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Sacramento
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By _____, Deputy
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19
20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **FOR THE COUNTY SACRAMENTO**

22 ELECTION INTEGRITY PROJECT
23 CALIFORNIA, INC.; LARRY LEWIS, an
24 individual; COLETTE CASEY, an individual;
25 ELLEN SWENSEN, an individual; THOMAS
26 D. PAVICH an individual; and CHARLES
27 SHINN, an individual,

28 Petitioners,

v.

SHIRLEY WEBER, CALIFORNIA
SECRETARY OF STATE; BOB PAGE,
ORANGE COUNTY REGISTRAR OF
VOTERS; DEAN LOGAN, LOS ANGELES
COUNTY REGISTRAR-
RECORDER/COUNTY CLERK; ART
TINOCO, RIVERSIDE COUNTY
REGISTRAR OF VOTERS; AIMEE X.
EXPINOZA, KERN COUNTY AUDITOR-
CONTROLLER-COUNTY CLERK; and
MICHELLE BALDWIN, TULARE COUNTY
REGISTRAR OF VOTERS,

Respondents,

Case No.:

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

PRIORITY ELECTION MATTER
(Cal. Elec. Code § 13314)

ACTION REQUIRED BY:
November 6, 2024

BY FAX

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1 **I. INTRODUCTION**

2 The present action arises following Petitioner Election Integrity Project California, Inc.’s
3 (“EIPCa”) audit of the November 2022 certified election data and seeks not to challenge the results
4 of that election, but to ensure that errors made by state and county elections officials in the 2022
5 election do not occur in the upcoming November 2024 election. Specifically, EIPCa has compared
6 the certified data published by Respondents following the November 2022 election (“November
7 2022 Certified Accounting”) with the official election data for that election it received from the
8 Secretary of State (the “Secretary”) in June of 2024 (“June 2024 Accounting”) as statutorily
9 prescribed by the Elections Code. While the June 2024 Accounting is supposed to be a “snapshot”
10 of the November 2022 Certified Accounting Data, EIPCa found major discrepancies between the
11 two data sets. (Declaration of Ellen Swensen (“Swensen Decl.”), ¶¶ 10-20; Exs. 6, 8; Declaration
12 of Dale Sinor (“Sinor Decl.”), ¶ 9.) These discrepancies demonstrate that either or both the Secretary
13 and the county elections officials¹ failed to perform their ministerial election duties in counting votes
14 and certifying election results. For instance, the June 2024 Accounting reflects 32 California
15 counties that had 71,092 more ballots counted than the total number of ballots counted and certified
16 in the November 2022 Certified Accounting. (Swensen Decl., ¶ 10; Ex. 6.) The June 2024
17 Accounting also reflects that 25 California counties had 27,764 fewer ballots counted than the total
18 number of ballots counted and certified in the November 2022 Certified Accounting. (*Id.*) Statewide,
19 the discrepancies netted a difference of 43,624 ballots cast and counted. (*Id.*) Additionally, an
20 unacceptable number of voter IDs had more than one ballot counted and attributed to a voter’s ID,
21 amounting to 42,769 ballots. (Swensen Decl., ¶ 17.) The implication is that thousands of voters
22 were disenfranchised of their right to have their vote counted and that thousands of invalid ballots
23 were somehow counted.

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26 ¹ “Elections official” means any of the following: (a) A clerk or any person who is charged
27 with the duty of conducting an election. (b) A county clerk, city clerk, registrar of voters, or elections
28 supervisor having jurisdiction over elections within any county, city, or district within the state.
(Elec. Code § 320.)

1 maintaining accurate voter rolls, managing elections in their county, processing ballots, performing
2 canvassing, counting votes, appointing the precinct board, and publishing certified statement of the
3 results, and providing results to the Secretary.

4 **B. November 2022 Certified Accounting And June 2024 Accounting Discrepancies**

5 Following the November 2022 election, Secretary Weber published a “Statement of Vote”
6 that included a Voter Participation Statistics chart showing certified 11,146,620 total voters
7 participated in the election. (Swensen Decl., ¶ 10; Ex. 8; Declaration of Emma F. Plotnik (“Plotnik
8 Decl.”), ¶¶ 4, 8; Request for Judicial Notice (“RJN”), Ex. 1, p. 2; Ex. 8.) Petitioners refer to this
9 data as the “November 2022 Certified Accounting.” On February 27, 2024, EIPCa filed a formal
10 application to obtain a “voter list or file,” by precinct, of each person who voted in California in the
11 November 8, 2022 federal election, including each voter’s name, address, birthdate, state
12 Registration ID number, voting method, and current registration status. (Declaration of Carl
13 Knowles (“Knowles Decl.”), ¶ 8; Ex. 9; Declaration of Linda Paine (“Paine Decl.”), ¶ 4; Ex. 3.)
14 Essentially, EIPCa requested the same November 2022 Accounting data used by Respondents in
15 certifying the election. (*Id.*) Secretary Weber’s office sent EIPCa non-responsive data on several
16 occasions. (Knowles Decl., ¶ 8; Ex. 9.) The Petitioners eventually received the “June 2024
17 Accounting” related to voters whose votes had been counted. (Knowles Decl., ¶ 11.) The amount of
18 data is vast with approximately 34 million rows of data, and each row containing multiple data
19 points. (*Id.*; Sinor Decl., ¶ 7.) While the November 2022 Certified Accounting should have allegedly
20 matched the June 2024 Accounting, EIPCa’s audit of the data demonstrated serious discrepancies
21 between the two accountings. (Knowles Decl., ¶¶ 6, 10; Swensen Decl., ¶¶ 7, 10; Sinor Decl., ¶ 9.)

22 Specifically, the November 2022 Certified Accounting showed that 11,146,620 voters
23 participated in the election, or that their ballots or “votes” were counted. (Swensen Decl., ¶ 10; Ex.
24 8; Request for Judicial Notice (“RJN”), Ex. 1.) However, the data provided by Secretary Weber in
25 the June 2024 Accounting showed 11,190,244 votes (or 43,624 more total votes) than listed in the
26 November 2022 Certified Accounting. (Swensen Decl. ¶ 10; Ex. 6.) In Los Angeles County, there
27 was an increase of 49,777 total votes between the November 2022 Certified Accounting (2,456,701
28

1 votes) and the June 2024 Accounting (2,506,478 votes). (*Compare* RJN, Ex. 1, with Swensen Decl.,
2 Exs. 6, 8; Swensen Dec., ¶ 11.) Moreover, in Riverside County, there was an increase of 4,282 votes
3 between the November 2022 Certified Accounting and the June 2024 Accounting. (*Id.*, ¶ 12; Ex. 6.)
4 Additionally, in Kern County, there were discrepancies of 490 votes. (*Id.*, ¶ 15; Ex. 6.)

5 In other counties, there was a reported inverse discrepancy. In Orange County, the Secretary
6 listed 994,277 votes in November of 2022 versus 992,939 in June of 2024, a decrease of 1,338 votes.
7 (Swensen Dec., ¶ 13; Ex. 6.) Similarly, in Tulare County, there was also a decrease between the data
8 sets of 326 votes. (*Id.*, ¶ 14; Ex. 6.) Modoc County is the only county where the data sets match.
9 (*Id.*, ¶ 15; Ex. 6.)² Overall, there were 71,092 more votes than certified and 27,764 fewer votes than
10 certified according to the June 2024 Accounting. (*Id.*, ¶ 10; Ex. 6.)

11 The June 2024 Accounting also reveals that there were 21,355 unique Registration ID
12 numbers that had more than one vote attributed to the voter identification. (*Id.* at ¶ 17.) The June
13 2024 Accounting by precinct also shows discrepancies between the precinct numbers and at least
14 one County's statement of the vote. (*Id.* at ¶ 20.) As discussed in greater detail below, Respondents
15 have a statutory duty to ensure that each eligible voter only has one vote counted.³

16 EIPCa reviewed the U.S. Election Assistance Commission data for the November 2022
17 election to see if the Los Angeles difference was the result of rejected ballots, but the report shows
18 that 94,072 ballots cast in Los Angeles County were rejected, apparently before the County certified
19 the results to Secretary Weber. (Swensen Dec., ¶ 18; Ex. 7; Plotnik Decl., ¶ 5; RJN Ex. 2.)
20 Accordingly, the discrepancy of 49,777 could not be explained by rejected ballots. (*Id.*) Both data
21 sets purportedly only show counted votes. (*Id.*)

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23

24 ² The accounting of votes for each county in California is reflected in Exhibit 10 to the
25 Swensen Declaration.

26 ³ EIPCa's data group conducted the audit using standard techniques to compile the
27 information. (Knowles Decl., ¶ 15.) The group did not modify or change the June 2024 Accounting,
28 rather, it only queried to group it by type so that it could be understood. Such as by retrieving all
votes cast that could be attributed to the same voter identification to determine if any voters had
more than one vote attributed to him or her. (*Id.*) Because EIPCa leaves the underlying data
untouched, the compilations are easily reproducible and verifiable. (*Id.*)

1 EIPCa sent its findings letter to the Secretary on September 6, 2024. (Paine Decl., ¶ 4; Ex.
2 4.) The letter asked six questions, including, but not limited to: (1) why the total number of votes
3 provided by the Secretary’s office in June 2024 exceeds the amount in the certification and what
4 procedures were used to reconcile these differences; (2) why certain counties had *fewer* votes and
5 other counties had *more* votes than listed in the certification; and (3) how “confidential registrants”
6 votes are counted and how many such votes were counted. (*Id.*) EIPCa supplemented the letter on
7 September 20, 2024. (*Id.*; Ex. 5.) To date, the Secretary has not provided the answers to these
8 questions. (*Id.* at ¶ 7.)

9 **C. Respondents’ Election Duties Counting, Recording, And Publishing Data**

10 Ministerial duties include ensuring every voter only has one vote counted and certifying and
11 publishing accurate vote numbers. Because these ministerial duties have not been adhered to, further
12 oversight is necessary.

13 **1. Statutory duties of County Registrar–Recorders/County Clerk in receiving**
14 **ballots**

15 Prior to receiving any votes, county elections officials “shall conduct regular
16 synchronization checks to compare the voter registration data in the statewide voter registration
17 system with the voter registration data in the county Election Management System and resolve any
18 differences.” (Cal. Code Regs. Tit. 2, § 19083.)

19 California begins receiving and processing votes in the form of vote-by-mail (VBM) ballots
20 as early as 29 days prior to the election. (Elec. Code § 15101.)⁴ The elections official directly
21 appoints the precinct board that processes VBM ballots. (Elec. Code § 15111 [referencing
22 § 15278].) Upon counting a VBM ballot, the elections official is tasked with entering into the
23 statewide system the status of the ballot as “Accepted” or “Not Accepted” along with a code to
24 provide the reason for any non-acceptance. (Cal. Code Regs., Tit. 2, §§ 19091, 19092, 19093.) The
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27 ⁴ Processing vote by mail ballots includes opening vote by mail ballot return envelopes,
28 removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or
machine reading them, including processing write-in votes so that they can be tallied by the machine.
(Elec. Code, § 15101, subd. (b).)

1 elections official must send the status of each VBM, provisional ballot,⁵ and Conditional Voter
2 Registration (CVR) ballot⁶ in near real time to the statewide voter registration system. (Cal. Code
3 Regs. § 19096.) All ballots must be adjudicated, resolved, and reported to the statewide registration
4 system within 31 days after the election. (*Id.*) Beginning on the first day of voting, the elections
5 official must send over the voter participation history (VPH) for each voter who participates in the
6 statewide voter registration system in near real time.⁷ (Cal. Code Regs. Tit. 2, § 19097.) Votes cast
7 by VBM ballot and votes cast at the polling place must be tabulated and tracked by precinct officials.
8 (Elec. Code, § 15321.)

9 a. *Semi-final canvass of votes*

10 Immediately upon the close of the polls, a “semifinal official canvas” commences until all
11 precincts are accounted for. (Elec. Code, § 15150.) The semifinal canvas is “the public process of
12 collecting, processing, and tallying ballots and, for state or statewide elections, reporting results to
13 the Secretary on election night. The semifinal official canvass may include some or all the vote by
14 mail and provisional vote totals.” (Elec. Code, § 353.3.) The canvass of the election returns and
15 entry of the statement of the results in the statewide system is merely ministerial and does not require
16 an official’s discretion; it is not in any sense a legislative act. (*Devlin v. Donnelly* (1912) 20 Cal.App.
17 495, 498.)

18 Once vote counting begins, elections officials ensure that the number of ballots corresponds
19 with the number of signatures on the precinct’s roster, including write-in ballots. (Elec. Code,
20 §§ 15153, 15271.) The results shall be made public once all county polls are closed and the elections
21 official must transmit the results to the Secretary of State at intervals of no greater than two hours.
22 (Elec. Code, § 15151.) Starting on the second day, the elections official must send a report, at least

23

24 ⁵ A provisional ballot is a regular ballot placed in a special envelope that is cast by a voter
25 who believes he or she is registered to vote, but whose name is not on the official registration list or
26 who votes by mail and instead wants to vote at a polling place but does not have a ballot. The vote
27 will be counted if, after review, election officials confirm the ballot is valid.

28 ⁶ CVR ballots are used for voters that missed the registration deadline to conditionally
register and cast a ballot. (Cal. Code Regs., Tit. 2, § 19062.)

⁷ In “near real time” means near the actual time during which the event occurs. (Cal. Code
Regs., Tit. 2, § 19062.)

1 every two hours, to the Secretary regarding the number of unprocessed ballots remaining. (Elec.
2 Code, § 15305.)

3 While there may be discretion of how votes are counted, the elections official *shall* compare
4 the VBM list “with the roster for each precinct to determine if any voter cast more than one ballot
5 at that election.” (Elec. Code, § 15278.) Once all votes are counted and tallied, the results must be
6 sealed in an envelope and signed by the precinct board, “certifying the total number of votes received
7 by each candidate for each office” and certifying that the “votes cast forms” transmitted to the county
8 elections official “show the total number of votes received by each candidate.” (Elec. Code,
9 §§ 15279, 15280.)

10 *b. Official canvass of the vote*

11 No later than the Thursday following the election, the official canvass must begin. (Elec.
12 Code § 15301.) And, for statewide elections, it must result in a report to the Secretary of State. (Elec.
13 Code § 15301.) The official canvass is:

14 The public process of processing and tallying all ballots received in an election,
15 including, but not limited to, provisional ballots and vote by mail ballots not included
16 in the semifinal official canvass. The official canvass also includes the process of
17 reconciling ballots, attempting to prohibit duplicate voting by vote by mail and
18 provisional voters, and performance of the manual tally of 1 percent of all precincts.
(Elec. Code, § 353.3.)

18 The official canvass involves, among other tasks, reconciling the number of signatures on
19 the roster with the number of ballots recorded on the ballot statement which, ultimately, must be
20 reported to the Secretary. (Elec. Code, § 15302.) Beginning no later than the Thursday following
21 the election, the elections official must post updated results on their internet website. (Elec. Code,
22 § 15306.) During this time, the elections official is charged with counting and finalizing all validly
23 cast votes. (*Id.*) Upon completion of the count, the elections official is tasked with declaring the vote
24 and posting a copy of it in the public space. (Elec. Code, §§ 15320, 15372, 15350.)

25 Within 30 days of the election, the elections official must prepare a “certified statement of
26 the results” and post it on its website for a period of 10 years following the election. (Elec. Code,
27 § 15372.) The elections official’s certified statement must show the results by precinct (Elec. Code,
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1 § 15373), the total number of ballots cast, the number of votes cast at each precinct for each
2 candidate, and the total number of votes cast for each candidate (Elec. Code, § 15374.) Generally,
3 within 31 days of the election the elections official then must send the Secretary of State a complete
4 copy of the results of statewide elections and federal elections (Elec. Code, § 15375, noting different
5 time frame for the presidential candidates.) The reports must provide results for candidates voted
6 for office and must include the total number of ballots cast. (*Id.*) Also, within 31 days, the elections
7 official must provide the Secretary with the number of ballots rejected by category. (Elec. Code,
8 § 15377.)

9 *c. The Secretary of State's duties in certifying and reporting the vote*

10 The Secretary shall compile the results of the semifinal official canvas for offices and
11 measures, which compilation must be continued without adjournment until completed. (Elec. Code,
12 § 15500.) The Secretary must also compile the results reported by local elections officials and make
13 them “available to any person or organization upon request.” (Elec. Code, § 15500.) This
14 compilation includes “[t]he total number of ballots cast.” (Elec. Code § 15375(f).) No later than the
15 38th day after the election, the Secretary shall determine the votes cast for each Senator and
16 Representative and certify the person having the highest number of votes. (Elec. Code, § 15503.)
17 By this time, the Secretary shall also analyze the votes given for presidential electors and certify to
18 the Governor the names of the proper number of persons having the highest number of votes. (Elec.
19 Code, § 15505.) The Secretary shall then transmit to each presidential elector a certificate of
20 election. (*Id.*) She must then certify the election after analyzing the votes given for presidential
21 electors and certify the names of the candidate with the highest number of votes to the Governor.
22 (Elec. Code, §§ 15504 15505.) Similarly, for non-presidential elections, the Secretary of State must
23 make out and deliver a certificate of election. (Elec. Code, § 15504.) Within 120 days of filing of the
24 Statement of Vote, the Secretary must complete a supplement, showing the number of votes cast in
25 each county, city, Assembly district, senatorial district, congressional district and supervisorial
26 district for each candidate for the offices of presidential elector and a copy of this supplement shall
27 be made available, upon request, to any elector of this state. (Elec. Code, § 15502.)

1 **III. LEGAL ARGUMENT**

2 **A. Petitioners Have Standing To Bring The Present Writ Petition**

3 Each Individual Petitioner has standing to bring their present Petition for Peremptory Writ
4 of Mandate as an “elector,” or “a person who is a United States citizen 18 years of age or older and
5 . . . is a resident of an election precinct in this state on or before the day of an election.” (Elec. Code
6 § 13314(a)(1); 321(a).) The Individual Petitioners are United States citizens over eighteen years of
7 age and are residents of the respective counties in which they intend to vote in the November 2024
8 election (Los Angeles, Orange, Riverside, Tulare, and Kern). Thus, the Individual Petitioners have
9 a beneficial interest and a “direct and substantial right” in ensuring that their votes are properly
10 accounted for and that the certified results are accurate. (Elec. Code § 1086; *Loeber v. Lakeside*
11 *Joint School Dist.* (2024) 103 Cal.App.5th 552, 565.) Individual Petitioners also have standing under
12 the public interest exception to the beneficial interest requirement which ensures California voters
13 can exercise their rights to have their elections questions answered pursuant to California’s Voter
14 Bill of Rights, § 2300. (*Loeber, supra*, 103 Cal.App.5th at p. 573–75 [providing that “the question
15 is one of public right and the object of the mandamus is to procure the enforcement of a public
16 duty”].) Similarly, Petitioner EIPCa has standing under the public interest exception to the beneficial
17 interest requirement under California law. By filing the present writ petition, EIPCa acts for the
18 Individual Petitioners and on behalf of California voters regarding broad public concern and
19 ensuring transparent, fair elections. (*Id.* at p. 576.)

20 **B. Respondents Have Failed To Conduct Their Ministerial Duties**

21 Elections officials are required to conduct numerous ministerial duties to ensure that only
22 eligible voters may cast a vote, that eligible voters only have a single vote counted, that all votes are
23 methodically recorded, and that an accurate vote count is kept—which ensure the candidate with the
24 most eligible votes wins *and* that there can be validation oversight of elections after the fact review
25 of the data. (*See, e.g.*, Elec. Code §§ 15300, *et. seq.*; 15500, *et. seq.*; 15111 [referencing §15278];
26 Cal. Code Regs., Tit. 2, §19083.) EIPCa’s audit of the data demonstrates that either or both the
27 Secretary and the county elections officials failed to perform their ministerial election duties in
28

1 counting votes and certifying election results. For instance, the June 2024 Accounting reflects 32
2 California counties that had 71,092 more ballots counted than the total number of ballots counted
3 and certified in the November 2022 Certified Accounting. (Swensen Decl., ¶ 10.) The June 2024
4 Accounting also reflects that 25 California counties had 27,764 fewer ballots counted than the total
5 number of ballots counted and certified in the November 2022 Certified Accounting. (*Id.*) Statewide,
6 the discrepancies netted a difference of 43,624 ballots cast and counted. (*Id.*) The implication is that
7 thousands of voters were disenfranchised of their right to have their vote counted and that thousands
8 of invalid ballots were somehow counted.

9 Additionally, an unacceptable number of voter IDs had more than one ballot counted and
10 attributed to a voter's ID, amounting to 42,769 ballots (21,355 voters). (Swensen Decl., ¶ 17.) 42,112
11 of those ballots are attributable to Los Angeles County alone (and 226 ballots are attributable to the
12 counties of Orange, Kern, Tulare, and Riverside collectively). (Ex. 6 to Swensen Decl.) The
13 Secretary has failed to respond to the apparent inaccuracies in her accounting as she is statutorily
14 obligated to do. (Elec. Code §2300(a)(9)(B); 2191; Cal. Code Regs., Tit. 2, § 19000, *et. seq.*)

15 Prior to the election, Respondent elections officials were required to conduct regular
16 synchronization checks to compare the voter registration data to the statewide voter registration to
17 help prevent multiple votes. (Cal. Code Regs., Tit. 2, § 19083.) EIPCa's audit of the data
18 demonstrates that these duties were not fulfilled. Specifically, there are at least 43,624 net total
19 ballots and possibly up to 71,092 total unaccounted for ballots cast between the data sets that are
20 supposed to be identical. At the precinct level, few precinct numbers in Riverside County from the
21 June 2024 Accounting Data matched precinct numbers in the county's Statement of the Vote for the
22 November 2022 election (Swensen Decl., ¶ 19.) In fact, only one county in all of California has the
23 same number of total votes in both data sets, Modoc County. (*Id.*, ¶ 16.)

24 Elections officials must conduct semi-final and final canvasses that are designed to ensure
25 only eligible votes are counted and that accurate data is stored and published. The conducting of
26 these canvasses are purely ministerial acts. (*Devlin, supra*, 20 Cal. App. at 498.) During the canvass,
27 officials must ensure that a voter does not have multiple ballots attributed to that voter by comparing
28

1 the number of ballots to the number of signatures on the precinct rosters. (*See* Elec. Code, §§ 15153,
2 15151, 15271, 15290, 15302.) During this time, officials are required to continually validate ballots
3 and send accurate information to the Secretary of State and, ultimately, must *certify* the total number
4 of votes received for each candidate. (*See* Elec. Code, §§ 15279, 15280, 15306, 15320, 15350
5 15372, 15374, 15375.) Black’s Law Dictionary defines “Certified” as: “A qualification or attribute
6 meaning to being officially attested or authoritatively confirmed as being genuine or true as
7 represented, or complying or meeting specified requirements or standards.” (*See* Black’s Law Dict.
8 (2ded. 1910).) Elections officials are *required* to reconcile ballots for any discrepancies received at
9 each polling place with the number of ballots cast as indicated on the ballot statement. (*See* Elec.
10 Code, § 15374.) In counting and providing the certified statement of the results of the vote, the
11 elections officials’ duties are purely ministerial, as they must simply add and ascertain by calculation
12 the number of votes cast for any office and make the declaration in accordance with the results
13 obtained. (*See People ex rel. Hicks v. Stewart* (1901) 132 Cal. 283; *Lamb v. Webb* (1907) 151 Cal.
14 451; *see also* Elec. Code, § 15372.) The Secretary must compile and certify the results reported by
15 local elections officials and compile “[t]he total number of ballots cast” statewide. (Elec. Code, §§
16 15500, 15501, 15504, 15505, 15375(f).) Had the elections officials and Secretary properly carried
17 out their ministerial duties, the June 2024 Accounting data set would accurately reflect the data set
18 for the November 2022 election.

19 Following an election, a party may request the elections data. (*See* Elec. Code, §§ 2188, et.
20 seq.; 2191; 2194; 2300(a)(9)(B); Cal. Code Regs., Tit. 2, § § 19000, *et. seq.*; U.S. Code: Title 42
21 National Voter Rights Act of 1993.) Petitioners are entitled to an answer to their questions regarding
22 discrepancies found from their audit or must be directed to the appropriate elections official(s) who
23 can provide an answer. (Elec. Code § 2191; 2300(9)(A)-(B).) EIPCa sent a letter and a supplemental
24 letter, on September 6th and September 20th, 2024, respectively, asking questions regarding the
25 discrepancies, but has not received a response yet. (Paine Decl., ¶¶ 6-7; Exs. 4-5; Swensen Decl., ¶
26 21.) Respondents have failed to fulfill their ministerial duties of answering or providing information
27 for an official who may answer EIPCa’s questions. Thus, Petitioners ask that Respondents be
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1 required to maintain accurate data from the election by taking a “snapshot” of the data following the
2 election that is not subject to after-the-fact changes. (Swensen Decl., ¶¶ 10-20; Exs. 6, 8; Sinor
3 Decl., ¶ 9.)

4 **C. A Writ Of Mandate Is The Proper Remedy To Compel Respondents To Perform Their**
5 **Ministerial Duties**

6 A peremptory writ of mandate may be issued under California Code of Civil Procedure
7 § 1085 to “compel the performance of an act which the law specifically enjoins, as a duty resulting
8 from an office, trust, or station ...” The writ “must be issued in all cases where there is not a plain,
9 speedy, and adequate remedy in the normal course of law. It must be issued upon the verified petition
10 of the party beneficially interested.” (Code Civ. Proc. § 1086; *People v. Picklesimer* (2010) 48
11 Cal.4th 330, 340, internal quotations omitted [providing that “To obtain relief under traditional
12 mandamus, a petitioner must demonstrate (1) no plain, speedy, and adequate alternative remedy
13 exists (Code Civ. Proc. § 1086); (2) a clear, present, ... ministerial duty on the part of the respondent;
14 and (3) a correlative clear, present and beneficial right in the petitioner to the performance of that
15 duty”].)

16 As it pertains to elections, a writ of mandate is the correct remedy to compel an officer to
17 conduct an election according to law. (See, *Hoffman v. State Bar of California* (2003) 113 Cal. App.
18 4th 630; *Conway v. City of San Mateo* (1981) 127 Cal. App. 3d 330.) A writ is also proper to compel
19 a canvassing officer to discharge required duties and canvass the returns of an election. (*People ex*
20 *rel. Del Valle v. Butler* (1912) 20 Cal. App. 379.) Typically, “[a] writ of mandate under [Code Civ.
21 Proc.] section 1085 is a vehicle to compel a public entity to perform a legal duty, typically one that
22 is ministerial. It is the traditional remedy for the failure of a public official to perform a legal duty.”
23 (*Loeber, supra*, 103 Cal.App.5th 552, 567.) Finally, under Elections Code §13314(a)(1), “An elector
24 may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur . . .
25 or that any neglect of duty has occurred, or is about to occur.” (Elec. Code §13314(a)(1).)

26 As previously discussed, Petitioners have a beneficial interest in ensuring that Respondents
27 perform their statutory duties to accurately count, certify, and reconcile the number of votes in the
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1 upcoming election either as individuals, or alternatively, through the public interest exception to the
2 beneficial interest rule. Petitioners have “no plain, speedy, and adequate alternative remedy,” as
3 monetary damages cannot compel administrative officers to “discharge their duties and canvass the
4 returns of an election.” (*People v. Picklesimer* (2010) 48 Cal.4th 330, 340; *People ex rel. Del Valle*
5 *v. Butler* (1912) 20 Cal. App. 379.) Petitioners have sought to communicate with Secretary Weber
6 informally to obtain their requested information regarding the voter history and voter information
7 files compiled by elections officials. (Elec. Code § 2191; 2300(9)(A).) However, this route has
8 proven to be unsuccessful, given that the Secretary of State has declined to explain the discrepancies
9 between the numbers of total ballots and voters in the November 2022 election as compared with
10 the June 2024 Accounting. (Elec. Code § 2300(9)(B).) Finally, Respondents have numerous
11 ministerial duties under various statutes regarding the counting, analyzing, and certifying of the vote
12 and voter numbers from an election, and maintaining accurate data.

13 **D. Petitioners Request A Special Master To Oversee Respondents In Performing Their**
14 **Ministerial Duties And Preside Over Evidentiary Hearings**

15 Courts have authority to appoint special masters either upon stipulation by the parties to the
16 action or upon a noticed motion by one party where the parties do not consent to the appointment.
17 (Code Civ. Proc. §§ 638, 639.) The role of a special master is to make factual findings and render
18 advisory opinions for the court’s consideration. (*Kim v. Superior Court* (1998) 64 Cal.App.4th 256,
19 261.) They are commonly used in writ proceedings. (*See, e.g., Wilson v. Eu* (1991) 54 Cal.3d 471,
20 473 [appointing a “Special Master[] to hold public hearings to permit the presentation of evidence
21 and argument” during an alternative writ proceeding].)

22 Petitioners request that this Court appoint a special master to oversee Respondents in
23 performing their ministerial duties in recordkeeping, canvassing, reporting, compiling, and accurate
24 certification of the election results for the November 5, 2024, election. Petitioners ask that any court-
25 appointed special master hold evidentiary hearings regarding the discrepancy of votes countywide
26 and statewide in the November 2022 election to aid Petitioners in obtaining their requested relief.

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1 **E. Petitioners Are Entitled To An Expedited Hearing**

2 Code of Civil Procedure Section 35(a) provides that, “Proceedings in cases involving the ...
3 the certification or denial of certification of candidates, the certification or denial of certification of
4 ballot measures, election contests ...shall be given precedence.” (Code Civ. Proc. § 35(a), emphasis
5 added.) Moreover, an election writ sought due to an error or neglect of duty that has occurred or is
6 about to occur, “shall have priority over all other civil matters.” (Elec. Code § 13314(a)(3).) This
7 case concerns future certification and the error and neglect of Respondents’ duty to certify accurate
8 election results or reconcile the total votes between the November 2022 Accounting and the June
9 2024 Accounting. Since Secretary Weber has not responded to EIPCa’s legitimate inquiries, it is
10 reasonable to assume the discrepancies identified from the June 2024 Accounting will occur in the
11 November 5, 2024, election counting and certification if the Respondents are not compelled to
12 identify the reason for the discrepancies and to correct their respective procedures to fulfill their
13 ministerial duties.

14 Time is of the essence, given the upcoming election on November 5, 2024. Petitioners timely
15 filed this Petition after the Secretary of State declined to respond to their September 20, 2024
16 correspondence and they had the opportunity to retain counsel to review their data summary tables
17 and the complex nature of their claims. (Plotnik Decl., ¶ 7.) Further, the accounting issues raised by
18 Petitioners in their concurrently filed Petition for Peremptory Writ of Mandate pertain to
19 certification under Code of Civil Procedure Section 35(a). This Petition is brought to prevent an
20 error that will likely occur in the November 5, 2024 election with the certification process, pursuant
21 to Elections Code § 13314(a)(3). The issuance of the requested writ will not substantially interfere
22 with the conduct of the election because Petitioners are requesting relief prior to official certification
23 of the vote. (Elec. Code § 13314(b).) Given the imminency of the 2024 general election, the
24 requirement of the County Registrars of Voters to send the Secretary of State a copy of the election
25 results within 31 days of the election, and the Secretary of State’s requirement to certify the
26 candidates with the highest number of votes 38 days after the election, Petitioners request an
27 expedited hearing on the merits as well as a ruling on their Petition for Peremptory Writ of Mandate
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1 on or before November 6, 2024 after the elections officials begin transmitting results to the Secretary
2 of State at intervals no greater than two hours following the election. (Elec. Code § 15151.).⁸

3 IV. CONCLUSION

4 For the foregoing reasons, Petitioners respectfully request that this Court grant their Petition
5 for Peremptory Writ of Mandate on or before November 6, 2024 and:

6 1. Order Respondents to timely respond to Petitioner’s questions laid forth in their
7 September 6 and September 20, 2024 correspondence;

8 2. Appoint a special master to investigate, hold hearings, and determine why the
9 November 2022 Certified Accounting fails to match the June 2024 Accounting and to provide
10 written findings for the purpose of ensuring compliance with the Elections Code in recordkeeping,
11 canvassing, reporting, and accurate certification of the election results for the November 5, 2024,
12 election and future elections.

13 3. Appoint a special master to oversee the November 2024 election in each Respondent
14 County to ensure that all ministerial requirements are fulfilled in compliance with the Elections
15 Code in recordkeeping, canvassing, reporting, and accurate certification of the election results for
16 the November 5, 2024, election;

17 4. Appoint a special master to oversee the Secretary of State’s fulfillment of her
18 ministerial duties to ensure compliance with the Elections Code in recordkeeping, canvassing,
19 reporting, compiling, and accurate certification of the election results for the November 5, 2024,
20 election and to ensure that the records are accurately maintained following the election for post-
21 election reporting; and

22 5. Order Respondents to provide EIPCa with accurate finalized voter history and voter
23 information files from the November 2024 election within sixty (60) days following the Secretary
24 of State’s certification of the final election results.

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26 ⁸ Petitioner is prepared to assemble the administrative record for this matter, and extrinsic
27 evidence is admissible. (*See, e.g., Western States Petroleum Assn. v. Superior Court* (1995) 9
28 Cal.4th 559, 575 [explaining that “extra-record evidence is usually necessary only when the courts
are asked to review ministerial or informal administrative actions, because there is often little or no
administrative record in such cases”].)

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DATED: October 30, 2024

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DATED: October 30, 2024

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