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

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CITY OF NEWPORT BEACH, et al.,

Plaintiffs,

vs.

NEWPORT BEACH STEWARDSHIP ASSOCIATION, et al.,

Defendants.

NEWPORT BEACH STEWARDSHIP ASSOCIATION, et al.,

Cross-Petitioners,

vs.

LENA SHUMWAY, et al.,

Cross-Respondents,

CITY OF NEWPORT BEACH, et al.,

Real Parties In Interest.

No.: 30-2026-01559183-CU-JR-NJC

Action Filed: March 26, 2026

ASSIGNED FOR ALL PURPOSES TO:
Hon. Julianne Bancroft, Dept. N14

INITIAL RETURN TO WRIT OF MANDATE

No Fee:
Cal. Gov't Code § 6103

INITIAL RETURN OF RESPONDENTS CITY OF NEWPORT BEACH, ET AL. TO WRIT OF MANDATE DATED SEPTEMBER 2, 2026

Respondents City of Newport Beach, et al. respectfully file this early Return to the Court's order of September 2, 2026, to apprise the Court of efforts undertaken to date and to seek the Court's further direction given the unavailability of critical election resources from the County and State that will have the effect of denying eligible Newport Beach voters an opportunity to vote in the City's special standalone election on November 3, 2026. Respondents report as follows:

1. The City's efforts to comply with the Court's orders began on August 27, 2026, when the Court issued its minute order directing the City "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."

2. In response to that order and on the same day it was issued, counsel for the City sent a letter electronically and by personal delivery to the Orange County Registrar of Voters, the County Counsel, and the Clerk of the Orange County Board of Supervisors. (Ihrke Decl., Ex. 1.) The letter transmitted the materials necessary for the Registrar to consolidate the City election with the November 3, 2026 statewide election and stated that if the Registrar or County Counsel "believes that any additional material or action is required in response to the 8/27/2026 Minute Order, please identify the requested material or action ***immediately*** and with specificity." (Ihrke Decl., Ex. 1., emphasis in original.) Included within that correspondence were the text of the measures, the ballot questions, and arguments for and against the measures. (Ihrke Decl., ¶ 3 & Ex. 1.)

3. Since the City first requested assistance from the County Registrar on August 27, 2026, the Registrar has repeatedly declined to consolidate the election ordered by the Court with the statewide election on November 3, 2026, or to provide the City the kind of assistance that would be required for the City to conduct the election on its own. In declining to provide election support, the Registrar cited various Elections Code provisions as well as practical concerns about voter confusion and risks to his ability to conduct the statewide general election. In fact, the Board of Supervisors has not placed the City's request for election assistance made pursuant to Elections Code section 10002 on the agenda for consideration by the Board of Supervisors, despite express authorization for a city to

request the county elections official provide specified services relating to the conduct of an election pursuant to this section. (Shumway Decl., ¶¶ 3, 13, 26, 28, 43 & Exs. 1, 6, 14, 25.)

4. When the County said that it would not consolidate the City election with the statewide election on August 28, 2026, the City had no choice but to conduct a stand-alone election to occur on the same day as the statewide election on November 3, 2026. The City of Newport Beach has not conducted a stand-alone election in 44 years, and it immediately began a search for election experts who could assist the City with a standalone election. (Shumway Decl., ¶ 5.) Preparations for an election normally take eight to twelve months even for county registrars of voters. (Blair Decl., ¶ 3.) The City had to find consultants able to help the City hold a standalone election in approximately two months.

5. On September 3, 2026, the City retained Jessica Blair of Stellara Group, LLC, who has more than 25 years of California local-government experience and experience administering municipal elections, including standalone municipal elections. (Blair Decl., ¶¶ 1-2.)

6. Because the City lacks both the equipment and personnel to conduct any election that involves in-person voting, the City concluded that it had no choice but to conduct the court-ordered election using all mail ballots. (Blair Decl., ¶ 9.) To move the mail-only election forward, the City's consultant identified available vendors for ballot production and mailing, ballot management, and the leasing of voting equipment. In addition, the Consultant immediately began making plans for assembling an experienced municipal election team for ballot processing and tabulation. (Blair Decl., ¶ 10.)

7. While the Consultant believed she could help the City successfully administer the election, it was clear that the City still needed the cooperation of the Orange County Registrar and the Secretary of State to send out ballots and to process them once they are returned. For example, although the County has provided the City the list of registered voters in Newport Beach,[1] that list is incomplete because it does not include voters whose names and addresses are kept confidential pursuant to Elections Code Sections 2166 to 2166.9. These include people like public safety officers and victims of domestic violence or abuse. (Elec. Code, §§ 2166.5, 2166.7.) Importantly, as of

[1] This list is available to "to any person for election, scholarly, journalistic, or political purposes" pursuant to Elections Code Section 2194(a)(3).

January 1, 2026, the list of registered voters excludes the elected officials and candidates at both the state and local levels, unless they have affirmatively decided to waive their right to confidentiality. (*Id.*, § 2166.9.) Without this information, the City is unable to send a ballot to allow candidates for City Council to vote on charter amendments that will affect the very offices for which they are running. The County has declined to produce the list of confidential voters. (Shumway Decl., ¶¶ 13, 50 & Exs. 6, 20.)

8. The City will also need to access a database of images of voter signatures to verify signatures on the envelopes in which voters return their ballots because Elections Code Section 3019 requires the elections official to compare the signature on a vote-by-mail ballot identification envelope with the signatures contained in the voter's registration record. Only the Registrar and the Secretary of State have that information, and they have both declined to provide it. (Shumway Decl., ¶¶ 23-24, 30, 45, 51 & Ex. 19; Harp Decl., ¶ 14 & Ex. 8.)

9. The County also has exclusive control of the County's registered voter rolls, which include up-to-date information regarding recent changes in voter registration status. Without this information, the City will not have an accurate, comprehensive, and up-to-date list of all City residents who are registered and eligible to vote as of election day. In addition, the City will need the County to provide a written chain-of-custody process for City ballots that are inadvertently returned to County vote centers or drop boxes, as well as for County ballots that are mistakenly delivered to City locations. As of the date of this filing, the City has not received any of these elements from the County. (Blair Decl., ¶ 21; Shumway Decl., ¶ 50.)

10. There has also been a critical lack of cooperation from the Secretary of State's Office. Although the City has engaged a qualified printer, printing of ballots cannot begin until the Secretary of State provides a ballot release as well as the tint and watermark that must be used on the ballots. Elections Code Section 13002 provides: "Ballot paper and ballot cards used by a jurisdiction holding an election pursuant to the laws of California shall be tinted and watermarked or overprinted with a design, to be furnished by the Secretary of State, so that the watermark or overprint is plainly discernible."

11. The City has requested that the Secretary of State provide the tint and watermark required under Section 13002, but as of this writing, the Office of the Secretary of State has declined to provide it. The City has told the Chief Legal Counsel for the Secretary of State that it is under court order to conduct the election on November 3, 2026, and it cannot print ballots without the ballot release, tint and watermark. (Harp Decl., Ex. 10.) To date, the Secretary of State has declined to furnish these resources. (Harp Decl., ¶ 16 & Ex.10.) The City opted to print and send its own ballots to overseas voters without this information, because state law allows those voters to receive ballots electronically and print them themselves without the tint or watermark and it allows certain military and overseas voters to return ballots by fax. (Elec. Code, §§ 3105, 3106.) However, the City cannot print and mail ballots to the City's more than 60,000 non-overseas voters without the ballot release, tint and watermark information from the Secretary of State that is required by Elections Code Section 13002. (Harp Decl., ¶ 16; Blair Decl., ¶ 20.)

12. The election vendors have informed the City's election consultant that the very last day they could receive approvals and releases from the Secretary of State and a full voter file from the County is October 7th to meet the October 19, 2026 mailing target. (Shumway Decl., ¶ 52; Blair Decl., ¶ 22.) This is important because the County of Orange did not place the City's request for assistance pursuant to Elections Code Section 10002 on the Board of Supervisors' September 29, 2026, agenda for consideration, and the Board does not have another regularly scheduled Board meeting calendared until October 13, 2026.

13. Even if the City is able to print and mail ballots, it will need cooperation from the Secretary of State to count them once they come in. Any ballot tabulating machine used in an election must receive from the Secretary of State a "trusted build" approval to verify that the machine's software is secure and reliable. Although the City has engaged Hart InterCivic, Inc. for leasing voting equipment, without "trusted build" approval from the Secretary of State, it cannot use that equipment to tabulate ballots. (Blair Decl., ¶ 20; Shumway Decl., ¶ 52.)

14. Despite these issues, the Stellara team and City staff have continued to do what they can to prepare for the upcoming election by identifying the election administration components the City and its vendors could proceed to move forward independently. This included the work of

ballot-production planning, vendor coordination, voter/ballot-management configuration, equipment planning, staffing, processing and tabulation planning, security procedures, and other standalone-election functions. (Blair Decl., ¶ 12.)

15. However, without assistance from the State, the County, and the Registrar on the issues described above, the City cannot conduct the election as required by law. Specifically, the City will lack the names and addresses of confidential voters so those eligible voters will not receive a ballot; it will be unable to print and mail ballots that comply with the Elections Code; it will have no chain of custody protocols with the Registrar to handle ballots that are misdirected either to the City or to the County; it will have no means of verifying signatures on the ballot envelopes; and it will have no legally valid machines for tabulating the votes.

16. At this time, the City is continuing to take all steps within its control to comply with the Court's order and conduct the election on November 3, 2026. Because there is limited time remaining and critical election resources and information necessary to conduct the election in accordance with state law remain within the control of the County, the Registrar, and the Secretary of State, the City respectfully suggests that the Court schedule a case management conference at its earliest possible convenience to discuss with the parties whether and how the City can obtain the help that it needs from the Registrar and the Secretary of State in order to conduct the election on November 3, 2026. To facilitate that discussion, the City has provided courtesy copies of this return and its supporting documents to counsel for the Secretary of State and the Orange County Registrar of Voters.

Dated: September 28, 2026

Respectfully submitted,

OLSON REMCHO LLP

By: 
Kristen Mah Rogers

Attorneys for Plaintiffs, Cross-Respondents and Real Parties in Interest CITY OF NEWPORT BEACH, NEWPORT BEACH CITY COUNCIL, AARON HARP, and LENA SHUMWAY

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 555 Capitol Mall, Suite 400, Sacramento, California 95814.

On September 28, 2026, I served a true copy of the following document(s):

INITIAL RETURN TO WRIT OF MANDATE

on the following party(ies) in said action:

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☐ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and

☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☐ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in Sacramento, California, in a sealed envelope with postage fully prepaid.

☐ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.

☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

☐ **BY EMAIL TRANSMISSION**: By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

☒ **BY EMAIL TRANSMISSION (ONE LEGAL):** By electronically submitting for filing and service the document(s) listed above through One Legal, an electronic filing vendor approved by this Court. The name of the vendor and the transaction receipt I.D. are given in the vendor's emailed Notification of Service.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on September 28, 2026, in Sacramento, California.



Eva Alfaro

(2,320,590)