

Case No. G067387

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION 3**

CITY OF NEWPORT BEACH, AARON HARP, LENA SHUMWAY,
and NEWPORT BEACH CITY COUNCIL,

Appellants,

vs.

NEWPORT BEACH STEWARDSHIP ASSOCIATION, MARSHALL
“DUFFY” DUFFIELD,

Respondents.

From the Superior Court of the State of California,
for the County of Orange
Superior Court Case No. 30-2026-01559183-CU-JR-NJC
[Related to Case No 30-2026-01580961-CU-WM-CJC]
Hon. Julianne Bancroft, Dept. N14
(657) 622-5614

**PETITION FOR WRIT OF SUPERSEDEAS OR OTHER
APPROPRIATE RELIEF AND MOTION FOR EXPEDITED
APPELLATE SCHEDULE; IMMEDIATE STAY REQUESTED OF
SEPTEMBER 2, 2026 WRIT OF MANDATE [EXHIBIT 87]**

William H. Ihrke* (SBN 204063)	Gerard M. Mooney (SBN 222137)
bihrike@rutan.com	gmooney@rutan.com
Jennifer J. Farrell (SBN 251307)	Kyle J. Berry (SBN 355393)
jfarrell@rutan.com	kberry@rutan.com

RUTAN & TUCKER, LLP

18575 Jamboree Road, 9th Floor; Irvine, CA 92612

Telephone: 714-641-5100

Facsimile: 714-546-9035

Attorneys for Petitioners

CITY OF NEWPORT BEACH, AARON HARP, LENA SHUMWAY,
and NEWPORT BEACH CITY COUNCIL

COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION 3		COURT OF APPEAL CASE NUMBER: G067387
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 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): Appellants CITY OF NEWPORT BEACH, AARON HARP, LENA SHUMWAY, and NEWPORT BEACH CITY COUNCIL		SUPERIOR COURT CASE NUMBER: 30-2026-01559183-CU-JR-NJC
APPELLANTS: CITY OF NEWPORT BEACH, et al. RESPONDENTS: NEWPORT BEACH STEWARDSHIP ASSOCIATION, MARSHALL "DUFFY" DUFFIELD		
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE		
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City of Newport Beach; Newport Beach City Counsel;

1. This form is being submitted on behalf of the following party (name): Aaron Harp; Lena Shumway
2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: September 8, 2026

William H. Ihrke

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

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INTRODUCTION AND SUMMARY OF PETITION

Appellants 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, “Appellants”) bring this Petition for Writ of Supersedeas and for an immediate temporary stay because the Superior Court has refused to stay its ***void and illegal*** September 2, 2026 writ of mandate pending appeal (9 Appellants’ Exhibit (“App. Ex.”) 87 at p. 2702), putting Appellants to the Hobson’s choice of either (1) complying with the writ to carry out an illegal November 3, 2026 election and potentially render this Appeal moot and the Court unable to provide effective relief, or (2) having the Superior Court hold Appellants in contempt for non-compliance, as it has already threatened to do. (*See, e.g.*, 6 App. Ex. 68 at p. 1563:5-8 [“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.”].) Appellants ***urgently require*** and respectfully request this Court’s ***immediate intervention*** to grant the requested stay.

The salient facts are straightforward: At its regular meeting on August 25, 2026, the City Council voted to place three charter amendment initiatives (the “Initiatives”) submitted by respondents Newport Beach Stewardship Association (“NBSA”) and its principal Marshall “Duffy” Duffield (collectively, “Respondents”) on the November 7, 2028 ballot. (7 App. Ex. 87 at p. 1901–02.) Respondents demanded an earlier election date, and on August 27, 2026, the Superior Court (without holding a hearing) granted Respondents’ *ex parte* application and ordered the Initiatives be scheduled for the November 3, 2026 election ***just two months later*** (the “8/27 Order”). In doing so, the Superior Court purported to overrule the City Council’s exercise of its unfettered statutory discretion (confirmed by this Court in *Jeffrey v. Superior Court* (2002) 102 Cal.App.4th 1) to select the election date, notwithstanding the prior expiration of statutory pre-election deadlines making such an election flatly ***illegal***. (7 App. Ex. 77, at p. 1804).

Appellants immediately appealed the 8/27 Order, initiating Court of Appeal Case No. G067367 (the “First Appeal”). (7 App. Ex. 77, at pp. 1799–806). Appellants informed Respondents that (1) the 8/27 Order was stayed pending the First Appeal, and

(2) even if it were not, the California constitution and City charter require the City hold consolidated elections through the Orange County Registrar of Voters (the “Registrar”), which had refused to put the Initiatives on the November 3, 2026 ballot given already-expired Elections Code deadlines and the Registrar’s concern that doing so “would substantially interfere with the conduct of the election” given the Registrar’s lack of time to provide necessary translations, print and mail ballots, and take other essential actions. (9 App. Ex. 88, at pp. 2681–82.)

Undeterred by the appellate stay, Respondents filed another *ex parte* application on September 1, 2026, seeking issuance of a writ of mandate to enforce the 8/27 Order and require the City to hold its ***own stand-alone election*** (*i.e.*, not a consolidated general election conducted through the Registrar) on November 3, 2026. (7 App. Ex. 78, at pp. 1807–16). On September 2, 2026, over Appellants’ objections and opposition, the Superior Court granted Respondents’ application without a hearing (and without providing a statement of decision as requested by the City) and issued Respondents’ requested writ of mandate (the “9/2 Writ”). (9 App. Ex. 93, at p. 2703.) In addition, the Superior Court included a finding in the 9/2 Writ pursuant to

Code of Civil Procedure section 1110b – also opposed by Appellants – that the 9/2 Writ would not be stayed on appeal because of unspecified “irreparable damage” Respondents would purportedly suffer as a result of such a stay. (9 App. Ex. 93, at p. 2703.)

Appellants filed the instant Appeal immediately upon issuance of the 9/2 Writ. (9 App. Ex. 95, at p. 2707–13.) Regardless, the 9/2 Writ purports to affirmatively lift any stay and sets a return date of September 30, 2026, by which date Appellants must demonstrate compliance with the writ involving a host of intermediate deadlines. (9 App. Ex. 93, at p. 2703.) Appellants thus have no alternative but to seek a writ of supersedeas.

A Court of Appeal may (and should) issue a writ of supersedeas to remedy a trial court’s enforcement of an order that is automatically stayed. (*See, Estate of Dabney* (1951) 37 Cal.2d 402, 408.) Alternatively, an appellate court may grant a discretionary writ of supersedeas where the party seeking the writ shows that (1) it would suffer irreparable harm absent a stay of the appealed order, and (2) the appeal has merit. (*Smith v. Selma Community Hosp.* (2010) 188 Cal.App.4th 1, 18 [party

seeking supersedeas “must convincingly show that substantial questions will be raised on appeal and must demonstrate it would suffer irreparable harm outweighing the harm that would be suffered by the other party”]; *see, also, Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1054 (“*Daly*”) [an appellate court is to balance equities in deciding whether to issue writ of supersedeas, and such a writ “is appropriate where difficult questions of law are involved and the fruits of a reversal would be irrevocably lost unless the status quo is maintained”].)

Here, the filing of the First Appeal stayed enforcement of the 8/27 Order and any other “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].) ***That stay has never been lifted;*** regardless, the Superior Court issued the 9/2 Writ to enforce the stayed 8/27 Order, such that the 9/2 Writ was and is void and should be stayed by writ of supersedeas. (*Varian Med. Sys., Inc. v. Delfino* (2005) 35 Cal.4th 180, 198 (“*Varian Med. Sys.*”) [“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].)

Because the Superior Court’s Order was in violation of the appellate stay, a writ of supersedeas is warranted – indeed, required – even without a showing of irreparable harm or the merits of the appeal. (*Estate of Dabney, supra*, 37 Cal.2d at p. 408; Eisenberg, et al., CAL. PRAC. GUIDE: CIV. APP. & WRITS (rev. ed. Dec. 2025) Ch. 7-E, ¶ 7:272.) As one court has held, “[t]he writ in this situation issues practically as a matter of right.” (*Beshara v. Goldberg* (1963) 214 Cal.App.2d 767, 771; 9 Witkin, CAL. PROC. 6TH (2026) Appeal § 300 [“The situation is

different, however, where the case is one in which the statute does provide a stay and the appellant is being unjustly deprived of it. In that case, supersedeas issues practically as a matter of right.”].)

Even were the writ discretionary and Appellants required to demonstrate irreparable harm and merit, both elements are overwhelmingly satisfied. First, if the 9/2 Writ is not immediately stayed (along with the already-stayed 8/27 Order), Appellants would unquestionably suffer irreparable harm. Indeed, Appellants would be forced to conduct the City’s 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 the Superior Court it does not have (7 App. Ex. 86, at pp. 1879–88), but which would be *flatly illegal* under the California Constitution, the Elections Code, and the 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 App. 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].) And even if the City could legally carry out its own election 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 (or the 8/27 Order the writ purports to enforce). (*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 potentially moot this Appeal and preclude this Court from granting effective relief even were Appellants to prevail (as they expect they will). Indeed, the election would have already taken place and Appellants' Constitutional and legal rights and powers would have been 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

By contrast, Respondents would suffer *no cognizable harm* were the 9/2 Writ stayed. A determination of such "harm" in this context is governed by Code of Civil Procedure section 1110b, which permits a court to lift the stay of a writ of mandate only where it finds the requesting party would suffer "irreparable damage" to its "business or profession." (Code Civ. Proc., § 1110b.) The trial court's lifting of the stay pursuant to Section 1110b was incorrect as a matter of law:

- The only "damage" Respondents asserted was that the election was scheduled for November 7, 2028, rather than November 3, 2026. (7 App. Ex. 78, 83, at pp. 1807–16, 1854). But as discussed herein, the Elections Code

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

expressly permits the City Council to choose the date for the proposed charter amendments (Elec. Code, §§ 9255(c)(1), 1415(b)), and Respondents have no cognizable right to an earlier election date, such that there can be no “irreparable damage” from an election simply taking place later than Respondents might desire.

- In addition, the “irreparable damage” must be specifically to one’s “business or profession,” which statutory element the Superior Court wholly ignored. As discussed in this Petition, California cases uniformly find this element requires harm to a commercial or professional endeavor, not a general communal interest, which was all Respondents presented or even mentioned in seeking to lift the stay. (7 App. Ex. 78, at pp. 1807–16).

Simply put, the balance of harms unquestionably favors imposition of a stay pending appeal.

Second, Appellants’ appeal plainly has merit. Indeed, Appellants’ right to reversal of the 9/2 Writ is overwhelming on a host of grounds:

- Again, the 9/2 Writ was issued in violation of the appellate stay, such that it is necessarily void and must be reversed. (*Varian Med. Sys.*, 35 Cal.4th at p. 198.)
- The Superior Court’s 8/27 Order and 9/2 Writ 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)(2), 1415(b); *Jeffrey*, 102 Cal.App.4th at p. 6 [“Nothing in [Elections

Code section 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 the Superior Court had no authority to order it to select some other date Respondents or the Superior Court might prefer.

- Sections 9255(c)(1) and 1415(b) 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(c)(1); *see also, Jeffrey*, 102 Cal.App.4th at pp. 6–10.) The City Council selected the date (and explained its reasoning for doing so), and neither [Sections 9255 and 1415](#) nor any other law permits the Superior Court to second guess that selection. (Elec. Code, §§ 1415(b), 9255(c)(2); *see also, Jeffrey*, 102 Cal.App.4th at pp. 6–10.) Respondents’ remedy, if it is unhappy, is to seek changes in Elections Code sections 1415 and 9255 through the California Legislature.
- “Mandamus 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*”).) Regardless, 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 – which as discussed herein would violate the City Charter and numerous deadlines and other requirements of the Elections Code.

Appellants respectfully request this Court issue a writ of supersedeas prohibiting enforcement of the 9/2 Writ (and likewise reaffirming the continuing stay of the 8/27 Order)

pending resolution of this Appeal, and ***issue an immediate temporary stay of the 9/2 Writ pending the Court's consideration of this Petition.*** Appellants further respectfully request the Court set an expedited briefing and argument schedule for this appeal to allow resolution of the important legal issues affecting the City and its residents as quickly as possible.

**PETITION FOR WRIT OF SUPERSEDEAS OR OTHER
APPROPRIATE RELIEF**

I. PETITIONERS' BENEFICIAL INTEREST

1. Appellant City Of Newport Beach (the "City") is a 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"), pending before the Hon. Julianne Bancroft, Dept. N14 (the "Superior Court").

2. Appellant Newport Beach City Council (the "City Council") is a real party in interest in the Action, and is the governing legislative body of the City.

3. Appellant Aaron Harp is a plaintiff and cross-

respondent in the Action, and is named in this action in his official capacity as City Attorney.

4. Appellant Lena Shumway is a cross-respondent in the Action, and is named in this action in her official capacity as City Clerk.

5. Respondents Newport Beach Stewardship Association (“NBSA”) and Marshall “Duffy” Duffield (“Duffield,” and together with NBSA, the “Respondents”) are the defendants and cross-petitioners in the Action.

II. AUTHENTICITY OF EXHIBITS

6. All exhibits accompanying this Petition are true and correct copies of documents on file with the Superior Court as well as copies of two transcripts of hearings before the Superior 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.

7. Appellants have made efforts to eliminate duplication in the exhibits, while providing the Court with exhibits that offer context for the pending Appeal and dispute giving rise to this Petition. For the Court’s reference, Appellants note the exhibits

primarily at issue in this Petition begin with Volume 5.

III. TIMELINESS OF PETITION

8. Petitions for writs of supersedeas are not subject to any express time limitations. (Eisenberg, et al., CAL. PRAC. GUIDE: CIV. APP. & WRITS (rev. ed. Dec. 2025) Ch. 7-E, ¶ 7:301 [“There are no express time limits for filing a supersedeas petition.”].) Regardless, Appellants file this Petition within six (6) days of entry and service of the challenged September 2, 2026 Writ of Mandate (the “9/2 Writ”).

IV. JURISDICTION AND STANDING

9. This Court has jurisdiction because the 9/2 Writ was issued by the Superior Court of Orange County and the appeal of the 9/2 Writ is pending before this Court after the entry of final appealable Orders. (Cal. Const., Art. VI, § 11(a); Code Civ. Proc., § 904.1; Gov. Code, § 69100(d).)

10. Appellants have standing to bring this Petition because Appellants are the appellants herein and the plaintiffs, cross-respondents and real parties in interest below.

V. PRIOR REQUEST FOR STAY IN TRIAL COURT

11. In their September 1, 2026 *ex parte* application seeking what became the 9/2 Writ, Respondents requested that if

the Superior Court were to grant their requested writ, the Superior Court should likewise preemptively order pursuant to Code of Civil Procedure section 1110b that no appeal of that writ would stay its enforcement. (7 App. Exs. 78, 83, at pp. 1807–16, 1854).

12. On September 1, 2026, in opposition to Respondents’ *ex parte* application, Appellants noted the already-pending stay imposed by Code of Civil Procedure section 916 as a result of Appellants’ appeal of the Superior Court’s order of August 27, 2026 (the “8/27 Order”), which Respondents expressly sought the 9/2 Writ to enforce or at least modify. (7 App. Ex. 85, at pp. 1860–78.) Appellants likewise opposed Respondents’ request for a preemptive lifting of any stay were the Superior Court to grant Respondents’ requested writ and an appeal from that writ to be filed. (7 App. Ex. 85, at pp. 1860–78.)

13. In its 9/2 Writ, the Superior Court granted Respondents’ *ex parte* application, and, pursuant Respondents’ request under Code of Civil Procedure section 1110b, entered its order preemptively lifting any stay imposed by Code of Civil Procedure section 916 upon appeal of the 9/2 Writ. (9 App. Ex. 93, at p. 2703.)

VI. FACTUAL AND PROCEDURAL BACKGROUND

14. This Petition and the underlying Appeal address three charter amendment initiatives submitted to the City by Respondents to amend the City Charter. Those initiatives are the so-called “Government Transparency Charter Amendment,” “Home District Voting Charter Amendment,” and “Strict Term Limits Charter Amendment,” collectively referred to herein as the “Three Charter Amendments.” (*See generally* 7 App. Ex. 87, at pp. 2034–41.)

15. Appellants’ concurrently-filed Petition for Writ of Mandate sets forth in greater detail the factual and procedural background for the parties’ dispute regarding the Three Charter Amendments. The Parties have engaged in significant litigation regarding whether Respondents met their burdens under the Elections Code and the City Charter to present those Three Charter Amendments for election, and whether the City could, consistent with the City’s Charter and the Elections Code, place the Three Charter Amendments on the ballot on November 3, 2026. This has included law and motion regarding whether one of the Three Charter Amendments complied with the “Single Subject Rule” of the California constitution; whether

Respondents properly published the Three Charter Amendments in an adjudicated newspaper of general circulation for the City; and whether Respondents otherwise complied with notice and posting requirements imposed by the Elections Code before they could properly seek voter signatures in support of the Three Charter Amendments.

16. While these underlying issues will be addressed in the Appeal, the most salient facts regarding the need for a writ of supersedeas for purposes of this Petition begin with the Superior Court’s Order of August 19, 2026 (the “8/19 Order”), which – over Appellants’ opposition based on the separation of powers clause of the California Constitution, numerous provision of the California Elections Code, the City’s Charter, and other grounds (addressed in the Petition for Writ of Mandate and to be addressed in the Appeal) – granted Respondents’ First Amended Cross-Petition for Writ of Mandate to order Appellants to set the Three Charter Amendments on an election date to be chosen in the City Council’s “discretion.” (7 App. Ex. 87, at pp. 2081–84.)

17. Although the 8/19 Order purported to leave the selection of the election date to the City Council – consistent with well settled law (Elec. Code, §§ 9255(c)(1), 1415(b); *Jeffrey v.*

Superior Court (2002) 102 Cal.App.4th 1, 6 (“*Jeffrey*”)) – the Superior Court further stated in the 8/19 Order that “[i]f the decision is made to place the [Three Charter Amendments] on a ballot other than the November 2026 ballot, [Appellants] shall provide an explanation why in their return” to a then yet-to-be-drafted “peremptory writ of mandate.” (7 App. Ex. 87, at pp. 2081–84.)

18. Appellants filed an appellate Petition for Writ of Mandate on August 21, 2026, requesting that this Court reverse the 8/19 Order. This Court, without comment, denied that appellate Petition on August 25, 2026. (6 App. Ex. 69, at pp. 1421–26.)

19. The City is a charter city which has conclusive authority over the “core” municipal affair of conducting its elections. (Cal. Const., art. XI, § 5(b) [“It shall be competent in all city charters to provide . . . for . . . conduct of city elections[.]”]; *City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 910–911 (“*City of Redondo Beach*”) [acknowledging and preserving the authority of charter cities over election timing].) Section 1000 of the City’s Charter is clear that “[c]ommencing 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.” (5 App. Ex. 55, at p. 1166 [City Charter, § 1000] [emphasis added].) In other words, there can be only ***one general municipal election*** for the City, and it ***must be consolidated with the statewide general election***. (5 App. Ex. 55, at p. 1166 [City Charter, § 1000].)

20. In addition, since the City’s 1982 adoption of its Charter to require consolidated elections, the City has not independently conducted a stand-alone municipal election for at least the last 44 years. (7 App. Ex. 86, at pp. 1879–88.) Rather, the City has administered its elections in coordination with and through the Orange County Registrar of Voters (the “Registrar”). (7 App. Ex. 86, at pp. 1880–81.) The City thus has not for the last four decades maintained an independent election operation or election-management system, elections equipment, trained election personnel, polling-place network, pool of trained poll workers, ballot-processing operation, or other infrastructure

necessary to independently conduct a “stand-alone” City-wide election. (7 App. Ex. 86, at pp. 1880–81.)

21. Prior to the City Council’s next regular meeting of August 25, 2026, the City Clerk presented to the City Council a report addressing potential legal barriers to selecting the November 3, 2026 election for the Three Charter Amendments to be placed on the ballot, including but not limited to the already-expired 88-day deadline imposed by Elections Code sections 9255(c)(1) and 1415(b) for a qualified voter-sponsored city charter amendment to be submitted for an established election, as well as the waning 10-day period for public examination of the ballot materials pursuant to Elections Code sections 9280, 9281, 9282, 9285, and 9295. (8 App. Ex. 88, at pp. 2347–2352.) In addition, the City Clerk noted that because the Registrar is not a party to the pending action and is not compelled to accept late resolutions for inclusion on the November 3, 2026 ballot, it could reject the Three Charter Amendments or refuse to provide the election services the City would require to hold an election on the Three Charter Amendments on that date. (8 App. Ex. 88, at pp. 2347–2352.)

22. The City Clerk provided extensive additional findings

explaining why the November 7, 2028 date should be chosen over November 3, 2026 and March 7, 2028, including but not limited to the “significant and long-lasting effects” of the Three Charter Amendments “on the structure, operation, transparency, and accountability of City government”; the fact that November 7, 2028 will be a “statewide general election” and likely “attract broader voter participation” than the primary election on March 7, 2028; the November 7, 2028 election will be a statewide general election and a regularly-scheduled General Municipal Election “at which City voters will already be considering the election of their municipal representatives,” and two of the Three Charter Amendments “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”; the November 7, 2028 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 the November 7, 2028 General Municipal Election “will avoid the additional administrative complexities

and potential expense associated with placing municipal Charter measures on a statewide primary ballot separate from the City's regular municipal election.” (8 App. Ex. 88, at pp. 2347–2352.)

23. At its regular meeting on August 25, 2026, the City Council adopted a resolution which selected November 7, 2028 as the date on which the Three Charter Amendments would be placed on the ballot, and stating the extensive reasoning for the City Council's selection of that date. (7 App. Ex. 87, at p. 1901–02; 8 App. Ex. 88, at pp. 2499–2502.)

24. The next day, August 26, 2026, in direct response to the City Council's vote, Respondents filed an *ex parte* application seeking an order that the Three Charter Amendments “shall be placed on the November 2026 ballot,” and demanding sanctions against the City. (6 App. Ex. 70, at pp. 1427–38.)

25. Respondents asserted “[t]he City continues to flout the law” and “took another extreme action to delay the vote” by “postpone[ing] the vote until November 2028.” (6 App. Ex. 70, at pp. 1430.) Respondents argued the Superior Court “has power to curb the [City's supposed] elections misconduct” and that the City “abused any discretion it might have had” pursuant to *Jeffrey*, 102 Cal.App.4th 1, to select the November 2028 election date.

(6 App. Ex. 70, at pp. 1431–35.) Respondents additionally argued the City Council’s choice of the November 2028 election date was an abuse of discretion because it was “unsupported by law or fact,” second-guessing the City Clerk’s and City Attorney’s analysis set forth in their report and adopted by the City Council. (6 App. Ex. 70, at pp. 1435–38.)

26. Appellants opposed the *ex parte* application, asserting pursuant to *Jeffrey* that the City Council “is the proper party to exercise the discretion awarded by [Elections Code sections 1415(b) and 9255(c)(1)] [to] select the relevant election date, and so long as the City Council selects an election [date] that is consistent with” the timing provisions of those statutes, “there is no abuse of discretion.” (6 App. Ex. 74, at pp. 1736–42.)

Appellants argued that “any other outcome – including the issuance of an order requested by NBSA to place the measure on a specific ballot (*i.e.*, the November 2026 ballot) – would violate the separation of powers doctrine and the plain language of the Elections Code.” (6 App. Ex. 74, at pp. 1736 (citing *People ex rel. Harris v. Rizzio* (2013) 214 Cal.App.4th 921, 940, quoting *Wheeler v. Gregg* (1949) 90 Cal.App.2d 348, 361 [“[A]ll questions of policy and wisdom concerning matters of municipal affairs are for the

determination of the legislative governing body of the municipality and not for the courts.”)]].)

27. “More pointedly,” Appellants asserted, “any order requiring the City Council to place the Three Initiatives on any specific ballot (including but not limited to the November 2026 ballot) would violate established precedent that a writ of mandate cannot be issued to control the legislative body’s discretion or compel an action that is contrary to law.” (6 App. Ex. 74, at pp. 1736–37 (citing *Duff v. Gardena* (1980) 108 Cal.App.3d 930, 935-936 [recognizing that while traditional mandamus “may be employed to compel performance of a duty which is purely ministerial in character, it cannot be applied to control discretion as to a matter lawfully conferred upon an administrative agency, or, as in the present case, the governing board of a municipality”)]].)

28. Appellants argued that while the Superior Court may have had the authority to compel the City Council to place the Three Charter Initiatives on a ballot, it could not “compel[] the City to place” those initiatives “on the November 2026 ballot” in particular “after the City Council properly exercised its discretion” to select a date pursuant to Evidence Code sections

1415(b) and 9255(c)(1). (6 App. Ex. 74, at pp. 1737.)

29. On August 27, 2026, without holding a hearing, the Superior Court issued the 8/27 Order granting Respondents' *ex parte* application. (7 App. Ex. 77, at p. 1804.) The Superior Court found that "the City Council abused its discretion by placing the [Three Charter Amendments] on the November 7, 2028 ballot," and that it (the Superior Court) "has the authority in this mandamus proceeding to order the City Council to immediately take the necessary steps to place [the Three Charter Amendments] on the November 3, 2026 ballot, including but not limited to forwarding all necessary materials to the Orange County Registrar of Voters." (7 App. Ex. 77, at p. 1804.)

30. Appellants appealed the 8/19 Order and 8/27 Order on August 27, 2026, initiating Court of Appeal Case No. G067367 (the "First Appeal"). (7 App. Ex. 77, at pp. 1799–806.) The filing of the First Appeal resulted in a stay of those Orders. (Code Civ. Proc., § 916; *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]; *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].)

31. On August 27, 2026, without waiver of its objections to the 8/27 Order, the City sent the materials for the Three Charter Amendments along with the Respondent Court’s 8/27 Order to the Registrar to determine whether the materials could be included with the November 3, 2026 ballot materials for the City’s general municipal election. (8 App. Ex. 88, at pp. 2544–46.) On August 28, 2026, the Registrar sent the City a letter advising that the Three Charter Amendments and those materials ***could not be added to the City’s November 3, 2026 general municipal election ballot*** because of the expiration of mandatory Elections Code deadlines, and because doing so would “substantially interfere with the conduct of the election” by, among other things, making it impossible to provide timely translations and proofing and formatting of the ballot materials

and Voter Information Guides, or to provide timely ballots and Voter Information Guides for military and overseas voters sufficiently ahead of the election. (9 App. Ex. 88, at pp. 2680–82.)

32. Notwithstanding the appellate stay resulting from the filing of the First Appeal, on September 1, 2026, Respondents filed another *ex parte* application, asserting, *inter alia*, that the City supposedly “refuses to respond to questions asking what steps the City has taken to proceed with an election run by the City, and outside of the consolidated process,” *i.e.*, to run its own stand-alone election on November 3, 2026 separate from the City’s general municipal election consolidated with the statewide general election. (7 App. Ex. 78, 83, at pp. 1807–16, 1854).

33. Respondents falsely (and without citation to evidence) asserted that “counsel for the City” had on August 27, 2026 “represented that the City would take steps to ensure a vote occurred in November 2026,” but “[a] few hours later the City purported to file a notice of appeal.” (7 App. Ex. 78, at pp. 1806). Respondents also noted Appellants had filed and then withdrawn an *ex parte* application seeking to confirm the appellate stay, and had indicated such an application would be re-filed were Respondents to ask the Superior Court to take further action to

require a November 2026 election on the Three Charter Amendments. (7 App. Ex. 78, at pp. 1806–07.)

34. Respondents recognized the Registrar had refused to include the Three Charter Amendments on the November 3, 2026 ballot for the consolidated election; regardless, Respondents asserted, “[t]he Court ordered the City to hold an election, and the City can run its own general municipal election in November 2026,” *i.e.*, the City could run a separate election itself on November 3, 2026, in addition to the consolidated election set for that date to be run by the Registrar. (7 App. Ex. 78, at pp. 1810–12.)

35. Respondents requested the Superior Court enter a Writ of Mandate to require the City to hold an election on the Three Charter Amendments on November 3, 2026, whether as part of the consolidated election run by the Registrar, or by way of a separate election run by the City itself. (7 App. Ex. 78, 83 at pp. 1811–13, 1854.)

36. In addition, Respondents requested that the Superior Court include in any writ it might issue an order pursuant to Code of Civil Procedure section 1110b that an appeal from the requested writ would not stay its effect, because of supposed

“irreparable harm” Respondents claimed they would suffer were such a stay to be imposed. (7 App. Ex. 78, at pp. 1812–15.)

37. Appellants opposed the *ex parte* application on September 1, 2026, asserting the stay resulting from the First Appeal precluded entry of the requested Writ of Mandate; the request for a City-run election was new and never before raised in the proceeding and could not properly be sought or decided by way of an *ex parte* application; and any such separate election would be unlawful pursuant to the California constitution and Newport Charter and ordinances, as well as the mandatory already-expired deadlines of the Elections Code, including Sections 9255 and 1415. (7 App. Ex. 85, at pp. 1860–78.)

38. Appellants’ Opposition included extensive declarations from City Clerk Lena Shumway and City Attorney Aaron Harp detailing the factual and legal reasons why the City could not carry out a City-run November 3, 2026 election even assuming the Superior Court had the authority to order it to do so (which Appellants argued it did not). (7–9 App. Ex. 86, 87, at pp. 1879–2685.) In sum, Appellants argued, the City’s Charter requires that all of the City’s general municipal elections be consolidated with statewide general elections run through the

Registrar, which a writ of mandate for a stand-alone election run by the City would violate; mandatory pre-election deadlines imposed by the Elections Code passed long ago (indeed, even before the Superior Court issued its 8/27 Order); the City lacked the resources to run a stand-alone election and in fact had not done so for at least 44 years consistent with the City's charter requiring consolidated elections; and such a stand-alone election would in addition to being illegal and infeasible cost the City and its taxpayers between \$1.5 million and \$2 million. (7 App. Ex. 85, at pp. 1860–78.)

39. In addition, Appellants argued Respondents had not met and could not meet their burden under Code of Civil Procedure section 1110b to demonstrate irreparable harm to their “business or profession” to permit a lifting of any appellate stay that may be imposed were the Superior Court to grant and Appellants to appeal the requested writ. (7 App. Ex. 85, at pp. 1870–74.)

40. Appellants also filed a request for a statement of decision, listing the controverted issues presented by the application and request for a Writ of Mandate as to which Appellants sought an explanation of the Superior Court's

findings. (9 App. Ex. 89 at p. 2686–88.)

41. On September 2, 2026, without holding a hearing, the Superior Court granted Respondents’ *ex parte* application and signed their proposed Writ of Mandate, the 9/2 Writ. (9 App. Ex. 93, at p. 2701–03.)

42. The 9/2 Writ requires that Appellants “[t]ake all steps necessary to hold a general municipal election for the [Three Charter Amendments] on November 3, 2026, ***whether run directly by the City*** or through a consolidated election process.” (9 App. Ex. 93, at p. 2703 [emphasis added].) Of course, this supposed alternative of a “consolidated election” is moot because – as the City made clear in its Opposition and other prior filings – the Registrar refused to put the Three Charter Amendments on the consolidated election ballot given the expiration of mandatory Elections Code deadlines and the inability of the Registrar to do so and meet its election obligations (many of which require actions be taken in the next days and weeks as set forth in the declaration of City Attorney Aaron Harp, Exhibit M). (7 App. Ex. 87, at pp. 2077–79; 9 App. Ex. 88, at pp. 2680–82.)

43. In addition, the 9/2 Writ mandates that the City file

an “Initial Return” by September 30, 2026 “detail[ing] what steps [Appellants] have taken to comply” with the 9/2 Writ. (9 App. Ex. 93, at p. 2703.)

44. The Superior Court also included a finding in the 9/2 Writ pursuant to Code of Civil Procedure section 1110b that “any stay of enforcement of this Writ pending appeal would result in irreparable harm to [Respondents], and therefore any appeal shall not operate as a stay of execution of this Writ absent further court order.” (9 App. Ex. 93, at p. 2703.)

45. On September 2, 2026, Appellants filed the instant appeal.

VII. AN IMMEDIATE STAY IS NECESSARY.

46. A immediate stay while the Court considers this Petition is not only warranted, it is necessary.

47. First, the 9/2 Writ requires immediate action by Appellants, and imposes an “initial return” date of September 30, 2026. Before that time, the Superior Court has effectively ordered immediate action by Appellants to set up a stand-alone election, which would be first run by the City in 44 years, as addressed above. (7 App. Ex. 86, at p. 1881; 9 App. Ex. 93, at p. 2703.)

48. As set forth at Exhibit M to the Declaration of City Attorney Aaron Harp filed in opposition to Respondents' September 1, 2026 *ex parte* application, numerous deadlines will arrive within the next two weeks for the November 3, 2026 election, including the September 19, 2026 deadline to issue ballots and Voter Information Guides for military and overseas voters (Evid. Code, § 3105); the September 24, 2026 timeline to begin mailing Voter Information Guides to all voters (Evid. Code, § 13303(a)); and the October 5, 2026 date to open ballot drop boxes (Evid. Code, §§ 3000.5, 3001, 3014, 4005(a)(8)(A)). (7 App. Ex. 87 at p. 2077–79.) If the 9/2 Writ is not stayed, Appellants will face an obligation to meet these deadlines and timelines (which they nevertheless do not have the resources to do, as discussed herein).

49. The uncontroverted evidence also establishes the election would cost the City and its taxpayers at least \$1.5 million to \$2 million, all to run what would be a flatly illegal election in violation of the California Constitution, the Elections Code, and the 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); 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 App. Ex. 55, at 1164–67 [City Charter]; *see, also, City of Redondo Beach*, 46 Cal.App.5th at pp. 910-911 [acknowledging and preserving the authority of charter cities over election timing notwithstanding provisions in the Elections Code to the contrary].)

50. Any such illegal election would also impugn the City’s election process, an outcome the courts have repeatedly held should be avoided. (*See, e.g., People ex rel. Bonta v. City of Huntington Beach* (2025) 115 Cal.App.5th 962, 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”]); *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.”].)

51. Enforcement of the 9/2 Writ pending appeal would likewise potentially moot this Appeal and preclude this Court

from granting effective relief even were Appellants to prevail, because the election would have already taken place and Appellants' Constitutional and legal rights and powers would have been invaded before the Appeal could be decided. That harm could not be "undone" by a later reversal of the by-then already completed 9/2 Writ.

52. An immediate stay should issue to halt enforcement of Respondent Court's order.

PRAYER

Petitioner City of Newport Beach prays that this Court:

1. Pending consideration of this Petition, ***issue an immediate temporary stay of the 9/2 Writ and any and all actions by the Superior Court to enforce the 9/2 Writ;***
2. Issue a writ of supersedeas commanding the Superior Court 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 no action to enforce the 9/2 Writ pending resolution of this Appeal or Appellants' concurrently-filed Petition for Writ of Mandate;
3. Award Appellants their costs related to this Petition;
4. 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
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
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. THIS COURT HAS AUTHORITY TO ISSUE A WRIT OF SUPERSEDEAS.

Where a trial court issues an order in violation of the automatic stay on appeal, issuance of a writ of supersedeas is “practically . . . a matter of right.” (*Beshara v. Goldberg* (1963) 214 Cal.App.2d 767, 771 (“*Beshara*”) [citing 3 Witkin, Cal. Proc., §§ 59, 60, pp. 2210, 2214]; 9 Witkin, Cal. Proc. 6th (2026) Appeal § 300 [“The situation is different, however, where the case is one in which the statute does provide a stay and the appellant is being unjustly deprived of it. In that case, supersedeas issues practically as a matter of right.”].) Indeed, the California Supreme Court has held that a writ of supersedeas should issue “‘in a corrective capacity’ in case of a violation or threatened violation of such stay.” (*Estate of Dabney* (1951) 37 Cal.2d 402, 408 (“*Estate of Dabney*”); *Beshara*, 214 Cal.App.2d at 771.)

Where a stay is discretionary, an appellate court may grant a writ of supersedeas where the party seeking the writ shows that (1) it would suffer irreparable harm absent a stay of the appealed order, and (2) the appeal has merit. (*Smith v. Selma Community Hosp.* (2010) 188 Cal.App.4th 1, 18 [party seeking

supersedeas “must convincingly show that substantial questions will be raised on appeal and must demonstrate it would suffer irreparable harm outweighing the harm that would be suffered by the other party”]; *see, also, Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1054 (“*Daly*”) [an appellate court is to balance equities in deciding whether to issue writ of supersedeas, and such a writ “is appropriate where difficult questions of law are involved and the fruits of a reversal would be irrevocably lost unless the status quo is maintained”].)

Here, whether as a matter of right or discretion, the Court should issue a writ of supersedeas pursuant to this Petition.

II. THE 9/2 WRIT WAS ISSUED IN VIOLATION OF THE APPELLATE STAY AND MUST BE STAYED BY WRIT OF SUPERSEDEAS.

A writ of supersedeas must issue “to override [the Superior Court’s] enforcement of [the 8/27 Order] [which] was *automatically* stayed[.]” (Eisenberg, et al., CAL. PRAC. GUIDE: CIV. APP. & WRITS (rev. ed. Dec. 2025) Ch. 7-E, ¶ 7:272.)

Generally, “the perfecting of an appeal stays [the] proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order[.]”

(Code Civ. Proc., § 916(a).) “The purpose of the rule depriving the trial court of jurisdiction during the pending appeal is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided”; more specifically, the rule “prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.” (*Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629 (“*Elsea*”).)

Where a trial court enters an order in violation of the appellate stay, ***that order is an act in excess of its subject matter jurisdiction, is necessarily “void,” and must be reversed.*** (*Varian Med. Sys., Inc. v. Delfino* (2005) 35 Cal.4th 180, 198 (“*Varian Med. Sys.*”) [“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]; *Elsea*, 4 Cal.App.4th at p. 629 [“Because the trial court's ruling on Ohio Casualty's section 473 motion affected enforcement of the default judgment,

it impacted on the effectiveness of the pending appeal and therefore was in excess of the court's jurisdiction.”].)

Here, ***the filing of the First Appeal stayed enforcement of the 8/27 Order*** or any other “matters embraced therein or affected thereby” pending resolution of the First Appeal. (Code Civ. Proc., §§ 916(a).) Indeed, writs of mandate such as the 8/27 Order are automatically stayed pending appeal in the absence of an order to the contrary by the trial court or appellate court pursuant to Code of Civil Procedure section 1110b. (*See 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 thus had no jurisdiction to enforce the 8/27 Order or take any act “embraced” in or “affected” by the

pending First Appeal.

Regardless of this appellate stay and divesting of the Superior Court's jurisdiction, the Superior Court issued the 9/2 Writ *for the purpose of enforcing or modifying the stayed 8/27 Order* to require a November 3, 2026 election. (See 9 App. Ex. 93, at p. 2703.) Indeed, Respondents expressly sought the 9/2 Writ for that purpose. (7 App. Ex. 93, at p. 1808–11 [“Yesterday morning, the City provided notice of an *ex parte* application, apparently taking the position that it would not comply with the orders of the Court due to the filing of the appeal.”; “At this time, it appears the City will not comply with orders of this Court absent entry of a writ, and a judicial determination that no stay of execution shall occur due to the filing of a notice of appeal.”; “The City now claims it has perfected an appeal, and therefore it has no obligation to comply with the orders of this Court.”].) At the very least, the 9/2 Writ is an act “embraced” in or “affected” by the pending First Appeal which will plainly address the ability of the Superior Court to order the November 3, 2026 election the 9/2 Writ purports to require. (See 9 App. Ex. 93, at p. 2703.) In sum, the 9/2 Writ was an act in excess of the Superior Court's subject matter jurisdiction and is void and must be reversed on

appeal (or pursuant to Appellants' concurrent Petition for Writ of Mandate). (*Varian Med. Sys.*, 35 Cal.4th at p. 198; *Elsea*, 4 Cal.App.4th at p. 629.)

Because the 9/2 Writ is a violation of the appellate stay, ***a writ of supersedeas is “practically . . . a matter of right” and must issue*** to stay its affect pending the instant Appeal (or the concurrent Petition for Writ of Mandate). (*Estate of Dabney*, 37 Cal.2d at p. 408; *Beshara*, 214 Cal.App.2d at p. 771.)

III. EVEN WERE A WRIT OF SUPERSEDEAS NOT A MATTER OF RIGHT, THE COURT SHOULD EXERCISE ITS DISCRETION TO STAY THE 9/2 WRIT.

Even were a writ of supersedeas discretionary and Appellants required to demonstrate irreparable harm and merit to obtain a writ, both elements are overwhelmingly satisfied.

A. Appellants Would Suffer Irreparable Harm Were The 9/2 Writ Not Stayed Pending Appeal.

If the 9/2 Writ is not immediately stayed (along with the already-stayed 8/27 Order) pending appeal, Appellants would unquestionably suffer irreparable harm, and the balance of harms plainly justifies issuance of a writ of supersedeas.

The 9/2 Writ purports to require Appellants to conduct a

City-run stand-alone municipal election. (See 9 App. Ex. 93, at p. 2703.) Such an election would be ***flatly illegal*** under the California Constitution, the Elections Code, and the 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 App. Ex. 55, at 1164–67 [City Charter]; see also, *City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 910-911 (“*City of Redondo Beach*”) [acknowledging and preserving the authority of charter cities over election timing notwithstanding provisions in the Elections Code to the contrary].)

In addition, Section 1000 of the City Charter plainly states that “[c]ommencing 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.***” (5 App. Ex. 55, at 1164–67 [City Charter] [emphasis added].) In other words, there can be only one general municipal election for the City, and it must be consolidated with the statewide general election, a legal requirement the Superior Court could not alter. (See, Cal. Const., art. XI, § 5(b); *City of Redondo Beach*, 46 Cal.App.5th at pp. 910-911; see, also, *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 12 [charter cities vested with plenary authority over municipal affairs, free from any constraint imposed by the general law and subject only to constitutional limitations]; *Lawing v. Faull* (1964) 227 Cal.App.2d 23, 28, 35-36 [finding that charter’s requirement that 20 percent of voters sign referendum petition controlled over state requirement of 10 percent].)

The 9/2 Writ would also unlawfully require the City hold a special election on the Three Charter Amendments, because the election cannot be held as part of a consolidated election through the Registrar. The Legislature recently 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 section 1415 and 9255 allowed cities to select special elections to present charter amendment initiatives to voters. (See 7 App. Ex. 75, at p. 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 . . .” (emphasis added)]; 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” (emphasis added)].) The Legislature removed the “special election” language from the statutes in 2013, which indicates the Legislature’s intent to restrict city councils to placing the charter amendment initiatives either on municipal general elections or the next statewide general election. (7 App. Ex. 75, at p. 1784–92.) The Legislative history materials reflect that the Legislature was trying to prevent cities from placing charter amendment initiatives on special elections ballots that, historically, had low voter turnout.

(7 App. 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.”].)

In addition, mandatory deadlines imposed by the Elections Code expired long before issuance of the 9/2 Writ, or the 8/27 Order the writ purports to enforce. For example, Elections Code sections 9255(c)(1) and 1415(b) provide that a qualifying voter-sponsored city charter amendment can only be set for an established statewide general election, statewide primary election, or regularly scheduled general municipal election occurring *not less than 88 days after the order of election* made by the governing city body. (Elec. Code, §§ 1415(b), 9255(c)(1).) But 88 days prior to November 3, 2026 was August 7, 2026, *long before the Superior Court issued the 9/2 Writ or the 8/27 Order* it purports to enforce. (7 App. Ex. 77, at pp. 1799–806; 9 App. Ex. 95, at p. 2707–13.) As a result, a November 3, 2026 election would be illegal under the Elections Code, which the City made clear in opposing issuance of the 9/2 Writ.

Holding an illegal election would harm the City by

impugning its election process. (*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”).) In addition, the interests of proponents of valid initiatives and those of voters, not to mention those of the City, would be irreparably harmed. (*See 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.”].)

By contrast, Respondents would suffer ***no cognizable harm*** were the 9/2 Writ stayed pending appeal. The determination of “harm” in this circumstance is governed by Code of Civil Procedure section 1110b, which permits a court to lift the stay of a writ of mandate only where it finds the requesting party would suffer “irreparable damage” to its “business or profession.” (Code Civ. Proc., § 1110b.) No such finding was or could be made here.

First, the only “damage” Respondents asserted or the Superior Court could have found was that the election was

scheduled for November 7, 2028, rather than November 3, 2026. (7 App. Exs. 80–81 at pp. 1845–50.) But the Elections Code expressly permits the City Council to choose the date for the proposed charter amendments (Elec. Code, §§ 9255(c)(1), 1415(b)), and Respondents have no cognizable right to an earlier election date, such that there can be no “irreparable damage” from an election simply taking place later than Respondents might desire. For that matter, at no time have Respondents ever cited any law giving them the right to an earlier election on the Three Charter Initiatives.

In addition, the “irreparable damage” under Section 1110b must per the plain terms of the statute be specifically to one’s “business or profession.” (Code Civ. Proc., § 1110b.) The Superior Court wholly ignored this statutory requirement, and does not even mention it in the 9/2 Writ.

“Business or profession” necessarily implies a commercial component, which Respondents did not and could not show they have or would be affected by a continued stay of the subject Orders. (*See, e.g., Soc. Servs. Union v. Cnty. of San Diego* (1984) 158 Cal.App.3d 1126, 1131 [“The County asserts the courts should have stayed the writs pending appeal. The courts had the

power to stay execution (§ 1110b), and properly did not do so because of irreparable damage to the employees who would have completely lost the benefits of the writ had it been stayed.”]; *English v. City of Long Beach* (1950) 35 Cal.2d 155, 160 [court lifted stay of writ of mandate finding city police officer unfit for duty and discharging him on a finding of threatened irreparable damage in his profession].)

In addition, California statutes uniformly define “business” in commercial or professional terms. For example, Corporations Code section 16101 defines a “business” as “every trade, occupation, and professions.” Labor Code section 350(f) defines a “business” as “any business establishment or enterprise, regardless of where conducted.” Revenue and Taxation Code section 6013 defines “business” as “any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.” Vehicle Code section 234 defines “business” as “a proprietorship, partnership, corporation, and any other form of commercial enterprise.” Business and Professions Code section 2033 defines “professional” as relating “to the art and science of medicine and surgery and to such other arts and sciences as may be included

within the field of medicine and surgery.”

Quoting a phrase from *Marin Municipal Water District v. Chenu* (1922) 188 Cal. 734 (“*Marin MWD*”), Respondents asserted “business” was anything “which busies, or engages time, attention, or labor, as a principal serious concern or interest[.]” (7 App. Ex. 78 at pp. 1814.) But *Marin MWD*, which involved interpretation of the Motor Vehicle Act, in fact endorsed a narrower reading of that term Respondents sought to omit: “The general definition of the word is ‘that which busies, or engages time, attention, or labor, as a principal serious concern or interest,’ ***but the word has a narrower meaning applicable to occupation or employment for livelihood or gain, and to mercantile or commercial enterprises or transactions.***” (188 Cal. at p. 738 [emphasis added]).

Respondents’ interpretation would require a wholesale re-drafting of Code of Civil Procedure section 1110b and render moot its requirement that irreparable damage must occur to a petitioner’s “business” or “profession.” It is also worth noting other statutes that require irreparable injury in their application do not limit the injury to “business or profession,” indicating the Legislature had a specific application of the Code of Civil

Procedure section 1110b in mind, which Respondents successfully (but improperly) suggested the Superior Court should ignore. (*See, e.g.*, Code Civ. Proc., § 526 [authorizes an injunction when an act “would produce waste, or great or irreparable injury, to a party to the action”]; § 527 [temporary restraining order requires that “great or irreparable injury will result to the applicant before the matter can be heard on notice.”]; § 527.6 [a temporary restraining order issues on a showing “that great or irreparable harm would result to the petitioner.”]; § 527.8(f)(1)(A), (f)(1)(B)(ii) [requires “that great or irreparable harm would result to an employee”].)

Even beyond these legal harms, Appellants established without contravention and in great detail that the City lacks the resources to run a stand-alone election and in fact has not done so for at least 44 years consistent with the City’s charter requiring consolidated elections run through the Registrar. (9 App. Ex. 93, at p. 2703.) Appellants further established that running the illegal and infeasible election the 9/2 Writ Orders would cost the City and its taxpayers between \$1.5 million and \$2 million. (7 App. Ex. 86 at pp. 1879–88.)

Simply put, the balance of harms unquestionably favors

imposition of a stay pending appeal.

B. Enforcement Of The 9/2 Writ Pending This Appeal Would Potentially Moot The Appeal And Render Appellate Relief Unavailable Or Ineffective.

A writ of supersedeas should be issued where “the fruits of a reversal would be irrevocably lost unless the status quo is maintained.” (*Daly*, 11 Cal.5th at 1054.) Enforcement of the 9/2 Writ pending appeal would potentially moot this Appeal and preclude this Court from granting effective relief even were Appellants to prevail (as they expect they will).

Given the realities of appellate timing, the November 3, 2026 election would have already taken place and Appellants’ Constitutional and legal rights and powers would have been invaded before the Appeal could be decided. That harm could not be “undone” by a later reversal of the by-then already completed 9/2 Writ.

Given the exigencies involved, Appellants are with this Petition also submitting a Petition for Writ of Mandate or other writ relief and for an immediate stay. But even that Writ will require time to resolve, and in the meantime the 9/2 Writ requires the City take a host of actions to stand up the ordered

election. (See 7 App. Ex. 86 at pp. 1879–88.) The City should not be required to undertake this conduct at the irretrievable expense of its taxpayers pending appeal.

C. Appellants’ Appeal Is Meritorious.

The second consideration for issuance of a discretionary writ of supersedeas is that the appeal has merit. A writ of supersedeas does not decide the underlying appeal (*Solomon v. Solomon* (1952) 110 Cal.App.2d 660, 662); rather, the appellant seeking the writ must demonstrate that “substantial questions” will be raised on the appeal and “facially” demonstrate the merit of the issues. (*Deepwell Homeowners’ Protective Ass’n v. City Council of Palm Springs* (1965) 239 Cal.App.2d 63, 67.)

Here, the Appeal raises a host of substantial questions, and Appellants’ contentions for reversal are plainly meritorious:

- As discussed above, the 9/2 Writ was issued in clear violation of the appellate stay, such that it is ***necessarily void and must be reversed***. (*Varian Med. Sys.*, 35 Cal.4th at p. 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).”].) On this ground alone, Appellants fully expect to prevail on appeal.

- 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 9/2 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 App. Ex 89 at pp. 2686-2888.) Respondent Court failed to provide that statement of decision, and thus the September 2 Writ must be reversed.

- As discussed in Appellants’ concurrently-filed Petition for Writ of Mandate, the Superior Court’s 8/27 Order and 9/2 Writ violate the separation of powers enshrined in the

California Constitution and the statutory discretion granted to the City Council 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*, 102 Cal.App.4th at p. 6 [“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)].)

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) likewise 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. (5 App. 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 – the very same thing the Superior Court purported to do here. 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)].)

Jeffrey leaves no question that the Superior Court’s 8/27 Order and 9/2 Writ fail as a matter of law and must be reversed. Indeed, *Jeffrey* further establishes that Respondents’ remedy is to seek changes in Elections Code sections 1415 and 9255 through the California Legislature.

- “Mandamus 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.) Regardless, 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, in addition to the deadlines and other requirements of numerous provisions of the Elections Code.

The 9/2 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 App. Ex. 55, at p. 1166 [City Charter, § 1000); and (b) the City cannot hold a special election on the Three Charter Amendments (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, 694.) Here, not only is there no clear duty, 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.)

CONCLUSION

Appellants respectfully request this Court issue a writ of supersedeas prohibiting enforcement of the 9/2 Writ (and likewise reaffirming the continuing stay of the 8/27 Order) pending resolution of this Appeal, and ***issue an immediate temporary stay of the 9/2 Writ pending the Court’s consideration of this Petition.*** Appellants further respectfully request the Court set an expedited briefing and argument schedule for this appeal to allow resolution of the important legal issues affecting the City and its residents as quickly as possible.

Dated: September 8, 2026

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

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

CERTIFICATE WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c), I hereby certify that the attached Petition for Writ of Supersedeas has a typeface of 13 points or more and contains 12,057 words, as determined by the word processing software used to generate the document.

Dated: September 8, 2026

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

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