

1 LEON J. PAGE, COUNTY COUNSEL
2 REBECCA S. LEEDS, SENIOR DEPUTY (SBN 221930)
3 rebecca.leeds@coco.ocgov.com
4 SUZANNE E. SHOAI, SENIOR DEPUTY (SBN 232866)
5 suzy.shoai@coco.ocgov.com
6 400 West Civic Center Drive Suite 202
7 Santa Ana, California 92701
8 Telephone: (714) 834-3300
9 Facsimile: (714) 834-2359

6 Attorneys for Respondent, BOB PAGE,
7 Orange County Registrar of Voters

8 *Exempt From Filing Fees Pursuant to Gov. Code, § 6103*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11 ELECTION INTEGRITY PROJECT
12 CALIFORNIA, INC; LARRY LEWIS, an
13 individual; COLETTE CASEY, an individual;
14 ELLEN SWENSEN, an individual; THOMAS
15 D. PAVICH, an individual; and CHARLES
16 SHINN, an individual,

17 Petitioners,

18 vs.

19 SHIRLEY WEBER, CALIFORNIA
20 SECRETARY OF STATE; BOB PAGE,
21 ORANGE COUNTY REGISTRAR OF
22 VOTERS; DEAN LOGAN, LOS ANGELES
23 COUNTY REGISTRAR-
24 RECORDER/COUNTY CLERK; ART
25 TINOCO, RIVERSIDE COUNTY
26 REGISTRAR OF VOTERS; AIMEE X.
27 EXPINOSA, KERN COUNTY AUDITOR-
28 CONTROLLER-COUNTY CLERK; and
MICHELLE BALDWIN, TULARE COUNTY
REGISTRAR OF VOTERS,

Respondents.

Case No. 24WM000168
Assigned for All Purposes to:
Judge Shelleyanne W.L. Chang, Dept. 21

**OPPOSITION OF RESPONDENT, BOB
PAGE, ORANGE COUNTY
REGISTRAR OF VOTERS, TO
PETITIONERS' EX PARTE
APPLICATION FOR ORDER
SHORTENING TIME**

ACTION FILED: October 30, 2024

Respondent Bob Page, Orange County Registrar of Voters (the "OC ROV"), by and through his attorneys of record Leon J. Page, County Counsel, Rebecca S. Leeds, Senior Deputy, and Suzanne E. Shoai, Senior Deputy, respectfully submits this Memorandum of Points and Authorities in Opposition to Petitioners' Ex Parte Application for Order Shortening Time.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioners' case is based on wholesale speculation regarding the *possibility* of the
4 Secretary of State and a handful of County elections officials (including the OC ROV)
5 mishandling the results of the November 5, 2024, statewide presidential election. Relying on
6 this speculation, Petitioners demand that this Court preemptively commandeer Respondents'
7 statutory roles by appointing a special master to "oversee... the recordkeeping, canvassing,
8 reporting, compiling and accurate certification of the elections results." (Memorandum of
9 Points and Authorities in Support of Petition ["MPA"] at 17:22-24.) While Petitioners have
10 created their own false urgency by waiting until just days before the election to file their action,
11 they now assert by way of their present Application that they will be "irreparably harmed" if
12 they are forced to adhere to the Court's notice protocols for a hearing on the merits.
13 (Application at 7.)

14 This Court should deny Petitioners' Application for multiple reasons. First, as the Court
15 already determined in relation to Petitioners' prior request for an expedited hearing, Petitioners
16 have not shown diligence in bringing this matter before the Court in a timely manner, and there
17 is no basis to prejudice Respondents by diverting from the Court's regular process. In addition,
18 Petitioners do not and cannot provide any factual or legal grounds for appointment of a special
19 master, as they rely entirely on perceived data errors *from the November 2022 election* to
20 speculate and allege that canvassing and certification errors *may possibly* take place in the
21 canvassing and certification of the November 5, 2024, election. Petitioners also do not and
22 cannot establish irreparable harm, immediate danger, or any statutory basis for an expedited
23 hearing prior to the county election officials' December 5, 2024, certification of the election
24 results. This is particularly true given the multiple alternative avenues available to Petitioners to
25 address any concerns they may have with the accuracy of the vote count and certification
26 process. In fact, Petitioners may request a recount under Elections Code section 15620 et seq. or
27 pursue an elections contest under Elections Code section 16000. et seq.—remedies that are both
28 available *after* the December 5, 2024, certification date identified by Petitioners.

1 In sum, Petitioners cannot demonstrate that the relief that they seek is available to them,
2 let alone that it is available on an expedited basis. This Court should deny their Ex Parte
3 Application in its entirety.

4 **II. FACTS**

5 Petitioners filed their Verified Petition for Peremptory Writ of Mandate on October 30,
6 2024, initiating this action. Relying on supposed discrepancies in Secretary of State (“SOS”)
7 data relating to the November 2022 election, Petitioners speculate that “either or both the [SOS]
8 and the county elections officials” erred “in counting votes and certifying [the November 2022]
9 election results.”¹ (MPA at 5:12-14.) Petitioners then leap to the conclusion that, because the
10 SOS did not respond to their inquiry regarding the 2022 election data discrepancies, similar
11 unidentified errors “will occur in the . . . November 5, 2024, election counting and certification.”
12 (MPA at 18:10-11.) While Petitioners do not allege a single instance of misconduct against
13 county election officials in relation to the November 5, 2024, election, Petitioners have
14 nonetheless included election officials from five separate counties, including the OC ROV, as
15 Respondents in this lawsuit.

16 In addition to requesting that the Court order the SOS to respond to its inquiries about the
17 November 2022 data and to promptly provide data following the November 5, 2024, election,
18 Petitioners request the appointment of special masters to oversee and investigate alleged
19 discrepancies in the data relating to the November 2020 election, to oversee the canvassing and
20

21
22 ¹ Petitioners’ conclusion that alleged discrepancies in the reporting data they received
23 from the SOS somehow proves that there was an error in the vote count or certification for the
24 November 2022 election requires multiple levels of speculation based on unfounded
25 assumptions. For example, if Petitioners are comparing “point in time” data from voter history
26 records to the November 2022 Certified Accounting, it is an “apples to oranges” comparison
27 because Petitioners would be comparing June 2024 data to November 2022 data, which may not
28 reflect voters who died or moved. Moreover, the fact that county elections officials are required
to remove cast vote records from precincts in which ten or fewer voters cast a ballot (Elec.
Code, § 15250.5), as well as the fact that provisional ballots may be either accepted and counted
versus challenged and rejected, may impact voter history records and ostensibly appear as a
discrepancy upon comparison.

1 certification of the November 5, 2024, election results in each Respondent county, and to
2 oversee the SOS's certification of the November 5, 2024, election results. (MPA at 19:6-24.)
3 Petitioners sought an expedited hearing on or before November 6, 2024. (MPA at 1.)

4 On October 31, 2024, the Court denied Petitioners' request for an expedited hearing,
5 noting that:

6 Petitioners have not offered any evidence as to their diligence in bringing this
7 matter before the Court after receiving the information over four months ago. . .
8 While Counsel declares that the petition was 'filed as soon as was practicable' the
9 Court does not find any evidence in the numerous declarations explaining why the
10 petition could not have been filed earlier before now.

11 (10/31/2024 Minute Order.)

12 The Court explained that an expedited hearing "does not allow Respondents sufficient
13 time to provide a meaningful opposition to the substantial relief sought" and that it does not
14 allow the Court "adequate time to consider the arguments and requested relief." (*Ibid.*) It
15 instructed Petitioners to comply with Local Rule 2.26, requiring notice and an opening
16 memorandum of points and authorities to be filed and served at least 45 days prior to the hearing
17 date. (*Ibid.*)

18 The present Application followed, again seeking an expedited hearing on the
19 merits of the Petition. This time, Petitioners ask that the hearing be set on or before December
20 5, 2024, which is when county election officials are required to certify the November 5, 2024,
21 election results.

22 **III. ARGUMENT**

23 **A. Petitioners' Application for Ex Parte Relief Should be Denied**

24 Ex parte proceedings "are designed to afford relief on an essentially emergency basis."
25 (*Newsom v. Superior Court of Sutter County* (2020) 51 Cal.App.5th 1093, 1097.) "A court will
26 not grant *ex parte* relief 'in any but the plainest and most certain of cases.'" (*Ibid.* [quoting
27 *People ex rel. Allstate Ins. Co. v. Suh* (2019) 37 Cal.App.5th 253, 257]; *Mission Power Eng'g*
28 *Co. v. Cont'l Cas. Co.*, 883 F.Supp. 488, 492 (C.D. Cal. 1995) ["Lawyers must understand that
filing an *ex parte* motion...is the forensic equivalent of standing in a crowded theater and
shouting, 'Fire!' There had better be a fire."].)

1 The California Rules of Court specifically require that those seeking *ex parte* relief
2 “make an affirmative factual showing in a declaration containing competent testimony based on
3 personal knowledge of irreparable harm, immediate danger, or any other statutory basis” for
4 granting *ex parte* relief. (Cal. Rules of Court, rule 3.1202(c).) Because Petitioners have failed
5 to meet this burden, emergency court intervention is not warranted here.

6 1. Petitioners Cannot Establish Exigency

7 As a preliminary matter, and as this Court has already determined, Petitioners did not
8 show diligence in initially bringing this matter before the Court only five days prior to the
9 election. Though unclear how data from the November 2022 election has any relevance to the
10 November 5, 2024 election, the 2022 data *has been available for nearly two years*. However,
11 Petitioners *first* requested this data in late February 2024, and waited *five months* after receiving
12 the data in June 2024, before bringing this matter to this Court in October 2024. Any purported
13 emergency is therefore of Petitioners’ own making.

14 Moreover, Petitioners seek the extraordinary relief of the appointment of a special master
15 to control Respondents’ canvassing and certification process in relation to the November 5, 2024,
16 election. Local Rule 2.26 requires parties to have *at least* 45 days’ notice prior to a hearing on
17 the merits of a writ petition. The Court should not accept Petitioners’ invitation to rob
18 Respondents of this time to investigate and challenge Petitioners’ allegations.

19 2. Petitioners are Unlikely to Succeed on the Merits

20 Petitioners have not identified any law or facts that entitle them to the appointment of a
21 special master, let alone on an expedited basis. There is no statutory authority that requires or
22 even authorizes the Court to appoint a special master to assume the role of state and county
23 election officials and usurp the statutory canvassing and certification duties entrusted to them by
24 law. (See, e.g., Elec. Code, §10 [the “Secretary of State is the chief elections officer of the state,
25 and has the powers and duties specified in this code and Section 12172.5 of the Government
26 Code”]; Elec. Code, § 320 [an elections official is “[a] county clerk, city clerk, registrar of
27 voters, or elections supervisor having jurisdiction over elections within any county, city, or
28 district within the state” and “is charged with the duty of conducting an election”].)

1 Petitioners mistakenly rely upon Elections Code section 11314 as the basis for expedited
2 relief; however, Elections Code section 13314 is wholly inapplicable to the challenges
3 Petitioners mount here. Indeed, Elections Code section 13314 offers a *pre-election remedy* for
4 alleged errors or omissions occurring on ballots or related ballot materials.² It does not apply to
5 allegations of error in the canvassing or certification of election results, as Petitioners allege here.

6 Similarly, a traditional writ under Code of Civil Procedure section 1085 is unavailable
7 here because Petitioners cannot identify any specific duty that Respondent counties failed to
8 perform. To obtain a writ of mandate, a petitioner must show “a clear, present, and usually
9 ministerial duty on the part of the respondent, [and] a clear, present, and beneficial right in the
10 petitioner to the performance of that duty.” (*CV Amalgamated LLC v. City of Chula Vista*,
11 (2022) 82 Cal.App.5th 265, 278.) “It is not enough that some statute . . . contains mandatory
12 language. In order to recover plaintiffs have to show that there is some specific statutory
13 mandate that was violated by the [public entity].” (*In re Dohner* (2022) 79 Cal.App.5th 590,
14 598-599 [quoting *In re Groundwater Cases* (2007) 154 Cal.App.4th 659, 689].) Petitioners
15 have not provided any facts to make this showing. Instead, Petitioners rely upon
16 generalizations, speculations and conjecture to claim that “either or both the [SOS] and the
17 county elections officials” erred “in counting votes and certifying [the November 2022] election
18 results” and that more errors “will occur in the . . . November 5, 2024, election counting and
19 certification.” (MPA at 5:12-14, 18:10-11.) They neither identify a clear and present duty, nor
20 describe any specific violation.

21 Moreover, as further discussed below, writ relief is not available here because there is a
22 plain, speedy and adequate remedy in the normal course of law. (See Code Civ. Proc, § 1086.)
23

24 _____
25 ² Elections Code section 13314(a)(1) allows an elector to seek a writ of mandate
26 “alleging that an error or omission has occurred, or is about to occur, in the placing of a name
27 on, or in the printing of, a ballot, county voter information guide, state voter information guide,
28 or other official matter, or that any neglect of duty has occurred or is about to occur.” It is also
located in Division 13 of the Elections Code relating to “Ballots, Sample Ballots, and Voter
Pamphlets” and in Chapter 4 relating to “State and County Voter Information Guides.”

1 3. Petitioners Cannot Show Irreparable Harm

2 In attempting to identify the alleged irreparable harm that will result if the Court will not
3 appoint a special master until after the certification of results by county election officials,
4 Petitioners simply reference the purported discrepancies they identified in SOS reporting data
5 *relating to the November 2022 election* and conclude that, “foreseeably, the above described
6 errors. . . *could occur* in the upcoming November 2024, election.” (Application at 9:7-8:3
7 [Emphasis added].) However, this does not demonstrate irreparable harm. In fact, Respondents
8 ignore the multiple alternative statutory avenues they have to challenge the accuracy of the
9 election returns both before and after certification.

10 First, the canvassing process is currently ongoing and Petitioners may participate in this
11 process as observers. (Elec. Code, § 15360.) Following the canvas and certification, Petitioners
12 may request a recount under Elections Code section 15620 et seq. or pursue an elections contest
13 under Elections Code section 16000, et seq. In fact, should Petitioners identify any factual basis
14 for errors in the canvass or summation of ballot counts in relation to the November 5, 2024,
15 election (which is still in progress), such a grievance would provide Petitioners with the grounds
16 upon which to bring an election contest under Elections Code section 16100 (f)&(g) [“Any
17 elector . . . may contest any election held therein, for any of the following causes: . . . (f) That
18 the precinct board in conducting the election or in canvassing the returns, made errors sufficient
19 to change the result of the election as to any person who has been declared elected. (g) That
20 there was an error in the vote-counting programs or summation of ballot counts.”].) Thus, not
21 only would requiring Petitioners to provide regular notice in no way thwart their ability to
22 address any actual issues they may uncover relating to the vote counts, but as Petitioners have a
23 plain, speedy and adequate remedy at law to address these issues, there are no grounds for a writ
24 of mandate to issue to preemptively appoint a special master.

25 **B. It is Premature to Determine Whether Venue is Proper or Whether**
26 **Respondents are Appropriately Joined Given Petitioners’ Vague Allegations**

27 On November 12, 2024, in response to Petitioners’ Ex Parte Application, the Court
28 ordered Respondents to file any opposition by 3:00 p.m. on November 15, 2024. The Court also

1 requested that “Respondents address whether the claims asserted against each Respondent are
2 properly joined in the complaint and whether this Court is proper venue for all claims.”

3 Unfortunately, given the generalized and speculative allegations in the Petition, it is
4 impossible to tell at this point whether there is a factual nexus connecting the claims against
5 the various named Respondents. (*Petersen v. Bank of America Corp.* (2014) 232 Cal.App.4th
6 238; *Hoag v. Superior Court of Los Angeles County* (1962) 207 Cal.App.2d 611.) While
7 Petitioners may believe there are discrepancies in the SOS data that it received pertaining to the
8 November 2022 election in the named counties, and while Petitioners may speculate that errors
9 will occur in the respondent counties in relation to the November 5, 2024, election, they have
10 not identified any specific races in which these errors purportedly occurred. This information is
11 critical to determining whether particular election officials or the SOS are properly joined and,
12 in turn, whether venue is proper.

13 **IV. CONCLUSION**

14 For all the foregoing reasons, Respondent OC ROV respectfully requests that this Court
15 deny Petitioners’ Ex Parte Application in its entirety.

16
17 DATED: November 14, 2024

Respectfully submitted,

18 LEON J. PAGE, COUNTY COUNSEL
19 REBECCA S. LEEDS, SENIOR DEPUTY
20 SUZANNE E. SHOAI, SENIOR DEPUTY

21 By: /s/ Suzanne E. Shoai
22 Suzanne E. Shoai, Senior Deputy
23 Attorneys for Respondent, Bob Page, Orange
24 County Registrar of Voters
25
26
27
28

PROOF OF SERVICE

I declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 400 W. Civic Center Drive, Suite 202, Santa Ana, California 92701, and my email address is xochitl.cuevas@coco.ocgov.com. I am not a party to the within action.

On **November 14, 2024**, I served the foregoing **OPPOSITION OF RESPONDENT, BOB PAGE, ORANGE COUNTY REGISTRAR OF VOTERS, TO PETITIONERS' EX PARTE APPLICATION FOR ORDER SHORTENING TIME** on all other parties to this action in the following manner:

BY ELECTRONIC SERVICE: Pursuant to California Rules of Court, rule 2.251, et seq., I caused an electronic version of the document(s) to be sent to the persons listed below.

PLEASE SEE ATTACHED SERVICE LIST

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

Executed in Santa Ana, California this 14th day of November, 2024.



Xochitl Cuevas

SERVICE LIST**Attorneys for Petitioners:**

ADVOCATES FOR FAITH & FREEDOM

Robert H. Tyler

Julianne E. Fleischer

25026 Las Brisas Rd.

Murrieta, CA 92562

btyler@faith-freedom.com

jfleischer@faith-freedom.com

TYLER LAW, LLP

Emma F. Plotnik

25026 Las Brisas Rd.

Murrieta, CA 92562

eplotnik@tylerlawllp.com

Attorneys for Respondent, Shirley**Weber, California Secretary of State:**

John D. Echeverria

Malcolm Brudigam

Maria Buxton

Office of the Attorney General

California Department of Justice

455 Golden Gate Ave., Suite 1100

San Francisco, CA 94102

john.echeverria@doj.ca.gov

Malcolm.brudigam@doj.ca.gov

maria.buxton@doj.ca.gov

Attorneys for Respondent Dean Logan,**Los Angeles County Registrar-****Recorder/County Clerk:**

Eva Chu

Adam Baumgarten

Office of the County Counsel

County of Los Angeles County

500 W. Temple St. #648

Los Angeles, CA 90012

echu@counsel.lacounty.gov

abaumgarten@counsel.lacounty.gov

**Attorneys for Respondent, Art Tinoco,
Riverside County Registrar of Voters:**

Ross Trindle

Stephanie Nelson

Mary Miller

Office of the County Counsel

County of Riverside

3960 Orange St., Suite 500

Riverside, CA 92501

grtrindle@rivco.org

stnelson@rivco.org

marmiller@rivco.org

Attorneys for Respondent, Aimee X.**Expinoza, Kern County Auditor-Controller-
County Clerk:**

Scott Fontes

Office of the County Counsel

County of Kern

1115 Truxtun Ave., 4th Fl.

Bakersfield, CA 93301

sfontes@kerncounty.com

Attorneys for Respondent, Michelle**Baldwin, Tulare County Registrar of Voters**

Jennifer M. Flores

Amy I. Terrible Myers

Patrick Beck

Office of the County Counsel

County of Tulare

2900 W. Burrel Ave.

Visalia, CA 93291

jflores1@tularecounty.ca.gov

amyers1@tularecounty.ca.gov

pbeck@tularecounty.ca.gov

kmartin1@tularecounty.ca.gov (Kari Martin-
Higgins, Paralegal)