

No. S281977

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

LEGISLATURE OF THE STATE OF CALIFORNIA; GAVIN NEWSOM,
in his official capacity as Governor of the State of California; and

JOHN BURTON,

Petitioners,

v.

SHIRLEY N. WEBER, Ph.D., in her official capacity as

Secretary of State of the State of California,

Respondent,

THOMAS W. HILTACHK,

Real Party in Interest.

**PRELIMINARY RESPONSE TO PETITION FOR WRIT OF MANDATE
AND REQUEST FOR STAY;
DECLARATION OF JANA M. LEAN**

Steven J. Reyes (SBN 212849)

*Mary M. Mooney (SBN 287376)

Alexa P. Howard (SBN 309197)

Office of the California Secretary of State

1500 11th Street

Sacramento, CA 95814

Tel.: (916) 767-8308

Email: mmooney@sos.ca.gov

Attorneys for Respondent Shirley N.

Weber, Ph.D., in her official capacity as

Secretary of State of the State of California

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to rules 8.208 and 8.488 of the California Rules of Court, Respondent Dr. Shirley N. Weber, Ph.D., in her official capacity as Secretary of State of the State of California, hereby certifies, through her undersigned counsel, that there are no interested entities or persons that must be listed in this certificate.

Dated: October 30, 2023

Respectfully submitted,

/s/ Mary M. Mooney

Mary M. Mooney
Office of the California Secretary of State
*Attorney for Respondent Dr. Shirley N.
Weber, Ph.D., in her official capacity as
Secretary of State of the State of
California*

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS 2

TABLE OF AUTHORITIES..... 4

PRELIMINARY RESPONSE..... 5

 I. To Ensure the Efficient Administration of the November 5,
 2024, General Election, this Proceeding Should be Resolved by
 June 27, 2024..... 6

 II. If Enacted, the Initiative Would Have an Immediate Impact
 on Election Administration..... 6

CONCLUSION 7

CERTIFICATE OF COMPLIANCE 8

DECLARATION OF JANA M. LEAN 9

TABLE OF AUTHORITIES

Statutes

Elections Code

§ 10.....6

Government Code

§ 12172.5.....6

Miscellaneous

Attorney General Initiative #21-0042A1, Secretary of State Initiative #1935

<https://oag.ca.gov/system/files/initiatives/pdfs/21-0042A1%20%28Taxes%29.pdf>.....5, 6

PRELIMINARY RESPONSE

Pursuant to the Court’s request, Respondent Dr. Shirley N. Weber, Ph.D., in her official capacity as Secretary of State of the State of California, submits this preliminary response to the emergency petition for writ of mandate and request for stay filed by Petitioners on September 26, 2023 (“Petition”). Petitioners contend that a proposed ballot initiative — Attorney General Initiative #21-0042A1 and Secretary of State Initiative #1935, titled “Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment.”¹ and also known as the Taxpayer Protection and Government Accountability Act (“Initiative”) — should not be permitted to be placed on the ballot because it is an unlawful attempt to revise the California Constitution and it would both retroactively and prospectively impair essential government functions. The Initiative has gathered sufficient signatures to make it eligible for the November 5, 2024, General Election ballot. Petitioners seek a writ of mandate and stay to prevent Respondent and all persons acting pursuant to her direction from qualifying the Initiative for the November 5, 2024, General Election ballot.

Respondent presently takes no position on the substantive merits of Petitioners’ arguments or prayer for relief, except Respondent denies any liability for attorneys’ fees and costs. Respondent provides this preliminary response to apprise the Court of relevant election deadlines for the November 5, 2024, General Election and to ensure any action by this Court does not interfere with the ability of the Secretary of State and county elections officials to administer upcoming elections.

To ensure the efficient administration of the November 5, 2024, General Election, if the Court accepts this matter for review, Respondent respectfully requests this proceeding be resolved by June 27, 2024, which is the date the Secretary of State must formally qualify the Initiative for the

¹ Attorney General Initiative No. 21-0042A1 and Secretary of State Initiative No. 1935, attached to the Petition as Exhibit A and at <https://oag.ca.gov/system/files/initiatives/pdfs/21-0042A1%20%28Taxes%29.pdf>.

November 5, 2024, General Election ballot. (Declaration of Jana M. Lean, ¶¶ 4-5, 7.).

I. To Ensure the Efficient Administration of the November 5, 2024, General Election, this Proceeding Should be Resolved by June 27, 2024

The Secretary of State has numerous statutory duties regarding California ballot measures. These duties include qualifying eligible initiatives and other ballot measures for placement on the statewide ballot, the solicitation of arguments in favor of and against proposed ballot measures, the preparation and distribution of the state voter information guide, and the overall supervision of the State's election process.

If the Court decides that the review sought by the Petition is appropriate, Respondent respectfully requests this proceeding be resolved, and a ruling issued, by June 27, 2024, which is the day the Secretary of State must formally qualify the Initiative for the November 5, 2024, General Election ballot. (Declaration of Jana M. Lean, ¶¶ 4-5, 7.).

II. IF ENACTED, THE INITIATIVE WOULD HAVE AN IMMEDIATE IMPACT ON ELECTION ADMINISTRATION

As California's chief elections officer, the Secretary of State is responsible for administering the provisions of the Elections Code and ensuring that elections are efficiently conducted and that state election laws are enforced. (Gov. Code, § 12172.5; Elec. Code, § 10.)

Respondent highlights for the Court that the Initiative, if adopted by voters, includes significant effects retroactive to January 1, 2022. The Initiative includes a directive that any tax or charge adopted on or after January 1, 2022, that was not adopted in compliance with the requirements of the Initiative is void within twelve months of the Initiative's effective date unless reenacted in compliance with the Initiative. (Initiative, Sec. 4, proposed art. XIII A, § 3, subd. (f); Sec. 6, proposed art. XIII C, § 2, subd. (g).) The Initiative does not provide for a specific process of conducting what could possibly be a significant number of elections to ratify these potentially noncompliant taxes and charges adopted between January 1,

2022, and the effective date of the Initiative, which would be the fifth day after the Secretary of State certifies the election results.

Any legal questions raised by the Petition that are unresolved by this Court would therefore create immediate responsibilities for state and local government (including any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity), to (1) determine the relevant legislative enactments affected by the Initiative (including those made retroactively as of January 1, 2022); (2) determine which of those matters to place before its electorate; (3) take necessary actions to hold one or more elections to place those proposals on the ballot for voter approval; and (4) to prepare for and conduct those elections.

CONCLUSION

Respondent informs the Court that the Initiative, if adopted by voters, will have an immediate impact on election administration in the state. Further, Respondent respectfully requests that, if the Court accepts this matter for review, this proceeding be resolved by June 27, 2024, to prevent interference with the administration of the November 5, 2024, General Election.

Dated: October 30, 2023

Respectfully submitted,

/s/ Mary M. Mooney

Mary M. Mooney
Office of the California Secretary of State
*Attorney for Respondent Dr. Shirley N.
Weber, Ph.D., in her official capacity as
Secretary of State of the State of
California*

CERTIFICATE OF COMPLIANCE

Pursuant to rules 8.204(c)(1) and 8.486(a)(6) of the California Rules of Court, I certify that this PRELIMINARY RESPONSE TO PETITION FOR WRIT OF MANDATE AND REQUEST FOR STAY uses 13-point Times New Roman font and contains 851 words.

Dated: October 30, 2023

/s/ Mary M. Mooney

Mary M. Mooney
Office of the California Secretary of State
*Attorney for Respondent Shirley N.
Weber, Ph.D., in her official capacity as
Secretary of State of the State of
California*

DECLARATION OF JANA M. LEAN

I, Jana M. Lean, declare as follows:

1. I am the Chief of the Elections Division, employed in the Office of the California Secretary of State. I have served in that capacity at all times pertinent to this action.

2. The Secretary of State is empowered by statute to perform numerous duties regarding California ballot measures. These include qualifying eligible initiatives and other ballot measures for placement on the statewide ballot, the solicitation of arguments in favor of and against proposed ballot measures, the preparation and distribution of the state voter information guide, and the overall supervision of the State's election process. The entire process by which ballot measures are qualified for and placed on the ballot is subject to stringent time constraints imposed by law.

3. Attorney General Initiative #21-0042A1 and Secretary of State Initiative #1935, titled "Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment." ("Initiative") gathered the sufficient number of signatures required for such Initiative to be eligible to be placed on the ballot for the Statewide General Election on November 5, 2024.

4. On June 27, 2024, the Secretary of State will certify the Initiative as qualified for the November 5, 2024, General Election ballot pursuant to Elections Code section 9033(b), unless the Initiative is withdrawn by its proponent prior to certification pursuant to Elections Code section 9604(b).

5. If the Initiative is certified as qualified for the ballot, the Secretary of State will be required to perform various duties pursuant to Elections Code section 9050 *et seq.* to finalize the contents of the state voter information guide prior to July 23, 2024, which is the date the voter information guide for the November 5, 2024, General Election is required to be placed on public display. These duties include: (1) soliciting arguments both in favor of and against the Initiative from interested parties;

(2) if more than one argument for or against the Initiative is properly filed, selecting one argument for and one argument against the Initiative; (3) exchanging the initial arguments between authors and requesting rebuttal arguments from the authors of the arguments for and against the Initiative; (4) gathering the summary statement and impartial analysis for the Initiative prepared by the Legislative Analyst pursuant to Elections Code sections 9085 and 9087; and (5) compiling and translating other materials as required by law to be included in the state voter information guide. Key deadlines for collecting and finalizing these items for the state voter information guide for the November 5, 2024, General Election cycle have been published on the Secretary of State website at <https://www.sos.ca.gov/elections/upcoming-elections/general-election-nov-5-2024/key-dates-deadlines>.

6. I am informed and believe that, due to strict printing and logistical constraints, the State Printer must receive the final version of the state voter information guide by 5:00 p.m. on August 12, 2024, in order to ensure that over 13.5 million required copies of the guide will be printed, bound, and distributed within the legally prescribed deadline. Printing of the guides in ten languages (English plus nine other languages) takes approximately four to six weeks. Under applicable law, guides must begin to be mailed to registered voters by September 26, 2024, and the mailing must be completed by October 15, 2024, for voters who register on or before the 60th day prior to the election, and by October 26, 2024, for voters who register between 59 and 29 days prior to the election, pursuant to Elections Code section 9094.

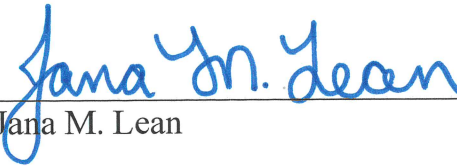
7. Resolution of this case by 5:00 p.m. on June 27, 2024, which is the date the Secretary of State must formally qualify the Initiative for the November 5, 2024, General Election ballot, would promote the ability of the Office of Secretary of State to timely prepare the voter information guide and avoid unnecessary state resources required to gather materials which are statutorily required to appear in the voter information guide.

8. If it is not possible to resolve this case by 5:00 p.m. on June 27, 2024, a resolution of this case by July 22, 2024, would enable the Office of the Secretary of State to meet its statutory duty to make the voter information guide—indicating what will appear on the ballot—available for public display between July 23, 2024 and August 12, 2024, and avoid unnecessary costs for typesetting and proofing additional materials for printing which occurs during the public display period.

9. I have personal knowledge of these facts and would competently testify to them if called as a witness to these proceedings.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of October 2023, at Sacramento, California.



Jana M. Lean

DECLARATION OF SERVICE

Case Name: *Legislature, et al. v. Shirley Weber, in her official capacity as Secretary of State of the State of California.* (Case No.: S281977)

I declare: I am over the age of 18 years and not a party to this matter. Electronic filings are transmitted using the TrueFiling electronic system. Participants who are registered with TrueFiling will be served electronically. Participants who are not registered with TrueFiling will be served by U.S. Mail. I am familiar with the Office of the Secretary of State's business practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence placed in the internal mail collection system at the Office of the Secretary of State is deposited with the United States Postal Service with postage fully prepaid that same day in the ordinary course of business.

On October 30, 2023, I served the attached:

PRELIMINARY RESPONSE TO PETITION FOR WRIT OF MANDATE AND REQUEST FOR STAY; DECLARATION OF JANA M. LEAN

BY ELECTRONIC SERVICE: I transmitted a true copy of the foregoing document via this Court's TrueFiling system to the parties listed on the following "Electronic Service List."

BY U.S. MAIL: I effected a true copy thereof to be enclosed in a sealed envelope and placed in the internal mail collection system at the Office of the Secretary of State, at 1500 11th Street, Sacramento, CA 95814, addressed to the parties listed on the following "U.S. Mail Service List."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of October, 2023, at Sacramento, California.

/s/ Mary M. Mooney

Mary M. Mooney

U.S. MAIL SERVICE LIST

| | |
|--|---|
| Office of the Attorney General P.O. Box 944255 Sacramento, CA 94244-2550 | <i>Pursuant to Rule 8.29 of the California Rules of Court</i> |
|--|---|

ELECTRONIC SERVICE LIST

| | |
|--------------------|-----------------|
| Thomas W. Hiltachk | tomh@bmhlaw.com |
|--------------------|-----------------|

BELL, McANDREWS & HILTACHK, LLP

455 Capitol Mall, Suite 600

Sacramento, CA 95814

Real Party in Interest

| | |
|-------------------------|---------------------------|
| Robin B. Johansen, Esq. | rjohansen@olsonremcho.com |
|-------------------------|---------------------------|

| | |
|----------------------------|---------------------------|
| Margaret R. Prinzing, Esq. | mprinzing@olsonremcho.com |
|----------------------------|---------------------------|

| | |
|-----------------------|-----------------------|
| Richard R. Rios, Esq. | rrios@olsonremcho.com |
|-----------------------|-----------------------|

| | |
|---------------------|---------------------------|
| Inez Kaminski, Esq. | ikaminski@olsonremcho.com |
|---------------------|---------------------------|

Olson Remcho LLP

555 Capitol Mall, Suite 400

Sacramento, CA 95814

Attorneys for Petitioners: Legislature of the State of California,
Governor Gavin Newsom, and John Burton

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **LEGISLATURE OF THE STATE OF CALIFORNIA v. WEBER
(HILTACHK)**

Case Number: **S281977**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **mmooney@sos.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

| Filing Type | Document Title |
|------------------------|---|
| PRELIMINARY OPPOSITION | S281977 Preliminary Response of Respondent (Weber) 10-30-2023 |

Service Recipients:

| Person Served | Email Address | Type | Date / Time |
|---|---------------------------|---------|--------------------------|
| Mary Mooney California Secretary of State 287376 | mmooney@sos.ca.gov | e-Serve | 10/30/2023 1:16:02 PM |
| Margaret Prinzing Olson Remcho, LLP 209482 | mprinzing@olsonremcho.com | e-Serve | 10/30/2023 1:16:02 PM |
| Michael Colantuono Colantuono, Highsmith & Whatley, PC 143551 | MColantuono@chwlaw.us | e-Serve | 10/30/2023 1:16:02 PM |
| Inez Kaminski Olson Remcho, LLP 345584 | ikaminski@olsonremcho.com | e-Serve | 10/30/2023 1:16:02 PM |
| Alexa Howard California Secretary of State 309197 | lhoward@sos.ca.gov | e-Serve | 10/30/2023 1:16:02 PM |
| Adrian Granda City of San Diego | ADGranda@sandiego.gov | e-Serve | 10/30/2023 1:16:02 PM |
| Robin Johansen Olson Remcho, LLP 79084 | rjohansen@olsonremcho.com | e-Serve | 10/30/2023 1:16:02 PM |
| Mike Young California Environmental Voters | mike@envirovoters.org | e-Serve | 10/30/2023 1:16:02 PM |
| Richard Rios Olson Remcho, LLP 238897 | rrios@olsonremcho.com | e-Serve | 10/30/2023 1:16:02 PM |
| Thomas Hiltachk Bell McAndrews & Hiltachk LLP 131215 | tomh@bmhlaw.com | e-Serve | 10/30/2023 1:16:02 PM |

| | | | |
|--|----------------------------|---------|--------------------------|
| Christopher Hoene California Budget & Policy Center | choene@calbudgetcenter.org | e-Serve | 10/30/2023 1:16:02 PM |
| Steven Reyes California Secretary of State | steve.reyes@sos.ca.gov | e-Serve | 10/30/2023 1:16:02 PM |
| Christina Williamson Mastagni Holstedt, A.P.C. | cwilliamson@mastagni.com | e-Serve | 10/30/2023 1:16:02 PM |

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/30/2023

Date

/s/Mary Mooney

Signature

Mooney, Mary (287376)

Last Name, First Name (PNum)

California Secretary of State

Law Firm