the order is not accompanied by a separate formal judgment.”].)

Petitioners immediately appealed the August 27 Order (the “8/27 Order”), initiating Court of Appeal Case No. G067367 (the “First Appeal”). (7 Pet.’s Ex. 77, at pp. 1799–806.) Under Code of Civil Procedure section 916, the 8/27 Order was stayed pending the First Appeal.

Nevertheless, when the Orange County Registrar of Voters (“Registrar”) stated in a letter to the City that it would not place the Initiatives on the ballot because doing so would substantially interfere with the election, Proponents moved *ex parte* for an order requiring the City to conduct its ***own stand-alone election*** (*i.e.*, not part of the consolidated general election conducted through the Registrar) on November 3, 2026 for the Initiatives. (7 Pet.’s Ex. 78, at pp. 1807–16.) On September 2, 2026, over Petitioners’ objections and opposition, Respondent Court granted Proponents’ application without a hearing (and without providing a required statement of decision as requested by the City) and issued Proponents’ requested writ of mandate (the “9/2 Writ”). (9 Pet.’s Ex. 93, at p. 2703.) That same day, Petitioners filed another notice of appeal, initiating Case No. G067387 (the “Second Appeal”). (9 Pet.’s Ex. 95, at p. 2707–13.)

Respondent Court expressly refused to stay the 9/2 Writ,

rejecting Petitioners’ request not to lift the otherwise automatic stay on appeal. (9 Pet.’s Ex. 93, at p. 2703.) Indeed, the 9/2 Writ sets a return date of September 30, 2026, by which date Petitioners must have taken a host of actions required by the Elections Code and demonstrate compliance with the writ. (9 Pet.’s Ex. 93, at p. 2703.) Given Respondent Court’s threats of contempt, Petitioners have no alternative but to seek a writ of mandate.

First, although the 9/2 Writ is subject to a pending appeal, that is not an adequate remedy, and in the absence of a writ of mandate from this Court, Petitioners will unquestionably suffer irreparable harm. (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 387 n.4 [“Delaying review until final judgment—while the trial court attempts to manage the unmanageable—would mean that the parties could not obtain appellate review until after they had paid the great costs which render the damage action inappropriate. Thus, appeal from a final judgment is not a practical remedy.”].) Indeed, Petitioners would be forced to conduct their first City-run stand-alone municipal election in 44 years, an endeavor that would not only cost **millions of taxpayer dollars** and require resources the City informed

Respondent Court it does not have (7 Pet.’s Ex. 86, at pp. 1879–88), but which would be ***flatly illegal*** under the California Constitution, Elections Code, and City Charter, which require the City’s general municipal elections be consolidated with the statewide general elections and run through the Registrar. (Cal. Const., art. XI, § 5(b) [“It shall be competent in all city charters to provide . . . for . . . conduct of city elections[.]”]; Elec. Code, § 10402.5 [“***Any*** state, county, ***municipal***, district, and school district ***election held on a statewide election date*** pursuant to Section 1002 ***shall be consolidated with the statewide election . . .***”] (emph. added; inapplicable exception deleted); 5 Pet.’s Ex. 55, at 1164–67 [City Charter]; *see also*, *City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 910-911 [acknowledging and preserving the authority of charter cities over election timing notwithstanding provisions in the Elections Code to the contrary].) Even if the City could legally carry out its own election (which it cannot) and had the resources to do so (which it does not), any such election would necessarily be ***illegal*** and impugn the City’s election process because numerous mandatory deadlines and requirements imposed by the Elections Code passed long before issuance of the 9/2 Writ. (*See, e.g.*,

People ex rel. Bonta v. City of Huntington Beach (2025) 115 Cal.App.5th 962, 971 (“*City of Huntington Beach*”) [“[p]ermitting [a] City to make its own rules, in violation of the state Elections Code, would upset the state’s delicate balance and could impugn the integrity of the City’s elections”]); *see, also, Am. Fed’n of Lab. v. Eu* (1984) 36 Cal.3d 687, 697 [“The presence of an invalid measure on the ballot steals attention, time and money from the numerous valid propositions on the same ballot.”].)

Enforcement of the 9/2 Writ pending appeal would likewise moot any appeal and preclude this Court from granting effective relief even were Petitioners to prevail (as they expect they will). Indeed, the election would have already taken place and Appellants’ Constitutional and legal rights and powers invaded before the Appeal could be decided, which harm could not be “undone” by a later reversal of the by-then already completed 9/2 Writ.¹

Second, the 9/2 Writ is void. The First Appeal prevented Respondent Court from modifying or altering the 8/27 order,

¹ Given the exigencies involved, Appellants are with this Petition also submitting a Petition for Writ of Supersedeas or other writ relief and for an immediate stay.

because under Code of Civil Procedure section 916, the filing of a notice of appeal removes a trial court's jurisdiction relating to "matters embraced therein or affected thereby" pending resolution of the First Appeal. (Code Civ. Proc., §§ 916(a), 1110b; *Daly*, 1 Cal.5th at p. 1052 [grant of writ of mandate operated as a mandatory injunction and was automatically stayed pending appeal]; *D.H. Williams Constr., Inc. v. Clovis Unified Sch. Dist.* (2007) 146 Cal.App.4th 757, 762 ("*D.H. Williams Constr.*") ["By statute, the filing of a notice of appeal stays a writ of mandate unless otherwise ordered by the trial court or this court."]; *Hayward Area Plan. Assn. v. Superior Court* (1990) 218 Cal.App.3d 53, 55–56 ("*Hayward APA*") [appeal of trial court order granting writ of mandate to strike referendum petition from the ballot was an appealable order that was automatically stayed].) The Superior Court issued the 9/2 Writ which purported to modify the 8/27 Order such that it is **void**. (*Varian Med. Sys., Inc. v. Delfino* (2005) 35 Cal.4th 180, 198 ["In order to preserve the status quo and return the parties to 'the same condition they were before the order was made' [citation], [Code of Civil Procedure] section 916 necessarily renders any subsequent trial court proceedings on matters 'embraced' in or

‘affected’ by the appeal void—and not merely voidable (§ 916).”]
[quoting *Wolcott v. Hudner* (1924) 67 Cal.App. 704, 707].)

The 8/27 Order and 9/2 Writ also violate the separation of powers enshrined in the California Constitution by purporting to overrule the City Council’s exercise of its legislative discretion to select an election date for the Initiatives. (Cal. Const., Art. III, § 3 [“Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.”]; Elec. Code, §§ 9255(c)(1), 1415(b); *Jeffrey v. Superior Court* (2002) 102 Cal.App.4th 1, 6 (“*Jeffrey*”) [“Nothing in [Elections Code sections 9255 or 1415] requires a city council to ‘order’ the election at the *next* available opportunity. Indeed, the very fact that each statute allows *options* in election dates refutes that idea.” (emphasis in original)].) The City Council exercised its discretion to select an election date, and Respondent Court did not have the authority to substitute its judgment for that of the City Council.

Indeed, sections 9255 and 1415 of the Elections Code give the City Council, not a court, the ability to “order” which election a charter amendment initiative may be presented to the City’s electorate for a vote, as prescribed by law. (Elec. Code,

§§ 1415(b), 9255; *see also*, *Jeffrey*, 102 Cal.App.4th at pp. 6–10.) Likewise, the law imposes no obligation upon a council to select some other election date an initiative proponent or even a trial court might prefer. (Elec. Code, §§ 1415(b), 9255; *see also*, *Jeffrey*, 102 Cal.App.4th at pp. 6–10.)

Finally, “[m]andamus will not lie to compel the performance of acts which are void, illegal, contrary to public policy, or which tend to aid in an unlawful purpose.” (*Plum v. City of Healdsburg* (1965) 237 Cal.App.2d 308, 317 (“*Plum*”).) The 9/2 Writ purports to require the City to run its own stand-alone election—separate from the City’s legally established general municipal election that ***must*** be consolidated with the statewide general election—in violation of the City Charter and Elections Code sections 1415 and 9255, which as discussed herein do not allow a City Council to hold a special election over charter amendment initiatives.

Petitioners respectfully request that this Court issue a peremptory writ in the first instance ordering Respondent Court to withdraw the Writ and enter a new and different order denying the Petition. (Code Civ. Proc., § 1088.) Such a peremptory writ is absolutely proper here: Petitioners’

“entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue” as “there has been clear error under well-settled principles of law and undisputed facts.” (*Ng v. Superior Court* (1992) 4 Cal.4th 29, 35.) In addition, ***given the impending November 3, 2026 Election deadline set by Respondent Court, as well as the September 30, 2026 return date for the 9/2 Writ and Elections Code deadlines looming in the next days and weeks, Petitioners additionally respectfully request that this Court issue an immediate stay of the 9/2 Writ until this Court has time to consider these important issues***, whether pursuant to this Petition or the pending appeal, or in connection with the concurrently filed petition for writ of supersedeas. (Code Civ. Proc., § 923; Cal. Rules of Court, rule 8.116.)

**AN IMMEDIATE STAY AND REVIEW OF THE WRIT IS
NECESSARY**

The 9/2 Writ requires the City Council to hold a standalone election for the first time in 44 years by November 3, 2026, with an initial return date of September 30, 2026. (7 Pet.’s Ex. 86, at pp. 1881.) A stay is warranted to prevent Respondent Court from

forcing the City Council to violate the Elections Code and from compelling legislative action in violation of the California constitution. Indeed, Respondent Court has threatened to hold the Petitioners, including the City Council, in contempt for refusing to follow Respondent Court's order.

Absent a stay of the 9/2 Writ, the City Council and City would be required to take immediate steps to comply with the 9/2 Writ in order to meet these timelines, despite the significant violations of the Elections Code and resulting harm to the public as well as the harm to the fundamental constitutional separation of powers which compliance with the 9/2 Writ necessarily entails. Once the City and City Council are forced to comply, there is no undoing the resulting harm, even should the Court later determine Respondent Court issued the Writ in error.

There is no reason the Initiatives must be placed on the ballot in November 2026. The California constitution and the Elections Code grant the City Council the discretion to determine whether and when the Initiatives will be placed on a ballot, not Respondent Court or the Proponents. (*See Jeffrey*, 102 Cal.App.4th at pp. 4, 6 [“It is the relevant legislative body, here the city council, and not the court, which ‘orders’ municipal

elections when voters submit initiatives.”)].) The City Council chose November 2028, and Appellants respectfully request this Court prevent the City Council’s proper exercise of its discretion from being illegally trampled upon.

WHY WRIT RELIEF IS PROPER

This Petition seeks review of the 9/2 Writ which commands the City Council to hold a standalone election in violation of the Elections Code. The 9/2 Writ requires immediate compliance, sets an initial return date of September 30, 2026, and requires an election be held on November 3, 2026. The 9/2 Writ demands immediate compliance, and given these strict deadlines with the looming threat of contempt, an appeal is not an adequate form of relief. (*See, Baeza v. Superior Court* (2011) 201 Cal.App.4th 1214, 1221 [writ review appropriate where party seeking writ lacks adequate means to attain relief, such as a direct appeal].)

Writ relief is necessary, because without writ relief, Petitioners will be placed in the untenable position of having to take actions which contravene California law (and more specifically, numerous provisions of the Elections Code); the City Council’s constitutional power to choose whether to pass a given

resolution will be violated; and the City Council’s discretion to choose the date when the charter amendments will be put to the voters will be eliminated.

This Court has the power to issue a writ of mandate when, *inter alia*, “the issues presented are of great public importance and must be resolved promptly.” (*Hornung v. Superior Court* (2000) 81 Cal.App.4th 1095, 1098 [quoting *Anderson v. Superior Court* (1989) 213 Cal.App.3d 1321, 1328] [internal quotation marks omitted].) A ruling requiring that Petitioners contravene multiple provisions of the Elections Code within the next days and weeks and which violates the constitutional separation of powers meets both requirements. (See, e.g., *City of Huntington Beach*, 115 Cal.App.5th at p. 971 [“[p]ermitting [a] City to make its own rules, in violation of the state Elections Code, would upset the state’s delicate balance and could impugn the integrity of the City’s elections”]; *County of San Diego v. State* (2008) 164 Cal.App.4th 580, 593–597 (“*Cnty. of San Diego*”) [“The State contends the court abused its discretion in issuing the writ of mandate because the relief the court ordered violates the separation of powers doctrine. We agree.”].)

Respondent Court ordered the Initiatives be placed on the

November 2026 ballot, despite the fact that the City Council made express findings as to why it was choosing the November 2028 election date. Sections 9255 and 1415 of the Elections Code give the City Council, not a court, the ability to “order” which election a charter amendment initiative may be presented to the City’s electorate for a vote, as prescribed by law: (a) the next regularly scheduled general municipal election pursuant to Section 1301 (which, for the City, coincides with the statewide general election), (b) at any established statewide general or (c) any statewide primary election pursuant to Section 1200 or 1201, ***occurring not less than 88 days after the date of the order of election.*** (Elec. Code, §§ 1415(b), 9255; *see also, Jeffrey*, 102 Cal.App.4th at pp. 6–10.) Indeed, Respondent Court may not tell the City Council how to legislate: “[A] judicially compelled enactment of legislation is not an incidental overlap; it is the very exercise of legislative power itself,” and a violation of the constitutional separation of powers. (*Cnty. of San Diego*, 164 Cal.App.4th at p. 594.) The City Council’s choice of which ballot the Initiatives should be placed on, after weighing the pros and cons of the options, is a legislative act that Respondent Court cannot overrule. (*Michael Leslie Prods., Inc. v. City of Los*

Angeles (2012) 207 Cal.App.4th 1011, 1026 [“It is a legislative function to consider data, opinion, and arguments, and then to exercise discretion guided by considerations of the public welfare.”].)

Moreover, these two statutes do not allow City Councils to hold special elections over charter amendment petitions. In fact, the Legislature altered both sections a few years ago with the express intent of preventing City Councils from placing city charter amendment initiatives on special elections ballots. (7 Pet.’s Ex. 75, at pp. 1784–92 [describing how the statute removed the ability to create special elections for city charter amendment petitions because they failed to ensure adequate voter turnout].)

Irreparable injury would ensue without writ relief. ***The Writ requires immediate compliance.*** (6 Pet.’s Ex. 79, at p. 1567.) If the Writ is not stayed pending appeal, appellate review is inadequate, because Petitioners will be forced to take steps to run a standalone election or be held in contempt. (*Pabla v. Superior Court* (2023) Cal.App.5th 599, 603 [“[W]rit relief is warranted, as the delays inherent in seeking appellate review render it an inadequate method to address petitioner’s concerns.”].)

Respondent Court has purported to order the City to hold its first standalone special election in 44 years. To do so would be illegal. This is the type of extraordinary situation that warrants writ relief, and an immediate stay in the interim to prevent this unlawful order from being enforced while this Court conducts its review.

**PETITION FOR WRIT OF MANDATE, PROHIBITION, OR
OTHER APPROPRIATE RELIEF**

I. PETITIONERS' BENEFICIAL INTEREST

1. Petitioner City Of Newport Beach (the "City") is the plaintiff and real party in interest in the action pending in the Superior Court of the State of California for the County of Orange, entitled *City of Newport Beach, et al. v. Newport Beach Stewardship Association, et al.*, Orange County Superior Court Case No. 30-2026-01559183-CU-JR-NJC (the "Action").

2. Petitioner Aaron Harp is a plaintiff and cross-respondent in the Action.

3. Petitioner Lena Shumway is a cross-respondent in the Action.

4. Petitioner Newport Beach City Council (the "City

Council”) is a real party in interest in the Action.

5. Respondent is the Superior Court of the State of California for the County of Orange (“Respondent Court”), Department N14, Honorable Julianne Bancroft, which issued the Writ that is the subject of this Petition.

6. Real Parties In Interest Newport Beach Stewardship Association (“NBSA”) and Marshall “Duffy” Duffield (“Duffield,” and together with NBSA, the “Proponents”) are the defendants and cross-petitioners in the Action.

II. AUTHENTICITY OF EXHIBITS

7. All exhibits accompanying this Petition are true and correct copies of documents on file with Respondent Court. The exhibits are incorporated by reference as though fully set forth in this Petition. The exhibits are paginated consecutively, and exhibit page references are to this consecutive pagination.

III. TIMELINESS OF PETITION

8. Writ petitions under section 1085 are timely if filed within the 60-day period applicable to appeals. (*See River’s Side at Washington Square Homeowners Ass’n v. Superior Court* (2023) 88 Cal.App.5th 1209, 1224.) The Writ sought to be reviewed was issued on September 2, 2026, and this Petition is

filed on September 8, 2026. The Petition is, therefore, timely.

IV. JURISDICTION AND STANDING

9. This Court has jurisdiction because the challenged Writ was issued by the Superior Court of Orange County. (Cal. Const., Art. VI, § 11(a); Gov. Code § 69100(d).)

10. Petitioners have standing to challenge the Writ because Petitioners are the petitioners below, and the Writ to be reviewed requires Petitioners to hold a standalone election in contravention of Respondent Court’s jurisdiction to issue mandate and in violation of the Elections Code.

V. FACTUAL AND PROCEDURAL BACKGROUND

11. This Petition involves whether the City must, or even can, hold a “standalone” election for three initiatives on November 3, 2026, which would not be part of the November 3, 2026 general municipal election for the City consolidated with the statewide general election administered by the Orange County Registrar of Voters (the “Registrar”). Despite a lengthy explanation from the Clerk about why it was impossible for the City to develop an entire elections process in roughly 60 days, Respondent Court—on an ex parte basis, without holding a hearing, and without making any factual findings despite a

request for a statement of decision—ordered the City to hold that standalone election.

12. This case arose from a dispute about whether three initiatives (the “Initiatives”) had been properly published before Proponents had collected signatures. Eventually, the dispute in the case became about whether the Court had the discretion to order the City Council to place the Initiatives on the November 2023 ballot, culminating in an order requiring the City council to hold a standalone election.

A. Proponents sought an order placing the Initiatives on the November 3, 2026 ballot.

13. The dispute in this case started when the City brought a single cause of action seeking declaratory relief as to whether one of the Initiatives violated the single subject rule. (*See generally* 7 Pet.’s Ex. 87, at pp. 1905–15.)

14. Proponents brought a cross-petition for writ of mandate, requesting the Court issue a writ of mandate compelling the City to provide a ballot title and summary for that same initiative. (7 Pet.’s Ex. 87, at pp. 1961–1967.) Respondent Court first ordered that the City provide a ballot title and summary, which it did the day after the Court’s ruling, and

eventually ruled that the Initiative did not violate the single subject rule. (7 Pet.'s Ex. 87, at pp. 2029–31.)

15. The City warned Proponents for a month that they had published in the wrong newspaper for purposes of the Elections Code requirement of publication in an adjudicated newspaper of general circulation for the City, but Proponents ignored the City. (7 Pet.'s Ex. 87, at p. 1898.) Instead, while this litigation was ongoing, Proponents were working on gathering signatures to support the Initiatives. (7 Pet.'s Ex. 87, at p. 1898.)

16. Proponents submitted signatures on July 7, 2026, which the City rejected on July 8, 2026 (consistent with the City's unheeded warnings about Proponents' potentially improper newspaper publication), and Proponents filed a First Amended Cross-Petition on July 8, 2026. (7 Pet.'s Ex. 87, at pp. 2034–41.) This amended petition added an additional cause of action, seeking a writ of mandate under Code of Civil Procedure section 1085 to compel the City to process the petitions for all three Initiatives and take all steps to place them on the November 2026 ballot. (*See* 7 Pet.'s Ex. 87, at p. 2040.)

17. A week later, Proponents moved *ex parte* for an order directing the City to transmit the signatures to the Registrar and

requiring Petitioners to take all necessary steps to place the Initiatives on the November 2026 ballot. (3 Pet.'s Ex. 13, at pp. 278–94.) Petitioners opposed, explaining that the required notices had not been published in a newspaper of general circulation for Newport Beach, rendering the signatures void under *Ibarra v. City of Carson* (1989) 214 Cal.App.3d 90, 99. (1 Pet.'s Ex. 4, at pp. 33–39.)

18. Respondent Court granted the *ex parte* application in part and ordered that the City transmit the signatures to the Registrar, which the City did the same day. (5 Pet.'s Ex. 54, at p. 1039; 7 Pet.'s Ex. 87, at pp. 2052–53.)

19. After the July 17, 2026 hearing, at the next status conference, on August 12, 2026, Respondent Court explained that if the Registrar found the signatures acceptable, the Petitioners were ordered to take the steps necessary to place the Initiatives on the November 2026 ballot and threatened contempt for non-compliance. (5 Pet.'s Ex. 51, at pp. 993–94.)

20. It was not until August 17, 2026, that the Registrar certified that the Initiatives had received the required minimum signatures to be placed on a ballot. (7 Pet.'s Ex. 87, at pp. 1900, 2056–75.)

B. Respondent Court orders the City Council to place the Initiatives on the ballot.

21. The parties filed their respective papers in support of the upcoming hearing on the merits regarding the improper publication of the Initiatives. The Proponents specifically sought an order compelling Petitioners to place the Initiatives on the upcoming November 2026 ballot. (4 Pet.’s Ex. 41, at pp. 683–701.) Petitioners opposed, arguing reasons for why Proponents had no right to have the initiatives on the November 2026 ballot, including several publication issues and that an order requiring the Initiatives be placed on the November 2026 ballot would violate the separation of powers under the California constitution as addressed in *Jeffrey v. Superior Court, supra*, 102 Cal.App.4th 1. (5 Pet.’s Ex. 53, at pp. 1012–1032.)

22. The matter proceeded to hearing on August 19, 2026, where Respondent Court found that Proponents had “substantially” complied with the Elections Code’s publication requirements. (7 Pet.’s Ex. 87, at pp. 2081–84; *see, generally* 6 Pet.’s Ex. 68, at pp. 1281–1420.)

23. Respondent Court ordered the City Council to exercise its discretion to decide which election ballot to place the

Initiatives on, and ordered that if the City Council any election other than November 2026, the City had to explain why it made that choice. (7 Pet.'s Ex. 87, at pp. 2081–84; *see, generally* Pet.'s 6 Ex. 68, at pp. 1281–1420.) At the same time, the Court determined that the City could not consider either the 88-day minimum time period to place an initiative on the ballot required under Elections Code sections 1415 and 9255 or the 10-day public examination period in making its ballot choice. (7 Pet.'s Ex. 87, at pp. 2081–84.)

C. Given Respondent Court's threats of contempt, the City Council exercised its discretion to place the matters on the November 2028 ballot.

24. Petitioners then immediately sought writ relief from this Court, arguing that the trial court was placing barriers on the City Council's exercise of its discretion to force it to choose the November 2026 ballot over the November 2028 ballot. This Court denied that Petition. (6 Pet.'s Ex. 69, at pp. 1421–26.)

25. Given Respondent Court's threats of contempt and the denial of its Petition to this Court, the City Council held a duly noticed regular public meeting to vote on which ballot to place the Initiatives on. (7 Pet.'s Ex. 87, at pp. 1901–02.) Prior to

the meeting, the City Clerk, as the City's elections official, performed a detailed analysis explaining that the Initiatives may be placed, pursuant to Elections Code sections 1415 and 9255, on the November 2028, March 2028, or November 2026 ballot. The City Clerk recommended that the Initiatives be placed on the November 2028 ballot because:

Charter amendments have significant and long-lasting effects on the structure, operation, transparency, and accountability of City government;

Statewide general elections traditionally attract broader voter participation than primary elections, thereby allowing a larger and more representative cross-section of the City's electorate to participate in deciding fundamental questions concerning the City's Charter and governance of the City;

The November 7, 2028, election will be both a statewide general election and the City's regularly scheduled General Municipal Election under Section 1000 of the Newport Beach City Charter, at which City voters will already be considering the election of their municipal representatives;

Submitting the Initiatives at the City's General Municipal Election will place the proposed structural changes to City government before voters in the election most directly associated with municipal governance and the selection of City Council Members;

The Lifetime City Council Term Limit Initiative and the District-Only Voting Initiative directly concern the qualifications, tenure, and manner of electing City Council Members, making the City's regularly scheduled General Municipal Election an especially appropriate election at which to consider those

measures;

Selecting November 7, 2028, General Municipal Election will provide sufficient time for the preparation and public review of accurate ballot questions, impartial analyses, arguments for and against, rebuttal arguments, and other voter information concerning the Initiatives; and

Selecting the City's regularly scheduled General Municipal Election will avoid the additional administrative complexity and potential expense associated with placing municipal Charter measures on a statewide primary ballot separate from the City's regular municipal election.

(8 Pet.'s Ex. 88, at pp. 2347–2352.)

26. The City Council considered the staff report and its supporting documents, heard public comments, and exercised its discretion by voting to order the three Initiatives to be placed on the November 2028 consolidated general municipal election ballot. (7 Pet.'s Ex. 87, at p. 1901–02.) The City Council also adopted Resolution No. 2026-73, which set forth the City Council's rationale for the November 2028 ballot, summarized as follows:

- The Registrar was not a party to the litigation so the Court's order could not compel it to accept late filings or alter the already-in-place schedule;
- The Initiatives propose substantial amendments to the

City Charter, nearly doubling its length, so additional time beyond November 2026 will allow voters, community organizations, public officials, and other interested people to examine the Initiatives separately, evaluate their legal and operational consequences, and participate in a meaningful public discussion before voting and ensure sufficient time for the preparation and public review of accurate ballot questions, impartial analyses, arguments and rebuttal arguments, and other voter information concerning the Initiatives;

- The Initiatives propose significant changes to public access to the City government, oversight, enforcement responsibilities, and administration of City operations, warranting sufficient time for careful legal analysis and informed public consideration as well as care to ensure voters understand the purpose, operation, and consequences of each measure;
- The Initiatives' effects on the structure operation, transparency, and accountability of the City Government, should be considered at a statewide general election as that is expected to provide the

broadest practical participation by the voters;

- The November 2028 ballot will be both a statewide general election and the City’s regularly scheduled General Municipal Election where voters will already be considering the election of their municipal representatives, so using this ballot will place the proposed structural changes to City government before voters in the election most directly associated with municipal governance and the selection of the City Council, especially since some of the Initiatives directly concern the qualifications, tenure, and manner of electing City Council Members; and
- The November 2028 ballot will avoid the additional administrative complexity and potential expense associated with placing municipal Charter measures on a statewide primary ballot separate from the City’s regular municipal election and promote broad voter participation, informed decision-making, orderly election administration, and public confidence in the process.

(8 Pet.’s Ex. 88, at pp. 2499–2502.)

27. In sum, the Resolution concluded: “[T]he City

Council's selection of November 7, 2028 is based on the nature and importance of the proposed Charter amendments, the anticipated breadth of voter participation, the relationship of the measures to municipal governance, and the need for adequate public review and election preparation, and is not intended to defeat, obstruct, or indefinitely postpone the Initiatives." (8 Pet.'s Ex. 88, at p. 2501.)

D. Respondent Court ruled that the City Council Abused its discretion in placing the matter on the November 2028 ballot.

28. The next day, Proponents asked Respondent Court to order the City Council to place the Initiatives on the November 2026 ballot. (6 Pet.'s Ex. 70, at pp.1427–38.) They argued that *Jeffrey* was not controlling because of subsequent legislative history and that the City Council had abused its discretion in placing the measures on the November 2028 ballot. (6 Pet.'s Ex. 70, at pp.1427–38.) Specifically, they argued the City had taken contrary positions by requesting emergency relief from this Court yet had postponed the ballot measure by two years, that only one City Council member spoke at the hearing, the justifications for placing a measure at a later ballot "fail to persuade", and the public who spoke at the City counsel meeting were in favor of

placing the initiatives on the November 2026 ballot. (6 Pet.’s Ex. 70, at pp.1427–38.)

29. The City opposed, arguing that under [sections 1415\(b\) and 9255\(c\)\(1\)](#), the City Council had discretion to choose between (1) the next regularly scheduled general municipal election; or (2) any established statewide election; or (3) any established statewide primary election—as long as the selected date occurs at least 88 days after the date of the order of election. (6 Pet.’s Ex. 74, at pp. 1733–42.) The City also explained that any amendments to section 1415 since the *Jeffrey* case—or, for that matter, any changes to 9255—only removed the ability of the City Council to submit Initiatives to voters through a special election, but still maintained the City’s discretion of which ballot the Initiatives should go on and did not require the City Council place the Initiatives on the November 2026 ballot. (6 Pet.’s Ex. 74, at pp. 1733–42; 7 Pet.’s Ex. 75 at pp. 1784–92.)

30. On August 27, 2026, the Court, without hearing oral argument from Petitioners, found the City Council abused its discretion and granted the ex parte, ordering the City to take necessary steps to place the measure on the November 2026 ballot:

The Court finds that the Newport Beach City Council Resolution No. 2026-73, which was adopted by the City of Newport Beach at its May 25, 2026 Regular City Council Meeting, and a copy of which was attached as Exhibit A to the declaration of William Ihrke filed 08/26/2026 (ROA #284) expresses the City's Council's exercise of its discretion. Having reviewed that resolution, and in consideration of the City parties' filings, contentions, arguments, and stated positions throughout this litigation, as well as the Court's previous orders, the Court finds that the City Council abused its discretion by placing the three initiatives on the November 7, 2028 ballot. **Therefore, this Court has the authority in this mandamus proceeding to order the City Council to immediately take the necessary steps to place these three initiatives on the November 3, 2026 ballot, including but not limited to forwarding all necessary materials to the Orange County Registrar of Voters.**

(7 Pet.'s Ex. 77, at p. 1804 [emphasis added].)

31. The City filed a notice of appeal later that day. (7

Pet.'s Ex. 77, at pp. 1799–806.)

E. The Registrar declines to place the Three Initiatives on the consolidated general municipal election ballot because doing so would violate the Elections Code.

32. Cognizant of the request for sanctions and the

Court's reservation of that issue, the City transmitted the materials for the three Initiatives to the Registrar alongside a letter explaining that it was being compelled to transmit the materials. (8 Pet.'s Ex. 88, at pp. 2544–46.)

33. The next day, the Registrar declined to place the Initiatives on the November 2026 ballot, finding it would be illegal to do so and would substantially interfere with the election:

[E]ven ignoring the legal restrictions against accepting a late request for consolidation, adding the City measures discussed above to the ballot at this late stage of election preparation would substantially interfere with the conduct of the election. For example, the materials to be included in the Voter Information Guide would total approximately fifty-three (53) new pages. Formatting and proofing those pages for printing in the County Voter Information Guide would at minimum take 10 to 13 business days. Translation, proofing and formatting of the measures to comply with the Voting Rights Act would require an additional 13 days. Given that ballots and Voter Information Guide pages for military and overseas voters will be sent to print by the end of next week, it would not be possible to perform such tasks without negatively impacting the distribution of such materials. Thus, adding the City measures would substantially interfere with the printing and distribution of election materials and disrupt the Registrar's ability to conduct the November 3, 2026, statewide election.

(9 Pet.'s Ex. 88, at pp. 2681–82.)

F. The trial court orders the City to hold a standalone election on November 3, 2026.

34. The next day, Proponents moved ex parte for a final writ of mandate asking Respondent Court to enter a proposed writ, including the language: “Take all steps necessary to hold a

general municipal election for the Initiatives on November 3, 2026, whether run directly by the City or through a consolidated election process.” (7 Pet.’s Ex. 78, 83, at pp. 1807–16, 1854.) They also sought for the Court to lift the stay of enforcement of this writ pending any appeal under Code of Civil Procedure section 1110b. Proponents offered no argument or explanation for why the City had the authority to conduct a standalone election on the Initiatives (7 Pet.’s Ex. 78, at pp. 1807–16.)²

35. The City opposed, arguing that Proponents (1) could not seek brand new relief for the first time on an ex parte basis; (2) Respondent Court lacked jurisdiction because the August 27, 2026 Order was final, meaning the case had been stayed by the notice of appeal filed the same day; and (3) Proponents had failed to meet their burden of showing an entitlement to lift the

² As discussed herein, Section 1000 of the City Charter provides for only one general municipal election, which must be consolidated with the statewide general election. (5 Pet.’s Ex. 55, at p. 1166 [City Charter, § 1000] [“Commencing with the election of November 2, 1982, General Municipal elections for the election of officers and for such other purposes as the City Council may prescribe shall be held in the City on the first Tuesday after the First Monday of November in each even-numbered year, and consolidated with the Statewide general election in the manner provided in the California Elections Code.”].)

appellate stay under section 1110b. (7 Pet.'s Ex. 85, at pp. 1860–78.)

36. The opposition also included a lengthy declaration from the Clerk who explained the extreme nature of an order requiring the City to hold a stand alone election for the first time in 44 years. (7 Pet.'s Ex. 86, at pp. 1879–88.) She explained that if the Registrar, who has “trained election professionals, election-management systems, voter registration information, established printing and mailing processes, voting and ballot-processing equipment, facilities, polling/vote-center locations, trained personnel, established vendors, security procedures, and election administration experience,” could not add the Initiatives to the ballot, the City, with none of those resources, will “face insurmountable obstacles in attempting to establish and conduct an entirely separate election from the ground up.” (7 Pet.'s Ex. 86, at pp. 1880–81.)

37. She also emphasized that the City has not conducted a stand alone election in 44 years; the City lacked the staff to administer the election; there would almost certainly be no elections consultants available; the City did not have access to the required polling places; the City would be unable to recruit

and train poll workers; the City lacked time to ensure ballot preparation, printing, and mailing; the City would not have time to do vote-by-mail and ballot processing; the City could not obtain the necessary election equipment and technology; and it would violate the City's Charter and its requirement that all elections be consolidated. (7 Pet.'s Ex. 86, at pp. 1879–88.)

38. Nevertheless, on September 2, 2026, Respondent Court granted Proponent's ex parte application, and ordered the City was required to "Take all steps necessary to hold a general municipal election for the Initiatives on November 3, 2026, whether run directly by the City or through a consolidated election process." (9 Pet.'s Ex. 93, at p. 2703.)

39. Respondent Court also did not hold a hearing nor make any factual findings in support of her decision to order the City to hold a standalone election.

40. Despite that the City filed a notice of appeal the same day as this order, (9 Pet.'s Ex. 95, at pp. 2707–11.), the order preemptively lifted the automatic stay under Code of Civil Procedure section 1110b. (9 Pet.'s Ex. 95, at p. 2711.) As such, the Order demands immediate compliance.

41. This timely Petition followed.

PRAYER

Petitioner City of Newport Beach prays that this Court:

1. Pending consideration of this Petition, issue an immediate temporary stay of the September 2, 2026 Writ and any and all actions by Respondent Court to enforce that Writ;

2. Issue a peremptory writ of mandate and/or prohibition or other extraordinary relief in the first instance commanding respondent, the Superior Court of Orange County in *City of Newport Beach et al. v. Newport Beach Stewardship Association, et al.* (Orange County Superior Court Case No. 30-2026-01559183-CU-JR-NJC), to set aside and vacate the Writ and enter a new order denying the Proponents' September 1, 2026 *ex parte* application; or,

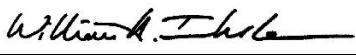
3. Issue an alternative writ of mandate and/or prohibition or other extraordinary relief in the first instance commanding respondent, the Superior Court of Orange County in *City of Newport Beach et al. v. Newport Beach Stewardship Association, et al.* (Orange County Superior Court Case No. 30-2026-01559183-CU-JR-NJC), to take the actions stated in Paragraph 2 above or show cause why it should not be compelled to do so, and thereafter, if necessary, issue a peremptory writ of

mandate commanding the same;

4. Award Petitioners their costs;
5. Grant such other relief as may be just and proper.

Dated: September 8, 2026

RUTAN & TUCKER, LLP
WILLIAM H. IHRKE
JENNIFER J. FARRELL
GERARD M. MOONEY
KYLE J. BERRY

By: 
William H. Ihrke
Attorneys for Petitioners
CITY OF NEWPORT BEACH,
AARON HARP, LENA
SHUMWAY, and NEWPORT
BEACH CITY COUNCIL

VERIFICATION

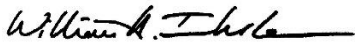
I, William H. Ihrke, declare as follows:

I am one of the attorneys for Petitioners herein. I have read the foregoing Petition and know its contents. The facts alleged in the Petition are within my own knowledge, and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, rather than Petitioners, verify this Petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on September 8, 2026, in Irvine, California.

Dated: September 8, 2026

RUTAN & TUCKER, LLP
WILLIAM H. IHRKE
JENNIFER J. FARRELL
GERARD M. MOONEY
KYLE J. BERRY

By: 
William H. Ihrke
Attorneys for Petitioners
CITY OF NEWPORT BEACH,
AARON HARP, LENA
SHUMWAY, and NEWPORT
BEACH CITY COUNCIL

MEMORANDUM OF POINTS AND AUTHORITIES

I. RESPONDENT COURT'S ORDER IS VOID BECAUSE IT HAD NO JURISDICTION TO ENFORCE OR MODIFY AN ORDER ON APPEAL.

Respondent Court's September 2 Writ was void for purporting to enforce or alter an order on appeal. Respondent Court's August 27, 2026 order was final, and the City filed a notice of appeal that same day. The filing of the notice of appeal the same day transferred jurisdiction from Respondent Court to this Court under Code of Civil Procedure section 916(a). Respondent Court was therefore without jurisdiction to issue the Writ on September 2, 2026 that purported to enforce or modify an order on appeal. (*Varian Med. Sys., Inc. v. Delfino* (2005) 35 Cal.4th 180, 189 ("*Varian*") ["The [automatic stay] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it." [alteration in original] [quotations omitted]].) "Where, as here, the procedural facts are undisputed, the question whether the trial court exceeded its jurisdiction is a legal question subject to de novo review." (*Lew-Williams v. Petrosian* (2024) 101 Cal.App.5th 97, 106.)

A. The August 27, 2026 Order was final because it granted the exact relief sought in Proponents' Cross-Petition and demanded immediate compliance.

Respondent Court's August 27, 2026 Order was final because it granted the exact relief requested by Proponents, and it only left the issue of compliance. "[A]n order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal, even if the order is not accompanied by a separate formal judgment." (*Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409 ("*PDO*"); *Save Mount Diablo v. Contra Costa Cnty.* (2015) 240 Cal.App.4th 1368, 1376 n.5; *see also* Cal. Rules of Court 8,.104(b)(2).)

"[W]here no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory." (*PDO, supra*, 106 Cal.App.4th at p. 1410.) So, when an order grants the exact relief requested by a petition, the rights of the parties put at issue by the pleadings have been

adjudicated, and the order is final and appealable. (*Ibid.*)

Respondent Court’s August 27, 2026 order resolved the issues between the parties and left only the issue of compliance. In its First Amended Petition, Proponents’ second³ cause of action alleged that “The law requires the City to process the petitions for the Initiatives, including counting the supporting signatures, and taking steps to place the Initiatives on the November ballot.” (7 Pet.’s Ex. 87, at p. 2040.) The Prayer for Relief requested “That the Court issue a writ of mandate directing the City to process the petitions for the Initiatives, including taking immediate and prompt action to count signatures, providing certification of the same to the Court within 10 days, promptly issuing ballot questions, and taking all other actions needed to place the Initiatives on the November 2026 ballot.” (7 Pet.’s Ex. 87, at p. 2040.) Proponents’ August 26, 2026 ex parte application then asked for that exact same relief: for an order requiring the City to take all necessary steps to place the Initiatives on the November ballot. (6 Pet.’s Ex. 70, at pp.1427–38.)

³ The first cause of action had already been resolved by orders issued before Proponents filed their Amended Cross Petition. (7 Pet.’s Ex. 87, at pp. 2029–31.)

Respondent Court granted that exact relief on August 27, 2026: “[T]his Court has the authority in this mandamus proceeding to order the City Council to immediately take the necessary steps to place these three initiatives on the November 3, 2026 ballot, including but not limited to forwarding all necessary materials to the Orange County Registrar of Voters.” (7 Pet.’s Ex. 77, at p. 1804.)

Because the August 27, 2026 Order granted the relief requested by Proponents First Amended Petition, the rights of the parties were adjudicated, and that Order was final.⁴

B. The August 27 Notice of Appeal invoked this Court’s jurisdiction, preventing Respondent Court from modifying that order.

The City filed its notice of appeal later that day, on August 27, 2026, which automatically stayed the case and transferred jurisdiction to the Court of Appeal. (7 Pet.’s Ex. 77, at pp. 1799–

⁴ Proponents have argued that this position is inconsistent with the City’s prior Petitions for Writ of Mandate to this Court. However, the order sought to be reviewed in those cases was not final because it contemplated the entry of a final judgment, whereas the August 27, 2026 order did not. (See 7 Pet.’s Ex. 77, at p. 1780–803 [August 19, 2026 order, directing “Counsel for NBSA shall prepare the necessary orders and/or writs for each case separately”]; *Luo v. Volokh* (2024) 102 Cal.App.5th 1312, 1326 [“A minute order that directs the preparation of a formal written order is not itself appealable.”].)

806; *Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1052 [grant of writ of mandate operated as a mandatory injunction and was automatically stayed pending appeal]; *see also*, Cal. Code Civ. Proc. §§ 904, 904.1(a)(1), 916; *Hayward, supra*, 218 Cal.App.3d at pp. 55–56 [appeal of trial court order granting writ of mandate to strike referendum petition from the ballot was an appealable order that was automatically stayed]; *D.H. Williams Constr., Inc. v. Clovis Unified Sch. Dist.* (2007) 146 Cal.App.4th 757, 762 [“By statute, the filing of a notice of appeal stays a writ of mandate unless otherwise ordered by the trial court or this court.”].)

This stay did two things: it prevented Respondent Court from modifying the order on appeal and from taking action to enforce its rulings. (*Varian, supra*, 35 Cal.4th at p. 189.) “The purpose of the automatic stay provision of section 916, subdivision (a) ‘is to protect the appellate court’s jurisdiction by preserving the status quo until the appeal is decided. The [automatic stay] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.’” (*Ibid.* [alteration in original] [quoting *Elsea v. Saberi* (1992) 4

Cal.App.4th 625, 629].)

Respondent Court was without subject matter jurisdiction to enforce or modify an order on appeal, so its November 2 Order was void and exceeded its jurisdiction. “In order to preserve the status quo and return the parties to ‘the same condition they were before the order was made’ section 916 necessarily renders any subsequent trial court proceedings on matters ‘embraced’ in or ‘affected’ by the appeal void—and not merely voidable.”

(*Varian, supra*, 35 Cal. 4th at p. 198 [quoting *Wolcott v. Hudner, supra*, 67 Cal.App. at p. 707; Cal. Code Civ. Proc. § 916].)

“[W]hether a matter is ‘embraced’ in or ‘affected’ by a judgment [or order] within the meaning of [section 916] depends on whether postjudgment [or postorder] proceedings on the matter would have any effect on the ‘effectiveness’ of the appeal.”

(*Varian, supra*, 35 Cal. 4th at p. 189 [quotations omitted] [alterations in original].) “If so, the proceedings are stayed; if not, the proceedings are permitted.” (*Ibid.*)

An unpermitted proceeding is one where the trial court directly or indirectly seeks to “enforce, vacate or modify [the] appealed judgment or order.” (*Id.* at p. 189 n.6 [citing *Socialist Workers etc. Committee v. Brown* (1975) 53 Cal.App.3d 879, 890–

891 [holding that an appeal precludes the trial court from issuing a subsequent order that effectively enforces the appealed order]; *Dallman v. Dallman* (1958) 164 Cal.App.2d 815, 817–818 [holding that an appeal precludes the trial court from modifying the appealed order]; *Agnew v. Superior Court* (1953) 118 Cal.App.2d 230, 234 [holding that an appeal precludes the trial court from enforcing the appealed order]].)

Respondent Court’s September 2, 2026 Writ of Mandate (“September 2 Writ”) seeks to enforce and modify the order on appeal by expanding the relief granted to Proponents. Specifically, the September 2 Writ expanded relief to require the City to conduct a standalone election—relief that had never been addressed by the parties or the Court, but was requested by Proponents for the first time in an ex parte application filed after the notice of appeal was filed. (*See* 7 Pet.’s Ex. 78, at pp. 1807–16)

Respondent Court’s modification unquestionably affects the appeal. Proponents’ Cross-Petition sought an order requiring the City Council to take all actions necessary to place the Initiatives on the November 3, 2026 general municipal election ballot by transmitting the required materials to the registrar, which the

City said it could not do given the timelines in the Elections Code. (See 7 Pet.’s Ex. 87, at p. 2040.) When the Registrar sent a letter *also* stating it would not add the three Initiatives to the general municipal election ballot because that would violate the Elections Code, (9 Pet.’s Ex. 88, at pp. 2681–82), the trial court modified its order to say that the City must now “[t]ake all steps necessary to hold a general municipal election for the Initiatives on November 3, 2026, whether run directly by the City or through a consolidated election process.” (9 Pet.’s Ex. 95, at p. 2711.) Respondent Court lacked jurisdiction to order new relief after the notice of appeal had been filed.

C. Lifting a stay under section 1110b did not allow the court to modify its ruling, only enforce the order.

Respondent Court purported to lift the stay from appeal of the September 2 Writ, *not* the stay from the already-pending appeal filed on August 27, 2026. Even were one to read the order as directed to the August 27, 2026 appeal, Respondent Court still exceeded its jurisdiction.⁵ As explained in the concurrently filed

⁵ Respondent Court’s application of section 1110b is addressed more fully in the concurrently filed Petition for Writ of Supersedeas.

Petition for Writ of Supersedeas, that order was improper because Respondent Court erred when it found the requirements of section 1110b were met and erred when it failed to make any factual findings despite a request for a statement of decision.

Merits of that ruling aside, even if the trial court had properly lifted the stay, that still did not give Respondent Court carte blanche to modify its ruling. Section 1110b allows a trial court to direct that “the appeal shall not operate as a stay of execution.” (Cal Code Civ. Proc. § 1110b.) “Stay of execution” refers to the automatic suspension of enforcement of the mandate that normally results from perfecting an appeal under section 916. (*See Hayworth v. City of Oakland* (1982) 129 Cal.App.3d 723, 727 [recognizing that section 1110b operates as an exception to the section 916 stay].)

Allowing enforcement of a judgment does not allow the **modification** of the judgment: “On its face, Code of Civil Procedure section 916 draws a distinction between enforcement, on the one hand, and matters that ‘affect[] . . . the judgment or order appealed from,’ on the other hand.” (*Royals v. Lu* (2022) 81 Cal.App.5th 328, 343 [alterations in original].) A court can enforce its order when a stay is lifted, but it still has no

jurisdiction to take action—including modification—that is otherwise embraced by or would affect the order on appeal. To allow a court to modify an order on appeal by using the section 1110b bar allows a court to defeat an appellate court’s jurisdiction by preventing it from addressing the order that was appealed. Respondent Court could not eliminate or affect the City’s right to appeal the August 27, 2026 order by purporting to modify that order on September 2, 2026.

II. RESPONDENT COURT’S FAILURE TO PROVIDE A STATEMENT OF DECISION IS REVERSIBLE ERROR.

The explanation provided by a statement of decision is the “touchstone” for appellate review, determining whether the trial court’s decision is properly supported by the necessary facts and law. (*Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, 1129.) Thus, a trial court’s failure to issue a timely requested statement of decision is per se reversible error. (*Id.* at p. 1126.)

Here, a statement of decision was required to be issued by Respondent Court in connection with the September 2 Writ (*In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 294 n.9 [holding that Code Civ. Proc. § 632 applies to a “hearing on the merits of a

petition for writ of mandate”]), and Appellants requested such a statement. (9 Pet.’s Ex. 93 at pp. 2686–88.) Respondent Court failed to provide that statement of decision, and thus the September 2 Writ must be reversed.

III. RESPONDENT COURT’S RULING VIOLATED THE SEPARATION OF POWERS BY PURPORTING TO CHOOSE THE DATE FOR THE ELECTION.

No court can issue a writ to compel the City to perform an illegal act, especially holding an illegal election; “[m]andamus will not lie to compel the performance of acts which are void, illegal, contrary to public policy, or which tend to aid in an unlawful purpose.” (*Plum v. City of Healdsburg* (1965) 237 Cal.App.2d 308, 317; *Swan v. Civil Service Commission of Mendocino County* (1971) 16 Cal.App.3d 710, 713; *see also Laurelle v. Bush* (1911) 17 Cal.App. 409, 417 [defendant cannot by mandamus “be coerced into doing that which his plain duty under the law prohibits him from doing.”].) Mandamus will only lie to compel a public official to perform an official act required by law. (Code Civ. Proc., § 1085.)

In addition, “[m]andamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner.” (*Common Cause v. Bd. of Supervisors* (1989)

49 Cal. 3d 432, 442 (“*Common Cause*”).) A city council’s discretion depends on its statutory authorization and the characterization of the extent to which the City Council has performed legislative acts, which are questions of law reviewed de novo. (*CV Amalgamated LLC v. City of Chula Vista* (2022) 82 Cal.App.5th 265, 279.)

A. The City Council’s choice of which ballot the Initiatives are placed on is a legislative act.

It is well settled that, “a court is without power to interfere with purely legislative action, in the sense that it may not command or prohibit legislative acts, whether the act contemplated or done be at the state level or the local level.” (*Monarch Cablevision, Inc. v. City Council, City of Pac. Grove* (1966) 239 Cal.App.2d 206, 211 [citations omitted].) To do so “would violate the basic constitutional concept of the separation of powers among the three coequal branches of the government.” (*Id.* at p. 211; *see also, City of Sacramento v. Cal. State Legislature* (1986) 187 Cal.App.3d 393, 399 “[A] judicially compelled enactment of legislation is not an incidental overlap; it is the very exercise of legislative power itself.”).)

The separation of powers prohibits the issuance of a writ of

mandate to compel a legislative body’s discretionary acts.
(*Childhelp, Inc. v. City of Los Angeles* (2023) 91 Cal.App.5th 224, 239 (“*Childhelp*”) [even if the law imposes a legal duty, “[m]andate, however, ‘will not issue if the duty is . . . mixed with discretionary power’” (omission in original) (quotation omitted)]; *see also, Johanson v. City Council of City of Santa Cruz* (1963) 222 Cal.App.2d 68, 72 (“*Johanson*”) “[T]he courts have no power to compel a legislative body to act in a particular way.”].)

Because there is no obligation for a city council to vote to approve a resolution or ordinance, enacting or rescinding an ordinance or resolution is a legislative act that may not be compelled. (See *Johanson, supra*, 222 Cal.App.2d at pp. 70–72 [requiring a city council to adopt an ordinance was to “force the council in a legislative matter,” because, before any vote, the city charter required a waiting period after an ordinance’s introduction “to allow representations to be made by the citizenry, and deliberation to be made by the councilmen”]; *Eller Outdoor Advert. Co. v. Bd. of Supervisors* (1979) 89 Cal.App.3d 76, 83 “[W]e think rescinding the resolution is a legislative act beyond the court’s power to command, and therefore violative of the doctrine of separation of powers.”]; *Boatworks, LLC v. City of*

Alameda (2019) 35 Cal.App.5th 290, 306 [trial court erred when it issued writ of mandate compelling city to rescind an ordinance]; *see, also, Childhelp, supra*, 91 Cal.App.5th at pp. 239–241 [affirming denial of mandate where such an order would have required the trial court to order the city perform discretionary work, including the passage of an ordinance].)

A writ of mandate may issue to compel ministerial acts, which are acts required by a statute that leaves no room for discretion, but that does not include a city council’s vote on an ordinance, which requires the councilmembers to exercise their discretion. (*See Harbach v. El Pueblo De Los Angeles etc. Com.* (1971) 14 Cal.App.3d 828, 834 [“When the city council votes for an ordinance, the councilmen are exercising their discretion in voting. If the necessary majority vote in favor of the ordinance, the various city departments are charged with the ministerial task of implementing the ordinance.”].) Thus, where a trial court mandates a city council to perform the legislative act of enacting an ordinance or resolution, that order violates the separation of powers. (*Bowles v. Antonetti* (1966) 241 Cal.App.2d 283, 285–286 (“*Bowles*”).) As the Court in *Bowles* explained:

The only way in which respondents can comply with

the trial court's order is by the performance of other legislative acts, namely, to pass resolutions annulling its previous resolution and setting aside the mayor's act in executing the order of vacation. Thus the writ would command the city council to perform legislative acts in a particular manner. It is a widely accepted rule that the writ of mandamus may not be employed to achieve this result.

(*Id.* at pp. 285–286; *see, also, City of Palo Alto v. Pub. Emp. Rels.*

Bd. (2016) 5 Cal.App.5th 1271, 1310–1316 (2016) [relying on *Bowles* to find PERB had no ability to order a city counsel rescind a resolution calling for a special election, because although a quasi-judicial body could void a resolution, it is beyond judicial power “to order a legislative body to rescind a legislative act or affirmatively pass legislative acts”].)

Here, Respondent Court purported to substitute its judgment for that of the City Council, and it had no ability to do so. The City Council’s consideration of, and its weighing the pros and cons of, ballot placement goes to the heart of a legislative act. (*Michael Leslie Prods., Inc. v. City of Los Angeles* (2012) 207 Cal.App.4th 1011, 1026 [“It is a legislative function to consider data, opinion, and arguments, and then to exercise discretion guided by considerations of the public welfare.”].)

Under Elections Code sections 1415(b) and 9255(c)(1), the

City Council is entitled to place a citizen sponsored charter initiative on **any** general statewide election occurring not less than 88 days from the order of election. Elections Code section 1415(b) states that citizen proposed charter amendments “shall be submitted to the voters at the next regularly scheduled general municipal election pursuant to Section 1301, **or at any** established statewide general or statewide primary election pursuant to Section 1200 or 1201, occurring not less than 88 days after the date of the order of election.” (Elec. Code, § 1415(b) [emphasis added].)

Elections Code section 9255(c) states that citizen proposed charter amendments “shall be submitted to the voters at **an** established statewide general, statewide primary, or regularly scheduled municipal election pursuant to Section 1200, 1201, or 1301 occurring not less than 88 days after the date of the order of election.” (Elec. Code, § 9255(c) [emphasis added].)

Because Newport Beach has consolidated all of its elections with the statewide general elections under its charter pursuant to Elections Code section 1200, both statutes allow the City Council to schedule a citizen sponsored ballot amendment to be voted upon in “any” or “an” statewide general election of the City

Council's choosing. (*See* 5 Pet.'s Ex. 55, at p. 1166 [City Charter, § 1000].) Thus, the City Council may exercise discretion in choosing in *which* year's election the initiatives go to the voters, and Respondent Court cannot order which ballot the measures go on. (*Jeffrey*, 102 Cal.App.4th at 4–6.)

In *Jeffrey*, 102 Cal.App.4th 1, this Court held that these statutes prohibited a trial court from ordering the city council to place a measure on the ballot at the next available election. In *Jeffrey*, the registrar certified the signatures for the initiative, and all the prerequisites had been met to place the initiatives on that year's ballot. (*Id.* at p. 3.) The city, however, chose to place the measure on the next year's ballot. (*Ibid.*)

This Court held the city council acted within its discretion, because sections 9255 and 1415 of the Elections Code did not require the city council to place the measure on a particular ballot. (*Id.* at pp. 4–6.) Instead, those statutes required only that the city council put the matter on a ballot for some election that was occurring not less than 88 days after the order of election. (*Ibid.* [“Nothing in [sections 1415 and 9255] requires a city council to ‘order’ the election at the *next* available opportunity. Indeed, the very fact that each statute allows *options* in election

dates refutes that idea.”].) And despite recognizing that allowing a city council to select a later election date gave the city time to thwart an initiative, this Court still found that “the Legislature’s drafting, . . . as it has written the law, gives city councils the limited authority to do just that.” (*Id.* at pp. 10–11.)

In other words, if the Legislature had wanted to require city councils to place initiatives on the soonest statewide general election, it could have done so. Indeed, the Legislature plainly knew how to do so, given that section 1415 references the “next regularly scheduled general municipal election.” But the Legislature instead chose to use the phrase “or at any” when referring to statewide general elections, making clear the Legislature’s intention to give city councils the discretion to choose when initiatives are presented to voters. (*Jeffrey*, 102 Cal.App.4th at 6 [“Significantly the Legislature knew how to require an initiative be placed on the ballot in the very next election if it had wanted to.”]; *see also*, *Brown v. Kelly Broad. Co.* (1989) 48 Cal.3d 711, 725 [“It is a well recognized principle of statutory construction that when the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded.” (quotations omitted)].)

And indeed, when the Legislature revisited section 1415 in 2013, it again affirmed the City Council’s right to choose whether it wanted to place the measure on the next regularly scheduled general municipal election or at any established statewide general or statewide primary election. (*See* 7 Pet.’s Ex. 75, at p. 1790.)

B. Respondent Court could not find that the City Council abused its discretion.

Instead of following this Court’s holding in *Jeffrey*, Respondent Court found that the City Council had abused its discretion in selecting the ballot for the Initiatives. However, Respondent Court was without power to substitute its own judgment for the City Council’s.

“[I]t is well settled that although a court may issue a writ of mandate requiring legislative or executive action to conform to the law, it may not substitute its discretion for that of legislative or executive bodies in matters committed to the discretion of those branches.” (*Common Cause, supra*, 49 Cal.3d at p. 445.) Respondent Court at multiple points threatened either contempt or sanctions seeking to compel placement of the Initiatives on the November 2026 ballot. (*See, e.g.*, 5 Pet.’s Ex. 51, at p. 994.)

Respondent Court did not provide any explanation as to why the City Council's order for the Initiatives to be on the November 2028 ballot was an abuse of discretion. Nor could the Court do so, given that the City Council enacted clear legislative acts, namely the resolutions and one specifically explaining that the City Council choose that election date based on (1) the fact the Initiatives sought to double the length of the City's Charter, (2) that there would be substantial administrative problems in placing them on the ballot, and (3) given the complexity of the Initiatives and that they sought to fundamentally change the structure and power of the City Council, more time was needed to ensure voters understood what the ballots said. No one can say that these concerns are unfounded; Respondent Court simply disagreed with the City Council's choice, which is not the function of a writ of mandate. (*See, Common Cause, supra*, 49 Cal.3d at p. 445.) Proponents only real opposition to these reasons were just that they were supposedly "unpersuasive." But the persuasiveness of the reasons for an action are within the province of the City Council.

A court can address a discretionary legislative act "*only* if the action taken is so palpably unreasonable and arbitrary as to

show an abuse of discretion as a matter of law”; a decision is an abuse “only if it is ‘arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.’” (*Munoz v. Regents of Univ. of California* (2025) 113 Cal.App.5th 466, 474 [citations and quotations omitted] [cleaned up]). A court cannot find abuse merely because it disagrees with the choice or thinks another option wiser; if reasonable minds could differ, the decision stands. (*California Pub. Recs. Rsch., Inc. v. Cnty. of Alameda* (2019) 37 Cal.App.5th 800, 806.)

Nothing the City Council said was factually untrue, nor has anyone suggested it addressed unlawful concerns in its reasons for picking the November 2028 ballot. The City did not apply the wrong standard. That Respondent Court and Proponents felt another option was better is not an abuse of discretion.

Respondent Court “in this case did not limit its order to requiring governmental defendants to take action in conformity with the law. Its order required [the City Council] to take a particular course of action—[place the matters on the November 2023 ballot or hold a standalone election]—specifically committed to [the City Council’s] discretion by statute.” (*Common Cause, supra*, 49 Cal. 3d at p. 446.) That was improper as a matter of

law, and must be reversed.

C. Respondent Court could not order the City Council to hold an illegal election.

Finally, Respondent Court’s September 2 Writ, requiring the City to run a standalone election, is unlawful on its face because: (a) there can be only one general municipal election in the City, and it must be—as it already has been by previously City Council action—consolidated with the statewide general election (Elec. Code, § 10402.5 [**“Any state, county, *municipal*, district, and school district *election* held on a statewide election date pursuant to Section 1002 *shall be consolidated with the statewide election* (except for a county of the first class, which Orange County is not)] [emphasis added]; 5 Pet.’s Ex. 55, at p. 1166 [City Charter, § 1000]); and (b) the City cannot hold a special election on the Initiatives (Elec. Code, §§ 1415(b), 9255(c)(1) [elections must be general municipal election or statewide election, not less than 88 days from order of the election]). “A court has no power to order a public official to commit an act in violation of a valid statute.” (*Sonoma Cnty. Nuclear Free Zone v. Superior Ct.* (1987) 189 Cal.App.3d 167, 178.) A trial court can only order a city council to hold a special election when there is a**

clear duty for the city council to do so. (*Goodenough v. Superior Ct.* (1971) 18 Cal.App.3d 692, 697.)

Here, there is no clear duty; in fact, it is improper to hold a special election for charter amendment initiatives. (Elec. Code, §§ 1415(b), 9255(c)(1); *Jeffrey, supra*, 102 Cal.App.4th at pp. 4-6.)

To be sure, Respondent Court’s September 2 Writ purported to require a “general municipal election” run directly by the City or through the consolidated elections process, but any election outside the consolidated process must necessarily be a special election. (See, Elec. Code, §§ 10402.5, 10403.) As discussed herein, the subject initiatives cannot be included in the general municipal election, and so Respondent Court has improperly ordered a special election. (Elec. Code § 356 [“‘Special election’ is an election, the specific time for the holding of which is not prescribed by law”].)

The Legislature amended Elections Code sections 1415 and 9255 to eliminate the ability to place charter amendment initiatives on a special election ballot. Before these changes, both sections 1415 and 9255 allowed for the selection of special elections for charter amendment initiatives. (7 Pet.’s Ex. 75, at pp. 1784–92; Stats. 2013, ch. 184 (S.B.311), § 2 [former Elec. Code

§ 9255 [“at either *a special election* called for that purpose, at any established municipal election date, or at any established election date pursuant to section 1000 . . .”]; former § 1415 [“at either the next regular general municipal election occurring not less than 88 days after the date of the order of election, *or at a special election* called for that purpose or on any established election date pursuant to Section 1000”].) The Legislature removed the “special election” language from the statutes in 2013, which indicate the Legislature’s intent to restrict City Councils to placing the charter amendment initiatives either on ballots for the general municipal election or statewide general election. (7 Pet.’s Ex. 75, at pp. 1784–92.) It did not do this because of *Jeffrey*, instead, as reflected in the Senate Bills, the Legislature was trying to address the problem of cities placing charter amendment petitions on special elections ballots that would have low voter turnout. (7 Pet.’s Ex. 75, at pp. 1786–87 [“This bill takes a step further by limiting the vote on certain charter proposals that are proposed by city governing bodies or by charter commissions to statewide general elections only.”].) Seeing as how the September 2 Writ was issued with full knowledge that the Registrar refused to place the Initiatives on

the consolidated November 3, 2026 ballot, Respondent Court ordered the City to run a standalone special election, which is prohibited by sections 1415 and 9255. Moreover, neither Respondent Court nor Proponents have ever cited a single case or statute which requires—or even permits—the City to hold a standalone election under the circumstances.

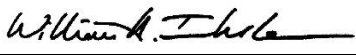
Therefore, Respondent Court could not order the City Council to violate the Elections Code and hold a standalone special election within 60 days.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court issue extraordinary relief to correct this error and issue a stay in the interim so that Petitioners are not forced to comply with the erroneous Writ.

Dated: September 8, 2026

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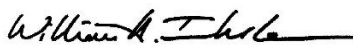
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CERTIFICATE WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c), I hereby certify that the attached Memorandum Of Points And Authorities has a typeface of 13 points or more and contains 10,222 words, as determined by the word processing software used to generate the document.

Dated: September 8, 2026

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