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SAN DIEGO PUBLIC LIBRARY FOUNDATION
9 and SAN DIEGO PARKS FOUNDATION

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**
12 **UNLIMITED JURISDICTION**
13

14 SAN DIEGO PUBLIC LIBRARY
FOUNDATION and SAN DIEGO
15 PARKS FOUNDATION,

16 Petitioners and Plaintiffs,

17 v.

18 DIANA FUENTES, in her capacity as
19 SAN DIEGO INTERIM CITY CLERK;
20 CYNTHIA PAES, in her capacity as
SAN DIEGO COUNTY REGISTRAR
21 OF VOTERS; and DOES 1 through 25,
inclusive,

22 Respondents and Defendants.
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Case No.

**VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

**(California Code of Civil Procedure
sections 1085, 526 and 1060, et seq.)**

1 Petitioners and Plaintiffs SAN DIEGO PUBLIC LIBRARY FOUNDATION and
2 SAN DIEGO PARKS FOUNDATION (“Petitioners”) hereby seek from this Court a
3 peremptory writ of mandate, injunctive relief, and declaratory relief directed to
4 Respondents and Defendants DIANA FUENTES, in her capacity as SAN DIEGO
5 INTERIM CITY CLERK (the “City Clerk”); CYNTHIA PAES, in her capacity as SAN
6 DIEGO COUNTY REGISTRAR OF VOTERS (the “Registrar”); and DOES 1 through
7 25, inclusive, and allege as follows:

8 INTRODUCTION

9 1. Petitioners bring this action as a result of Respondents’ inaccurate and
10 legally unjustified determination that the citizens’ initiative petition for the “Libraries
11 and Parks Improvement Act” (the “Initiative”) does not contain enough valid signatures
12 of City of San Diego (the “City”) voters to qualify for the ballot.

13 2. Petitioners, as the Initiative’s official proponents, seek to present to the
14 voters of the City of San Diego a parcel tax in 2024 to provide much-needed ongoing
15 financial support to the City’s libraries and parks.

16 3. In support of the Initiative effort, between July and December 2022,
17 Petitioners oversaw the gathering of, upon information and belief, more than 82,566
18 valid signatures of City voters. On or about December 15, 2022, Petitioners submitted
19 approximately 111,189 signatures to the City Clerk, and the Registrar was tasked with
20 reviewing the signatures to determine their sufficiency.

21 4. The Registrar selected a three percent random sample of signatures, as
22 permitted by law, and reviewed 3,336 of the 111,189 signatures that had been submitted.
23 On or about January 24, 2023, the Registrar concluded that only 2,201 of the 3,336
24 random sample signatures were valid, 1,135 were invalid, and that therefore the Initiative
25 petition was projected to contain 72,285 valid signatures and thus failed to qualify for the
26 ballot. The Registrar also concluded that because the Initiative petition failed to contain
27 at least 78,438 valid signatures, it also failed to qualify for a “full count” of signatures to
28 determine if it in fact contained the required number of valid signatures.

1 5. As permitted by law, Petitioners conducted a detailed review of the
2 Registrar’s signature determinations and concluded that the Registrar made numerous
3 legal and factual errors and that judicial relief is required to protect Petitioners, the
4 voters, and the integrity of the initiative process.

5 6. The Registrar’s legal and factual errors include, but are not limited to:

- 6 A) Determining that 82,566 valid signatures (or ten percent of the 2020
7 General Election registered voters) are required, when in actuality,
8 upon information and belief, 80,020 valid signatures (or ten percent
9 of the 2022 General Election registered voters) are required.
- 10 B) Invalidating approximately 125 signatures on the grounds that
11 voters’ addresses as written on the Initiative petition were different
12 from the addresses as contained in the voters’ registration records,
13 when in actuality the voters’ street name was either slightly
14 misspelled or merely difficult to read (e.g., “Louisiana” Street
15 instead of “Louisiana” Street) or the voters used an imperfect U.S.
16 Postal Service abbreviation of their street names (e.g., for
17 “Mountain,” using “Mt.” instead of “Mtn.”).
- 18 C) Invalidating more than 150 signatures on the grounds that there were
19 discrepancies between the dates that petition circulators placed on
20 the petition and the dates that petition signers placed on the petition
21 (e.g., writing one’s birthday instead of the day they signed the
22 petition).
- 23 D) Determining that voters were required to affix a date next to their
24 signatures on the Initiative petition;
- 25 E) Invalidating more than 20 signatures on the grounds that there were
26 discrepancies between the dates that petition signers placed on the
27 petition and the dates that they re-registered to vote at a different
28 address (e.g., moving to a new residence and re-registering to vote at

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that new address, but then listing their old address on the petition the very next day).

- F) Invalidating nearly 20 signatures on the grounds that there were discrepancies between the signatures on the Initiative petition and the signatures on the voters’ registration records.
- G) Failing to take into account that electronic signatures, such as those obtained from voters on electronic screens at the Department of Motor Vehicles, can appear not to match signatures obtained from voters on paper.
- H) Failing to validate certain signatures that had previously been invalidated, even after admitting that such signatures should not been invalidated.
- I) Applying overly strict and legally unsupported criteria to several other categories of signatures, thus tainting the entire signature review process.
- J) Depriving Petitioners, their supporters, voters, petition signers, and others of their constitutional rights under the United States and California Constitutions.

7. Accordingly, Petitioners seek this Court’s issuance of a writ of mandate, an injunction, and a declaration, as prayed for herein, that would require the Registrar to review the petition signatures again based on criteria established pursuant to this litigation.

PARTIES

8. Petitioner and Plaintiff SAN DIEGO PUBLIC LIBRARY FOUNDATION (the “Library Foundation”) is a 501(c)(3) non-profit organization dedicated to supporting library efforts to help San Diegans learn new skills, pursue lifelong ambitions, and achieve a better life with the help of dedicated staff, committed volunteers, and generous donors and partners. The Library Foundation strengthens communities by supporting

1 excellence in the San Diego Public Library system through philanthropy, advocacy and
2 outreach. The Library Foundation is a catalyst for creating stronger communities
3 through investment in the San Diego Public Library system - where access to resources
4 supporting literacy, work readiness, and lifelong learning ensure equal opportunities for
5 success.

6 9. The Library Foundation is based in the City of San Diego and County of
7 San Diego, is one of the official proponents of the Initiative, is beneficially interested in
8 this matter, and has standing to bring this action.

9 10. Petitioner and Plaintiff SAN DIEGO PARKS FOUNDATION (the “Parks
10 Foundation”) is a 501(c)(3) non-profit organization dedicated to improving the quality of
11 life of communities throughout the City of San Diego through equitable investments in
12 parks, greenspace, and recreational opportunities. The Parks Foundation was established
13 to provide critical support to the City of San Diego’s Parks and Recreation Department.
14 The Parks Foundation secures funds from private and public supporters to address Parks
15 and Recreation’s funding gaps in programming and maintenance of neighborhood parks
16 as well as implement projects directly. This support helps foster community health and
17 connection by providing opportunities for exercise, spending time in nature, social
18 interaction, and accessing resources.

19 11. The Parks Foundation is based in the City of San Diego and County of
20 San Diego, is one of the official proponents of the Initiative, is beneficially interested in
21 this matter, and has standing to bring this action.

22 12. Respondent and Defendant DIANA FUENTES is the Interim Clerk of the
23 City of San Diego, and is charged by law with overseeing the initiative process in the
24 City of San Diego, including reviewing, or contracting with the San Diego County
25 Registrar of Voters to review, initiative petitions to determine whether they contain a
26 sufficient number of valid signatures to qualify for the ballot.
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1 13. Respondent and Defendant CYNTHIA PAES is the San Diego County
2 Registrar of Voters, and is charged by law with overseeing the initiative process in the
3 City of San Diego, including, when retained by a city within the county to review
4 initiative petitions, to determine whether they contain a sufficient number of valid
5 signatures to qualify for the ballot.

6 14. Doe Respondents and Defendants 1 through 25, inclusive, are, upon
7 information and belief, responsible for some of the legal violations alleged herein. The
8 true names and capacities of the Doe Respondents and Defendants are unknown to
9 Petitioners at the present time. The Doe Respondents and Defendants were, at all
10 relevant times, the agents or employees of some of the named Respondents and
11 Defendants and were acting in the course and scope of such agency or employment.
12 When Petitioners ascertain the names and capacities of the Doe Respondents and
13 Defendants, they will amend this Writ Petition/Complaint to insert such names in place
14 of the Doe names.

JURISDICTION AND VENUE

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16 15. This Court has jurisdiction over this matter pursuant to CCP sections 1085,
17 526 and 1060, et seq. Venue is proper in the San Diego County Superior Court because
18 the parties are conducting business in, and the acts complained of which are the subject
19 of this action occurred in, San Diego County, California.

FACTUAL BACKGROUND

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21 16. In November of 2021, Petitioners formed a political committee known as
22 “Libraries and Parks for All, Sponsored by The San Diego Public Library Foundation
23 and The San Diego Parks Foundation” for the purpose of placing a libraries and parks
24 parcel tax initiative on the 2024 San Diego City ballot.

25 17. After fulfilling the numerous legal obligations that initiative proponents
26 must undertake prior to collecting signatures on a petition, on or about July 9, 2022
27 Petitioners began circulating the petition throughout the City so as to obtain the requisite
28 number of signatures to qualify the Initiative for the ballot.

1 18. The City Clerk informed Petitioners that they would have until December
2 15, 2022 to collect at least 82,566 valid signatures in order to qualify the Initiative for the
3 ballot. This number was derived by calculating ten percent of the 825,660 registered
4 voters in the City as of the last general City election, which was November 3, 2020.

5 19. On December 15, 2022, Petitioners submitted the Initiative petition to the
6 Registrar, with whom the City Clerk had contracted to review and verify petition
7 signatures. The Registrar determined that the petition contained 111,189 signatures.

8 20. The Registrar selected a three percent random sample of signatures and
9 reviewed 3,336 of the 111,189 signatures that had been submitted.

10 21. On or about January 12, 2023, Petitioners transmitted a letter to the City
11 Clerk to seek clarification as to the amount of signatures required for the Initiative
12 petition to qualify for the ballot. Petitioners' letter noted that San Diego Municipal Code
13 section 27.1020(c)(2) refers to the "last general City election" as the election which the
14 City Clerk must use to tabulate the amount of signatures required in order for an
15 initiative to qualify for the ballot. The letter continued that since the petition signatures
16 had been submitted on December 15, 2022, the "last general City election," and thus the
17 election to be used to calculate the required number of signatures, must be the November
18 8, 2022 election, and not the 2020 general City election.

19 22. On or about January 13, 2023, the City Clerk responded to Petitioners' letter
20 and informed them that she had consulted with the San Diego City Attorney and that
21 based thereon she would be unable to change her decision about which election was the
22 proper one to use. The City Clerk therefore continued to base her signature requirement
23 calculations on the 2020 general City election and not the 2022 election.

24 23. On or about January 24, 2023, the Registrar determined that only 2,201 of
25 the 3,336 random sample signatures were valid, 1,135 were invalid, and that therefore the
26 Initiative petition was projected to contain 72,285 valid signatures and thus failed to
27 qualify for the ballot. The Registrar also concluded that because the Initiative petition
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1 failed to contain at least 78,438 valid signatures, it also failed to qualify for a "full count"
2 of signatures to determine if it in fact contained the required number of valid signatures.

3 24. On or about January 27, 2023, Petitioners asked the Registrar and the City
4 Clerk for more information about the 1,135 random sample signatures that the Registrar
5 deemed invalid. That same day, the City Clerk provided Petitioners with a document
6 entitled "Petition Statistics," which had been prepared by the Registrar and which set
7 forth thirteen reasons why signatures were deemed insufficient. These included
8 allegedly mismatched voter addresses, signature dates, circulation dates, voter
9 registration dates. and signatures.

10 25. Also on January 27, 2023, Petitioners requested, pursuant to California
11 Government Code section 7924.110, that the Registrar and City Clerk permit Petitioners
12 to review the initiative petition signatures and to determine the grounds upon which the
13 Registrar rejected the signatures.

14 26. Petitioners' signature review began on or about February 8, 2023 and
15 continued through February 15, 2023. During the signature review process, Petitioners
16 challenged more than 300 of the Registrar's determinations regarding invalid signatures,
17 well over the 185 additional signatures needed for the Initiative to qualify for a "full
18 count."

19 27. On or about February 13, 2023, the City Clerk's office notified Petitioners
20 that the San Diego Municipal Code does not contain a challenge process regarding the
21 signatures and that therefore the notice of insufficiency and any challenges will therefore
22 need to be decided by the courts.

23 28. Between mid-February and early April 2023, Petitioners and the City (via
24 both the City Clerk and City Attorney) met and conferred multiple times regarding how
25 the various disputes as to invalid signatures might be resolved. Ultimately, there was no
26 resolution, and thus Petitioners began preparing this writ petition/complaint.
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1 **FIRST CAUSE OF ACTION**

2 **Writ of Mandate (CCP Section 1085, et seq.)**

3 **(Against All Respondents and Defendants)**

4 29. Petitioners reallege and incorporate herein by reference the allegations of
5 paragraphs 1 through 28, inclusive.

6 30. Pursuant to CCP section 1085:

7 “A writ of mandate may be issued by any court to any inferior . . . person to
8 compel the performance of an act which the law specially enjoins, as a duty
9 resulting from an office, trust, or station”

10 31. Pursuant to CCP section 1086:

11 “The writ must be issued in all cases where there is not a plain, speedy, and
12 adequate remedy, in the ordinary course of law. It must be issued upon the
13 verified petition of the party beneficially interested.”

14 32. The issuance of a writ of mandate is necessary to enforce Petitioners’ rights
15 in that Petitioners, as beneficially interested parties, are entitled to such a writ and have
16 no plain, speedy, or adequate remedy in the ordinary course of law by which their rights
17 can be upheld and Respondents can be compelled to comply with the law.

18 33. Should the requested writ not issue, irreparable harm will occur in that
19 Petitioners and others will be deprived of their rights to have the Initiative petition
20 signatures reviewed in accordance with applicable law and the voters will be deprived of
21 their rights to vote on a matter of substantial importance.

22 34. Accordingly, the Court should issue a writ of mandate directing
23 Respondents to verify signatures on the Initiative in accordance with applicable law.

24 **SECOND CAUSE OF ACTION**

25 **Injunctive Relief (CCP Section 526, et seq.)**

26 **(Against All Respondents and Defendants)**

27 35. Petitioners reallege and incorporate herein by reference the allegations of
28 paragraphs 1 through 28, inclusive.

1 36. Pursuant to CCP section 526:

2 “(a) An injunction may be granted in the following cases:

3 (1) When it appears by the complaint that the plaintiff is entitled to the
4 relief demanded, and the relief, or any part thereof, consists in restraining the
5 commission or continuance of the act complained of, either for a limited period or
6 perpetually. . . .

7 (4) When pecuniary compensation would not afford adequate relief.”

8 37. The issuance of an injunction is necessary to enforce Petitioners’ rights
9 in that Petitioners are entitled to the relief demanded – which consists of restraining the
10 commission or continuance of the act complained of – and pecuniary compensation will
11 not afford adequate relief.

12 38. Should the requested injunctive relief writ not issue, irreparable harm will
13 occur in that Petitioners and others will be deprived of their rights to have the Initiative
14 petition signatures reviewed in accordance with applicable law and the voters will be
15 deprived of their rights to vote on a matter of substantial importance.

16 39. Accordingly, the Court should issue injunctive relief directing
17 Respondents to verify signatures on the Initiative in accordance with applicable law.

18 **THIRD CAUSE OF ACTION**

19 **Declaratory Relief (CCP Section 1060, et seq.)**

20 **(Against All Respondents and Defendants)**

21 40. Petitioners reallege and incorporate herein by reference the allegations of
22 paragraphs 1 through 28, inclusive.

23 41. Pursuant to CCP section 1060, et seq.:

24 “Any person . . . who desires a declaration of his or her rights or duties with
25 respect to another . . . may, in cases of actual controversy relating to the legal
26 rights and duties of the respective parties, bring an original action . . . in the
27 superior court The court may make a binding declaration of these rights or
28 duties. . . and the declaration shall have the force of a final judgment.”

1 42. The issuance of declaratory relief is necessary to enforce Petitioners' rights
2 in that Petitioners desire a declaration of their rights or duties with respect to
3 Respondents in this case of actual controversy relating to the legal rights and duties of
4 the respective parties.

5 43. Petitioners are of the view that Respondents have not fulfilled their legal
6 duties with respect to the verification of signatures on the Initiative petition, and
7 Respondents are of the view that they have fulfilled such duties.

8 44. Should the requested declaratory relief not issue, irreparable harm will
9 occur in that Petitioners and others will be deprived of their rights to have the Initiative
10 petition signatures reviewed in accordance with applicable law and the voters will be
11 deprived of their rights to vote on a matter of substantial importance.

12 45. Accordingly, the Court should declare that Respondents have not fulfilled
13 their legal duties with respect to the verification of signatures on the Initiative petition
14 and that Respondents are required to verify signatures on the Initiative in accordance with
15 applicable law.

16 **FOURTH CAUSE OF ACTION**

17 **Violations of Federal and State Constitutional Rights**
18 **(U.S. Constitution, First and Fourteenth Amendments;**
19 **California Constitution, Article I, Sections 2, 3 and 7)**
20 **(Against All Respondents and Defendants)**

21 46. Petitioners reallege and incorporate herein by reference the allegations of
22 paragraphs 1 through 28, inclusive.

23 47. Pursuant to the First and Fourteenth Amendments to the United States
24 Constitution and Article I, Sections 2, 3 and 7 of the California Constitution, Petitioners,
25 their supporters, voters, petition signers, and others have rights of free speech; the right
26 to petition their government for a redress of grievances; the right to due process; and the
27 right to equal protection under the laws.
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1 48. As alleged hereinabove, Respondents have violated Petitioners' and others'
2 constitutional rights in connection with the verification of signatures on the Initiative
3 petition. The issuance of a judgment is necessary to enforce Petitioners' and others'
4 constitutional rights.

5 49. Should such a judgment not be issued, irreparable harm will occur in that
6 Petitioners and others will be deprived of their constitutional rights to have the Initiative
7 petition signatures reviewed in accordance with applicable law and the voters will be
8 deprived of their rights to vote on a matter of substantial importance.

9 50. Accordingly, the Court should issue a judgment that protects Petitioners'
10 and others' constitutional rights in connection with the verification of signatures on the
11 Initiative petition.

12 **PRAYER**

13 WHEREFORE, Petitioners pray:

14 1. That this Court issue a peremptory writ of mandate ordering Respondents
15 and Defendants, and all parties acting pursuant to their direction and control, to verify
16 signatures on Petitioners' Initiative petition in accordance with the law;

17 2. That this Court issue preliminary and permanent injunctions ordering
18 Respondents and Defendants, and all parties acting pursuant to their direction and control,
19 to verify signatures on Petitioners' Initiative petition in accordance with the law;

20 3. That this Court declare that Respondents and Defendants, and all parties
21 acting pursuant to their direction and control, are required to verify signatures on
22 Petitioners' Initiative petition in accordance with the law;

23 4. That this Court determine that Respondents and Defendants, and parties
24 acting pursuant to their direction and control, are violating Petitioners' Federal and State
25 constitutional rights and therefore are required to verify signatures on Petitioners'
26 Initiative petition in accordance with the law;

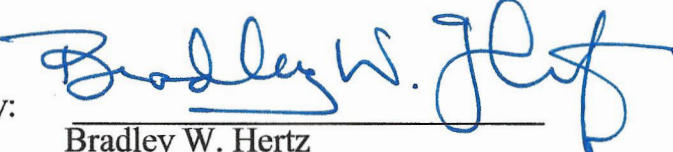
27 5. That this Court award Petitioners costs, including attorneys' fees, pursuant
28 to CCP section 1021.5, to be recovered from Respondents and Defendants; and

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6. That this Court grant such other and further relief as it deems just and proper.

Respectfully Submitted:

THE SUTTON LAW FIRM, PC



Dated: April 7, 2023

By:

Bradley W. Hertz
Attorneys for Petitioners and Plaintiffs
SAN DIEGO PUBLIC LIBRARY FOUNDATION
and SAN DIEGO PARKS FOUNDATION

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VERIFICATION

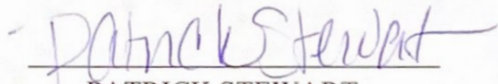
STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, PATRICK STEWART, am the Chief Executive Officer of the San Diego Public Library Foundation, which is a Petitioner and Plaintiff in the above-entitled action.

I have read the foregoing "Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief" and know the contents thereof. The matters stated therein are true and correct of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed this 7th day of April, 2023 at San Diego, California.

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



PATRICK STEWART

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, MICHEL ANDERSON, am the Chair of the San Diego Parks Foundation, which is a Petitioner and Plaintiff in the above-entitled action.

I have read the foregoing "Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief" and know the contents thereof. The matters stated therein are true and correct of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed this 7th day of April, 2023 at San Diego, California.

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



MICHEL ANDERSON