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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO
12

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14 **ELECTION INTEGRITY PROJECT**
CALIFORNIA, INC., et al.,
15
16 Petitioners,
17
18 **SHIRLEY WEBER, CALIFORNIA**
SECRETARY OF STATE, et al.,
19
20 Respondents.

Case No. 24WM000168

**RESPONDENT SECRETARY OF
STATE'S OPPOSITION TO
PETITIONERS' EX PARTE
APPLICATION FOR ORDER
SHORTENING TIME**

Date: None set.
Time: None set.
Dept: 21
Judge: Hon. Shelleyanne W.L. Chang
Trial Date: None set.
Action Filed: October 30, 2024

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1 **INTRODUCTION**

2 Petitioners’ ex parte application is an unnecessary and improper attempt to relitigate this
3 court’s prior minute order denying petitioners an expedited hearing. Any purported urgency in
4 this matter is entirely of petitioners’ own making and does not provide a basis for ex parte relief.
5 As the court pointed out in its October 31 Minute Order: “Petitioners have not offered any
6 evidence as to their diligence in bringing this matter before the Court after receiving the
7 information over four months ago.” Nothing in the ex parte application alters this conclusion. As
8 the Court previously noted, petitioners’ allegations stem from a data set they obtained in June
9 2024. Instead of filing suit in advance of the election to allow the respondents and the court
10 adequate time to review their allegations, petitioners waited until voting was already well
11 underway to file the action. Then, they delayed again, waiting until November 5—a full five days
12 after the court’s October 31 Minute Order—to file the instant ex parte application. That was on
13 election day, when the Secretary and the county registrars were already in the throes of counting
14 votes—a massive, complex undertaking that will continue into December, with state and federal
15 deadlines to certify the results looming on December 5 and December 11, respectively. Setting a
16 hearing on shortened time as petitioners request would reward them for their lack of diligence and
17 at the same time hugely complicate the work of state and county election officials, who would
18 have to divert time and resources that cannot be spared to defending this litigation.

19 Petitioners also fail to carry their burden to establish “irreparable harm, immediate danger,
20 or any other statutory basis for granting relief ex parte.” (Cal. Rules of Court, rule 3.1202(c).)
21 Petitioners erroneously invoke Elections Code section 13314 and Code of Civil Procedure section
22 35 as a basis for “election precedence,” but neither of those statutes apply to the writ relief sought
23 here—i.e., the appointment of numerous special masters to oversee the ongoing administration
24 and certification of an election in five counties and statewide. Petitioners’ factual showing of
25 “irreparable harm” and “immediate danger” is also deficient, because their alleged harm is purely
26 speculative. They argue, essentially, that they have identified “errors” in the administration of the
27 2022 statewide election, and that those same problems “could” occur now. That is flatly
28 insufficient to justify ex parte relief, or *any* relief. It is based on supposed evidence from two

1 years ago without any explanation as to what present harm has occurred or will occur due to that
2 evidence. Not only does petitioners’ evidence—a claimed discrepancy between two data sets—
3 say nothing about whether respondents are carrying out their legal duties, but the two data sets are
4 not comparable. One reflects the votes cast in a specified election, while the other reflects voter
5 registration data pulled from a specific point in time. Such a threadbare showing does not justify
6 ex parte relief, especially when the ultimate writ relief requested would interfere with the ongoing
7 administration of the General Election and jeopardize respondents’ timely certification of same.

8 Accordingly, the court should deny petitioners’ ex parte application, and proceed with a
9 writ hearing and briefing schedule in accordance with the court’s standard schedule for
10 prosecuting writs.

11 BACKGROUND

12 I. FACTUAL BACKGROUND

13 On October 30, 2024, petitioners, five individuals and an organization called “Election
14 Integrity Project California, Inc.,” filed this lawsuit seeking a writ to, among other things, appoint
15 a special master to oversee the November 2024 General Election to ensure that respondents fulfill
16 their statutory duties under the Elections Code, including accurately certifying the election
17 results. (Petitioners’ Memorandum of Points and Authorities in support of Ex Parte Application
18 for an Order Shortening Time [“EPA”] at 1.) Petitioners contend that a special master is
19 necessary to oversee the election administration, because petitioners found a discrepancy between
20 two data sets concerning the 2022 General Election, and therefore respondents may make similar
21 errors in the 2024 General Election. (EPA at 1.)

22 The two data files that form the basis of petitioners’ action represent two distinct sets of
23 information. The first data set, referred to in the application as the “November 2022 Certified
24 Accounting,” is the Statement of Vote for the November 4, 2022 General Election. The
25 Statement of Vote reports the county-by-county votes cast for each candidate and measure on the
26 ballot in a particular election—in other words, it reflects the votes cast in a particular election. In
27 contrast, the second data set, referred to in the application as the “June 2024 Accounting,” is a
28 Public Voter Registration Data Request (“PVRDR”) from June 28, 2024. The PVRDR data is not

1 a statement of the vote, but rather a report of county-by-county voter registration data pulled from
2 the state’s centralized voter registration database (called “Vote Cal”) at a specific point in time.
3 The PVRDR data is used to determine active voter registrations in a county at a particular
4 moment in time; such data, maintained in Vote Cal, is constantly being updated by counties under
5 state and federal law and is changing constantly. The PVRDR data is not used by elections
6 officials to compile the Statement of Vote.

7 The PVRDR data includes information about voter participation in past elections, but is not
8 a reliable indicator of votes cast in any one county or election. This is because it is a snapshot in
9 time and does not indicate which county a voter’s prior voter participation took place. Voters may
10 move between the time they vote and the time the data is pulled, and so it does not necessarily
11 reflect where a given vote was cast. (Cf. Decl. of Ellen Swensen in Support of Petition for
12 Peremptory Writ of Mandate [“Swensen Decl.”] ¶ 10.) For example, if 100 votes were legally
13 cast in County A and 100 votes were legally cast in County B, the Statement of Vote for that
14 election would show 100 votes in each county. But if 20 people move from County A to County
15 B after the election, the PVRDR will show 80 voters in County A who voted in the last election,
16 and 120 in County B. Of course, this does not account for anyone who moves out of California
17 entirely or voters that may have been cancelled since cancelled voters are not included in
18 PVRDRs. Petitioners acknowledge this very limitation in the declaration of Carl Knowles filed in
19 support of their ex parte application. (Decl. of Knowles in Support of Petition for Peremptory
20 Writ of Mandate [“Knowles Decl.”] ¶ 12 [explaining that the PVRDR data “prevents the vote
21 history data from being used to accurately audit any election because the vote tallies no longer
22 match the vote tallies on the Statement of Vote used by the SOS to certify an
23 election.”].) Similarly, at any given moment in time, it is possible for a voter to have multiple
24 records in the VoteCal database, due to, for example, the voter moving residences. This does not
25 mean a single individual voted multiple times, because the VoteCal database is not a report of
26 votes cast in an election. Elections officials are constantly performing list maintenance and data
27 verification throughout the year to correct erroneous data entries.

1 **II. PROCEDURAL BACKGROUND**

2 In their operative petition for writ of mandate (“petition” or “Pet.”), petitioners sought
3 action by the court before November 6, 2024, arguing that they were entitled to an expedited
4 hearing under Elections Code section 13314 and Code of Civil Procedure section 35. (Pet. at 18-
5 19.) The next day, on October 31, 2024, the court sua sponte denied petitioners’ request to have
6 the court “act on” the petition by November 6, 2024. (Minute Order, Oct. 31, 2024.) As the court
7 pointed out, “Petitioners have not offered any evidence as to their diligence in bringing this
8 matter before the Court after receiving the information [alleged in their Petition] over four months
9 ago,” and the court did “not find any evidence in the numerous declarations explaining why this
10 petition could not have been filed earlier[.]” (*Ibid.*) The court further concluded that petitioners
11 must proceed under normal court rules for obtaining a hearing date and filing and serving an
12 opening brief at least 45 days prior to that date. (*Ibid.*)

13 Apparently dissatisfied with the court’s response, petitioners waited five full days—until
14 November 5—to file the instant ex parte application for an order shortening time to hear their
15 petition. Their ex parte application makes virtually the same request that the court previously
16 denied, except now, within a matter of a few days of their original request, the supposed
17 “emergency” can wait until December 5, 2024. Petitioners seek an order shortening the time to
18 hold a hearing because the court’s earliest available hearing date, February 14, 2025, is too late to
19 hold a hearing, according to petitioners. But as explained further below, petitioners have not
20 satisfied their burden of showing irreparable harm or immediate danger will occur if the court
21 does not grant petitioners’ ex parte application. In reality, petitioners merely seek to relitigate the
22 court’s October 31, 2024 Minute Order determining that this case does not warrant election
23 precedence. Like petitioners’ first request, the court should deny this nearly indistinguishable
24 second request.

25 **LEGAL STANDARD**

26 “A court will not grant ex parte relief in any but the plainest and most certain of cases”
27 warranting relief on an “emergency basis.” (*Newsom v. Superior Court of Sutter County* (2020)
28 51 Cal.App.5th 1093, 1097 [cleaned up].) To meet that standard, “[a]n applicant must make an

1 affirmative factual showing in a declaration containing competent testimony based on personal
2 knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief
3 ex parte.” (*Id.* [quoting Cal. Rules of Court, rule 3.1202(c)].) “A trial court should deny an ex
4 parte application absent the requisite showing.” (*People ex rel. Allstate Ins. Co. v. Suh* (2019) 37
5 Cal.App.5th 253, 257.)

6 ARGUMENT

7 Petitioners do not meet their burden of making a factual showing demonstrating that they
8 face “irreparable harm, immediate danger, or any other statutory basis for granting relief ex
9 parte.” (Cal. Rules of Court, rule 3.1202(c).) And the court has already found that the
10 “emergency” nature of petitioners’ lawsuit was created by their own decision to file this lawsuit
11 on the eve of the November 2024 General Election. The court should deny petitioners’ ex parte
12 application for an order shortening time for at least four reasons: (1) petitioners have
13 manufactured the “emergency” nature of this briefing by failing to diligently file this lawsuit in
14 time for respondents and the court to address these issues on a reasonable timeline, and then
15 compounding their delay by waiting until another five days after the court’s October 31 Minute
16 Order to file the instant ex parte application; (2) petitioners fail to show they will suffer
17 irreparable harm without an expedited hearing; (3) petitioners are not entitled to statutory
18 preference because Elections Code section 13314 and Code of Civil Procedure section 35 do not
19 apply to this case; and (4) an expedited hearing is unnecessary, because petitioners’ petition is
20 unlikely to succeed, including because their requested relief would be catastrophic to the
21 administration of this election, contrary to the public interest, and would violate binding
22 precedent warning courts not to interfere in ongoing elections.

23 I. PETITIONERS FAILED TO USE DILIGENCE IN BRINGING THIS ACTION.

24 As the court recognized in its October 31, 2024 Minute Order, the “emergency” nature of
25 petitioners’ lawsuit is a result of petitioners’ failure to diligently bring this suit. In this second
26 attempt to fast-track this case, petitioners have again provided no credible evidence explaining
27 why it took petitioners nearly *five months* from the time they obtained the June 2024 data before
28 to initiate this lawsuit days before the November 5th General Election. (Minute Order, Oct. 31,

1 2024 [“Petitioners have not offered any evidence as to their diligence in bringing this matter
2 before the Court after receiving the information over four months ago.”].)

3 Petitioners argue that they needed that time to obtain counsel. That explanation strains
4 credulity. In the ex parte application, petitioners rewrote the sworn declaration of counsel Emma
5 Plotnik, explaining that the two firms representing petitioners—Advocates for Faith and Freedom
6 and Tyler Law, LLP—were not retained until October 15, 2024 rather than the date of September
7 26, 2024, as originally represented in the Petition. (Decl. of Plotkin in Support of Ex Parte
8 Application [“Plotkin Decl.”] ¶ 6.) But petitioners imply that they had to search for and retain
9 brand new counsel for this case, when in reality they were *already* working with at least one of
10 the firms (Advocates for Faith and Freedom) on other matters as of September 26. (*Ibid.*) And
11 petitioner Election Integrity Project California, Inc. has retained Advocates for Faith and Freedom
12 in other recent lawsuits against the Secretary of State. (See, e.g., *Election Integrity Project*
13 *California, Inc. v. Weber* (9th Cir. 2024) 113 F.4th 1072 [plaintiffs represented by the Advocates
14 for Faith and Freedom and seeking, unsuccessfully, “appointment of a special master to oversee
15 the administration of California’s elections”].) Indeed, one of petitioners’ counsel—Robert H.
16 Tyler—is counsel at both the Advocates for Faith and Freedom law firm and Tyler Law, LLP.¹
17 Petitioners fail to explain why they waited until October 15, less than three weeks before the
18 General Election, to retain two firms they already had a relationship with and were already using
19 in active litigation. The contention that petitioner Election Integrity Project California, Inc.
20 “needed time to seek legal counsel that both met their financial needs and experienced in election
21 law,” (Plotnik Decl., ¶ 6), is not credible.

22 Finally, petitioners indicate they were delayed in bringing this lawsuit because they were
23 waiting on a response from respondent Secretary of State to correspondence petitioners sent on
24 September 6 and 20, 2024. (EPA at 4; Plotkin Decl., ¶ 6 [explaining that petitioners “wanted to
25 allow time for the Secretary of State to respond to their September 20, 2024 correspondence”].)
26 In other words, petitioners decided to wait for a response from the Secretary of State to lengthy

27 ¹ This is apparent by reviewing the attorneys listed under “Team” on the Advocates for
28 Faith and Freedom website, or under “About Us” for Tyler Law, LLP; both law firms also share
the same mailing address. <https://faith-freedom.com/>; <https://www.tylerlawllp.com/about-us>.

1 correspondence provided on September 20, 2024—while she was in the throes of administering
2 the 2024 General Election, and likely the busiest time in her office in the last four years.
3 Plaintiffs cannot use the Secretary’s delay in responding to rationalize their lack of diligence
4 bringing this lawsuit. There is no pre-litigation notice requirement to bring a writ action. And
5 petitioners’ explanation smacks of post-hoc rationalization: as petitioners state in their ex parte
6 application, “any answer to EIPCa’s September 6 and September 20, 2024, correspondence
7 provided by Respondents *will be unable to aid any* special master appointed by the Court in
8 adopted procedures to oversee Respondents.” (EPA at 8.) In other words, waiting on a response
9 from respondent Secretary of State had nothing to do with diligently bringing this lawsuit.

10 **II. PETITIONERS FAIL TO SHOW IRREPARABLE HARM OR IMMEDIATE DANGER**
11 **ABSENT AN EXPEDITED HEARING.**

12 Petitioners’ request for an expedited hearing should also be denied because petitioners have
13 not met their burden of making “an affirmative factual showing in a declaration containing
14 competent testimony based on personal knowledge of irreparable harm, immediate danger, or any
15 other statutory basis for granting relief ex parte.” (Cal. Rules of Court, rule 3.1202(c).)

16 The only “factual” showing put forth by petitioners is merely the same basis as their
17 petition—i.e., that there is some discrepancy between two data sets concerning voters from the
18 November 2022 General Election. (EPA at 7.) But there is no explanation as to how that
19 discrepancy means ministerial duties were not followed in 2022, or why that has any relevance
20 whatsoever to the November 2024 General Election. (See *Flores v. Dept. of Corrections &*
21 *Rehabilitation* (2014) 224 Cal.App.4th 199, 205 [finding a writ can only issue when there is a
22 “clear, present and usually ministerial duty upon the part of the respondent” and “a clear, present
23 and beneficial right in the petitioner to the performance of that duty”] [citation omitted].) Indeed,
24 the only declaration cited by petitioners in supporting their showing does not even contend that
25 the 2022 discrepancy has caused, or will cause, any harm to anyone. (EPA at 7; Declaration of
26 Swenson [“Swenson Decl.”] at ¶¶ 10-11.) At most, petitioners merely assert that errors “*could*
27 *occur* in the upcoming November 2024 election,” (EPA at 8, emphasis added), based on a
28

1 discrepancy between two data sets. The mere possibility of future error does not show irreparable
2 harm is likely or that there is immediate danger.

3 And, contrary to petitioners’ allegations, the discrepancy between the two data files does
4 not even show that there were errors in the 2022 General Election. As explained in the Section I
5 above, the Statement of Vote and PVRDR data are two different sets of information; the latter
6 cannot be used to “audit” the former. (See Knowles Decl. ¶ 12 [admitting that the PVRDR data
7 cannot “be[] used to accurately audit any election”].) Petitioners’ apples-to-oranges comparison
8 of data does not constitute a factual showing based on personal knowledge that there is
9 “irreparable harm” or “immediate danger” at stake here. (*Newsom, supra*, 51 Cal.App.5th at p.
10 1098 [finding that ex parte procedure was improper where record showed a “lack of competent
11 evidence of irreparable harm or immediate danger”].)

12 Thus, petitioners have not carried their burden justifying ex parte relief and the court should
13 deny their application.

14 **III. PETITIONERS ARE NOT ENTITLED TO STATUTORY PREFERENCE.**

15 Petitioners incorrectly invoke Elections Code section 13314 and Code of Civil Procedure
16 section 35 as statutory bases for setting a hearing in this matter on an expedited basis. (EPA at 2,
17 5-6.) The plain text of section 13314, along with its location in the Elections Code, show it has
18 nothing to do with challenging the certification of an election.

19 Elections Code section 13314 states that:

20 [a]n elector may seek a writ of mandate alleging that an error or omission has occurred, or
21 is about to occur, **in the placing of a name on, or in the printing of, a ballot, county
22 voter information guide, state voter information guide, or other official matter**, or that
any neglect of duty has occurred, or is about to occur.

23 This case does not concern a preelection challenge alleging an error or omission regarding the
24 printing of a ballot or voter information guide. (*County of Alameda v. Alameda County
25 Taxpayers’ Assn., Inc.* (2024) 99 Cal.App.5th 226, 239 [explaining that “Section 13314 similarly
26 permits a voter to seek a preelection writ of mandate . . . attack[ing] [] the sufficiency or
27 impartiality of ballot materials”].) Nor can petitioners invoke section 13314 to expedite any
28 action related to an election merely because that statute’s language provides for a writ of mandate

1 for “any neglect of duty [that] has occurred, or is about to occur.” Section 13314 is in Chapter 4
2 of Division 13 of the Elections Code. Division 13 concerns “Ballots, Sample Ballots, and Voter
3 Pamphlets,” while Chapter 4 focuses on “State and County Voter Information Guides”; neither
4 concern challenges to the ongoing administration, or certification, of an election. And petitioners
5 have not cited any legal authority showing that section 13314 has ever been used in that manner.

6 Even if Section 13314 applied to *any* election-related petition for writ of mandate (which it
7 does not), it would not warrant an expedited hearing, because petitioners’ requested relief directly
8 runs afoul of that statute’s limitations. Section 13314 specifically instructs that a writ *shall not*
9 *issue* under that provision if it would “substantially interfere with the conduct of the election.”
10 (Elec. Code, § 13314(a)(2)(B).) That is exactly what petitioners seek to do here. Petitioners ask
11 this court to appoint a special master to oversee Respondents’ performance of their statutory
12 duties related to the ongoing General Election, to “make factual findings,” and to “render
13 advisory opinions for the court’s consideration.” (Pet. at 17.) That would burden time-crunched
14 elections officials who must—by state and federal law, certify election results—and instill this
15 court as the arbiter of the election. (Cf. *County of Alameda, supra*, 99 Cal.App.5th at p. 239
16 [“Voters, not judges, mainly run our democracy. It would threaten that core tenet if one person
17 who did not like the election result could hire lawyers and with ease could invalidate an
18 expression of popular will.”] [citation omitted].) And, as explained further below, respondents
19 risk missing their statutory deadlines to certify county elections and the statewide election,
20 including reporting those results to Congress, as required by federal law. (See, *infra*, Section IV.)
21 Thus, section 13314 is inapplicable given the nature of petitioners’ action and the writ relief they
22 seek.²

23 Code of Civil Procedure section 35 is similarly inapplicable. That provision applies to
24 cases involving voter registration, certification of candidates or ballot measures, actions
25 challenging campaign materials and redistricting, or election contests. (See Code Civ. Proc.

26
27 ² In addition, petitioner Election Integrity Project California, Inc. is not an “elector” under
28 section 13314, subdivision (a). (Elec. Code, § 13314, subd. (a); see also Elec. Code, § 321, subd.
(a) [“‘Elector’ means a person who is a United States citizen 18 years of age or older and, . . . is a
resident of an election precinct in this state on or before the day of the election.”].)

1 § 35.) Petitioners’ action, which is about alleged errors in recordkeeping related to canvassing the
2 vote, does not fit any of these categories. Indeed, petitioners contend that respondents are not
3 fulfilling their statutory duties under Division 15 of the Elections Code, which concerns the
4 “Semifinal Official Canvass, Official Canvass, Recount, and Tie Vote Procedures.” (See Pet. ¶¶
5 48-74, titled “Statutory Duties of County Registrar-Recorders/County Clerks As Election
6 Officials” [citing Elec. Code §§ 15100 et seq and Elec. Code § 335.5 (defining “[t]he ‘official
7 canvass’”)].) Those duties—which concern “the official canvass,” i.e., “the public process of
8 processing and tallying all ballots received in an election” (Elec. Code § 335.5)—do not fall
9 within the plain language of Code of Civil Procedure section 35.

10 Even if petitioners sought to characterize their preelection lawsuit as a post-election
11 “contest,” an election contest action can only be filed in the 30 days “*after* the declaration of the
12 result of the election by the body canvassing the returns thereof,” (Elec. Code, § 16401, emphasis
13 added), and requires following detailed statutory procedures governing election contests. (See
14 Elec Code, §§ 16000, et seq.) Petitioners cannot bypass this statutorily required process,
15 especially when the challenge is based entirely on speculative grounds. (*McKinney v. Superior*
16 *Court* (2004) 124 Cal.App.4th 951, 958 [finding the Elections Code provide the exclusive
17 grounds for an “election contest” and that such action can only be brought post-election]; *Bradley*
18 *v. Perrodin* (2003) 106 Cal.App.4th 1153, 1173 [“Election results may only be challenged on one
19 of the grounds specified in section 16100.”] [citation omitted].) Indeed, the basis for petitioners’
20 action and writ relief is their contention that errors *may* arise in the tabulating of results, but
21 petitioners do not explain what these alleged errors are, why they are likely to occur, or if they
22 would affect any election outcome. That is far cry from the requirement that ex parte relief only
23 be granted in “the plainest and most certain of cases.” (*Newsom, supra*, 51 Cal.App.5th at p.
24 1097.)

25 **IV. AN EXPEDITED HEARING IS UNNECESSARY, BECAUSE PETITIONERS’ REQUESTED**
26 **RELIEF SHOULD NOT BE GRANTED IN THE MIDDLE OF AN ONGOING ELECTION.**

27 Petitioners insist that they need a hearing before December 5th so that the court can grant
28 petitioners’ extraordinary requested relief—that is, so that the court can insert itself into the

1 administration of this election in five counties—before each county certifies the results. But the
2 court cannot grant that relief without running afoul of binding precedent warning courts not to
3 interfere in the administration of elections—particularly once an election is already underway.
4 The United States Supreme Court has warned against granting in junctions that interfere with
5 impending elections. *See Purcell v. Gonzalez*, 549 U.S. 1, 5-6 (2006). And the Ninth Circuit has
6 reiterated that “election cases are different from ordinary injunction cases. . . . Interference with
7 impending elections is extraordinary” and “interference with an election after voting has begun is
8 unprecedented.” (*Southwest Voter Registration Educ. Project v. Shelley* (9th Cir. 2003) 344 F.3d
9 914, 919 [en banc]; see also *Arizona Democratic Party v. Hobbs* (9th Cir. 2020) 976 F.3d 1081,
10 1086 [“[A]s we rapidly approach the election, the public interest is well served by preserving
11 Arizona’s existing election laws, rather than by sending the State scrambling to implement and to
12 administer a new procedure for curing unsigned ballots at the eleventh hour.”].) Petitioners
13 request just that: court interference with an election after voting has begun. The court need not
14 expedite a hearing when the Ninth Circuit has advised against granting precisely the relief that
15 petitioners request. Indeed, the relief petitioners seek would be completely unprecedented in the
16 history of California elections.

17 Furthermore, the potentially catastrophic effect of granting petitioners requested relief
18 before December 5th cannot be overstated, and it is yet another reason why this court should deny
19 petitioners’ ex parte application. Unlike some other states, California has an extremely tight
20 window in which to meet the federal deadline to certify the state’s results and for California’s
21 electors to cast their votes in the Electoral College. Under California law, each county must
22 certify the results of the vote count by December 5. (Elec. Code § 15372.) That leaves just *six*
23 *days* for state officials to meet the federal deadline to produce a certificate of ascertainment to the
24 state’s electors on December 11. (3 U.S.C. § 5, subd. (a)(1)). That deadline must be met in order
25 for the state to meet the subsequent federal deadline, on December 17, 2024, by which those
26 electors must cast their votes for president. (3 U.S.C. § 7.)

27 These deadlines are non-negotiable; missing them would cast the state—and the country—
28 into uncharted waters, legally and constitutionally, and risk undermining the results of the

1 national presidential election, which would be contrary to the public interest. It is therefore
2 critical that election officials proceed efficiently with the vote certification process already
3 underway. Any disruption risks delaying that process, and any delay could be disastrous. Yet,
4 petitioners would have the court insert itself, via a special masters, into the middle of that process,
5 to “oversee” election officials “in performing their ministerial duties in recordkeeping,
6 canvassing, reporting, compiling, and accurate certification the vote count and certification
7 procedures” by, among other things, “*hold[ing] evidentiary hearings*” regarding the vote count
8 between the day of the court’s order granting that relief and December 5. (Pet., p. 17.) This is a
9 virtually impossible timeline. Petitioners’ request is almost certain to delay the certification of
10 the vote.

11 Petitioners’ request is akin to demanding that a doctor perform a physical exam *while* an
12 Olympic athlete is halfway through the 200-meter sprint—it risks dooming the process it seeks to
13 improve. Like anything, there is a time and a place for auditing government procedures, but days
14 away from a federally-imposed deadline is not the proper time. (See *Merrill v. Milligan*, 142 S.
15 Ct. 879, 880 (2022) (Kavanaugh, J., concurring) [noting that administering an election is
16 “complicated and difficult” and “state and local election officials need substantial time to plan for
17 elections”].) This court should not grant an expedited hearing when the relief requested is so
18 clearly against the public’s interest, disruptive to the administration of a national election, and
19 contrary to Ninth Circuit authority.

20 **V. THE SECRETARY DOES NOT CONTEST VENUE OR JOINDER.**

21 In the court’s November 12, 2024 Minute Order, it requested that “Respondents address
22 whether the claims asserted against each Respondent are properly joined in one complaint and
23 whether this Court is the proper venue for all claims against the county Respondents.”

24 For her part, the Secretary does not object to proceeding with this action in Sacramento
25 Superior Court, which appears to be the proper venue at least with respect to the claim asserted
26 against the Secretary. For most actions brought against the state, the place of trial “shall be
27 changed to Sacramento County” or any county where the Attorney General has an office. (See
28 Gov. Code § 955; Code Civ. Proc. § 401(1).) Nor does the Secretary object to joining petitioners’

1 claims against all respondents in one pleading. (See Code Civ. Proc. § 379, subd. (b) ["It is not
2 necessary that each defendant be interested as to every cause of action or as to all relief prayed
3 for. Judgment may be given against one or more defendants according to their respective
4 liabilities."].) However, the Secretary reserves her right to raise any other challenge to the
5 petition.

6 **CONCLUSION**

7 For the reasons set forth above, the court should deny petitioners' ex parte application and
8 set a writ hearing and briefing schedule in accordance with this court's normal writ procedures.

9 Dated: November 15, 2024

10 Respectfully submitted,

11 ROB BONTA
12 Attorney General of California
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14 Supervising Deputy Attorney General

15 */s/ Malcolm A. Brudigam*

16 MALCOLM A. BRUDIGAM
17 MARIA F. BUXTON
18 Deputy Attorney General
19 *Attorneys for Respondent California*
20 *Secretary of State, Dr. Shirley Weber, Ph.D.*

DECLARATION OF SERVICE BY E-MAIL and U.S. MAIL

Case Name: **Election Integrity Project California, Inc., et al. v. Shirley Weber, et al.**
No.: **24WM000168**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 15, 2024, I served the attached **RESPONDENT SECRETARY OF STATE'S OPPOSITION TO PETITIONERS' EX PARTE APPLICATION FOR ORDER SHORTENING TIME** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 15, 2024, at Sacramento, California.

Kyle Nicholson

Declarant

/s/ Kyle Nicholson

Signature