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No. S295866

In the Supreme Court of the State of California

CLARISSA CERVANTES, *et al.*,

Petitioners,

v.

CHAD BIANCO, AS SHERIFF, ETC., *et al.*,

Respondents.

AMICUS BRIEF OF THE ATTORNEY GENERAL IN SUPPORT OF PETITIONERS

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INTRODUCTION AND STATEMENT OF INTEREST

The Attorney General submits this amicus brief in support of petitioners' request for a writ of mandate directing Sheriff Bianco and his office to return all seized ballots and other materials to the Riverside County Registrar of Voters. As the "chief law officer of the State," the Attorney General has "direct supervision" over sheriffs (Cal. Const., art. V, § 13) with authority to "direct" their "activities" (Gov. Code, § 12560). In this capacity, the Attorney General has a strong interest in ensuring that law enforcement officers comply with statutory and constitutional limits in their conduct of criminal investigations. Nowhere is that interest more weighty than in the context of preserving public confidence in the State's elections. The Attorney General has exercised his direct supervision authority over Sheriff Bianco by issuing directives, which the Sheriff has resisted and defied, to pause his investigation into the November 2025 special election. The important question of whether the Sheriff must comply with those supervisory orders is pending before this Court in *Attorney General v. Bianco*, No. S295901.

This amicus brief addresses a distinct question presented directly in this case: whether the Sheriff's unprecedented physical seizure of voted ballots also violates the Elections Code. The answer to that question is "yes." Elections officials are required to retain voted ballots and other materials for a short, specified period after each election. (Elec. Code, § 17302, subd. (b).) The ballot packages must be kept "unopened and unaltered" during that time, except in the event of a contest or certain

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criminal proceedings. (*Id.*, § 17302, subds. (b), (c).) Even then, "[i]n no event shall the package [containing voted ballots] or its contents be taken from the custody of the elections official." (*Id.*, § 15551, subd. (d).)

As detailed below, these provisions reflect over a century of legislative efforts to balance an interest in preserving the secrecy and integrity of voted ballots while at the same time specifying the narrow circumstances in which authorities under court supervision may inspect them. This Court held more than a century ago in *Ex parte Brown* (1892) 97 Cal. 83, 87 that the ballot-retention statute from which the Elections Code provisions at issue here were derived overrides courts' "general . . . power to compel the production of the best evidence within the reach of their process." *Brown* explained that "[i]f it is thought necessary to make the ballots available as evidence in criminal proceedings, the legislature can do so, under such limitations and restrictions as may be deemed essential to their integrity." (*Id.* at p. 90.)

Following *Brown*, the Legislature has fine-tuned the Elections Code several times in response to a growing electorate, new technologies, contests, disputes, scandals, and court decisions. But throughout these changes, it has retained the core requirement that ballots by default remain unopened and unaltered, and that they always remain in the custody of the elections official. The long pedigree of these provisions reinforces what is clear from their text: voted ballots can be inspected only in narrow, specified circumstances, and even then they must never be taken from elections officials' custody.

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ARGUMENT

THE SEIZED BALLOTS MUST BE RETURNED

A. The Elections Code requires ballots to remain in the custody of elections officials

The Elections Code requires elections officials to maintain "packages" containing voted ballots "unopen and unaltered" for a specified period after an election and then to have them "destroyed or recycled." (Elec. Code, § 17302, subds. (b), (c).)[1] The sole exception in the statute is if a "contest" or "criminal prosecution involving fraudulent use, marking or falsification of ballots, or forgery of vote by mail voters' signatures" is "commenced within the [specified] period." (*Id.*, § 17302, subd. (c).) In such cases, "the package containing the voted ballots shall be subject to the order of the court in which the contest or criminal prosecution is pending." (*Id.*, § 15551, subd. (a).) Even then, the statute mandates that "[i]n no event shall the package or its contents be taken from the custody of the elections official." (*Id.*, § 15551, subd. (d).)

1. These ballot-retention and custody requirements date back to the nineteenth century. California's first elections statute was enacted in 1850. (Stats. 1850, ch. 38, art. V, § 35, p. 104.)[2] That law required votes to be counted at each precinct, and instructed precinct inspectors to "destroy[]" ballots as soon as counting was complete. (*Ibid.*) Inspectors were required to

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[1] Section 17302 governs "state or local elections." (Elec. Code, § 17302, subd. (a).) Section 17301 imposes similar requirements for certain federal elections. (*Id.*, § 17301.)

[2] The historical session laws cited in this brief are available at <clerk.assembly.ca.gov/archive-list> (as of June 29, 2026).

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preserve just two copies of the results tally. (*Ibid.*) One copy of the results was to be sent to the county clerk, endorsed as "Election Returns," and the other "retained" and "preserved" by the inspector for "at least six months." (*Ibid.*) This immediate-destruction rule was similar to laws prevalent in "many of the [S]tates"; it ensured absolute "secrecy of the ballot" even though "it was plainly inconsistent with any use of the ballots for the purpose of proving fraud." (*Brown*, *supra*, 97 Cal. 83, 88.)

The first major change to the elections statute was adopted in 1863, requiring ballots to be retained for a short period, rather than destroyed, so that they could be used as evidence in election contests. (Stats. 1863, ch. 268, § 5, p. 354.) This amendment was prompted in part by the circumstances surrounding an 1861 election in which a Democrat from Mono County won a state Senate seat because of 406 votes he received in a precinct called "Big Springs." (Sen. Com. on Elections, Report on Contested Election (Mar. 10, 1862) Sen. J. (1862 Sess.) pp. 325, 336 <hdl.handle.net/2027/mdp.39015067103500> [as of June 29, 2026].) That precinct had purportedly been created just days before the election. (*Id.* at pp. 326-327.) The losing candidate, a Republican, contested the outcome, asserting that the Big Springs precinct returns were fraudulent and that no election had been held there. (*Id.* at p. 326.) The Senate Elections Committee considering the challenge was unable to inspect the contested ballots (*id.* at p. 327), since the 1850 statute required only that returns, not the actual ballots, be sent to county officials (Stats. 1850, ch. 38, art. V, § 35, p. 104).

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Without ballots, the Committee was left to review "certified copies" of the returns (the originals "disappeared" in "mysterious" circumstances) as well as testimony and other indirect evidence. (Report on Contested Election, *supra*, at pp. 326, 336-337.) After months of investigation, the Committee concluded, based in part on the "absurdities [that] appear from the face of the returns" (including that no Republican candidate received a single vote), that "no such election was ever held" at Big Springs. (*Id.* at pp. 337-338.) The purported returns from the new precinct had been "false and forged"—"a monstruous, bold, and palpable fraud, having no parallel in the history of our State." (*Ibid.*)

The next year, in 1863, the Senate ousted the winner of that Mono County seat. (Sen. J. (1863 Sess.) p. 355 <archive.org/details/jour1863cali> [as of June 29, 2026]; see also *Letter from Sacramento*, S.F. Bulletin (Mar. 31, 1863) p. 3.)[3] The same month, the Legislature amended the elections statute to require each precinct's ballots to be "strung upon a cord . . . in the order in which they are entered upon the tally list" and "sealed up" after counting. (Stats. 1863, ch. 268, § 5, p. 354.) The sealed package of voted ballots, along with the tally list, was then

[3] Although the Committee initially concluded in 1862 that the Democratic winner of the Mono County seat won through fraud, the attempt to unseat him failed because the Democrats held a Senate majority; he was removed the next year after the majority flipped. (*Letter from Sacramento*, *supra*, at p. 3.) For a detailed discussion of the Big Springs case, see Pritchett, *The Big Springs Voter Fraud Revisited* (2018) 57 J. of the West 3, <tinyurl.com/bigsprng> (as of June 29, 2026).

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required to be sent to the county clerk, who was to retain them for "at least six months" in the event of "a recount." (*Ibid.*)

The Mono County election was not the only elections scandal that informed the Legislature's 1863 amendment. By the mid-1850s, a "system of ballot-box stuffing" that "began in San Francisco at an early day" had become a "common practice" "in vogue" throughout the city. (2 Bancroft, *Popular Tribunals* (1887) pp. 8-10 <hdl.handle.net/2027/hvd.hn2x6h> [as of June 29, 2026].) Ballot-stuffing was carried out using a "stuffer's ballot-box," a deceptively "simple plain box" that concealed "false bottom[s] and side[s]" that could be stuffed ahead of an election with fraudulent ballots. (*Id.* at p. 6.) In 1856, widespread ballot-box stuffing in San Francisco helped spur the "largest and best-organized vigilante movement in American history": the San Francisco "Vigilance Committee." (Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism* (1977) p. 135 <archive.org/details/strainofviolence0000brow> [as of June 29, 2026].) In a proclamation "to the People of California," Committee members—including 32-year-old future governor Leland Stanford (*id.* at p. 163)—decried the use of "cunningly contrived ballot boxes with false sides and bottoms" and claimed authority to "expel[] from the community those ruffians and assassins who have so long outraged the peace and good order of society, violated the ballot-box, over-ridden law and thwarted justice." (Proclamation of the Vigilance Committee of San Francisco (June 9, 1856) <sfmuseum.org/hist1/vig56proc.html> [as of June 29, 2026].)

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The Committee obtained one of these stuffer's ballot boxes and placed it on display at its fortified downtown headquarters, Fort Gunnybags, where "[a]t least 10,000 people" came to see it. (Kamiya, *1856 Vigilantes Changed Corrupt Political System*, S.F. Gate (Aug. 1, 2014) <tinyurl.com/sfgvig> [as of June 29, 2026].) The vigilantes ultimately hanged four men and expelled twenty-eight others from the State after "methodically . . . collecting evidence of ballot-box stuffing, election fraud, and municipal corruption." (*Strain of Violence*, *supra*, at pp. 136-138.) Eventually, in addition to the legislative amendments governing voted ballots, the issue of ballot-box stuffing was addressed by the adoption of a simple transparency measure: ballot boxes made of glass. (*Popular Tribunals*, *supra*, at p. 13; see also Nalewicki, *A Glass Ballot Box Was the Answer to Voter Fraud in the 19th Century*, Smithsonian Mag. (Nov. 2, 2020) <tinyurl.com/smballot> [as of June 29, 2026].)

A decade following the 1863 amendment, the Legislature folded the elections statute into the new Political Code of 1872. In doing so, the Legislature clarified that ballots were to be preserved for the sole purpose of enabling contests. As before, the Political Code required voted ballots to be "strung upon a string" after counting and directed that the "sealed packages containing the . . . ballots" be "deliver[ed] . . . without their having been opened, to the County Clerk." (Former Pol. Code, §§ 1259, 1263, 1264, as enacted 1872 [hereafter 1872 Pol. Code].) But unlike the 1863 statute, which required only that the ballots be "kept" by the clerk (Stats. 1863, ch. 268, § 5, p. 354), the 1872

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law specified that the clerk must "keep [the ballot package] unopened and unaltered" and could not "open[] or examin[e] its contents" (1872 Pol. Code, § 1265). It also extended the preservation period from six to twelve months. (*Ibid.*) The 1872 statute specified that the only circumstance in which ballots could be examined was a "contest" (*id.*, § 1266), a formal proceeding that could be initiated by a voter to challenge a winner's election.[4] In the event of a contest, the tribunal with jurisdiction could "order" the ballot package to be "brought and opened before it, to the end that evidence may be had of its contents." (*Ibid.*) In that circumstance, the "package and its contents are in the custody of the tribunal." (*Ibid.*)

As this Court has explained, the "motive" for these new requirements was "to preserve the best evidence of the actual vote for the trial of contested elections, and to protect it by all the safeguards that could be conveniently thrown around it." (*Brown*, *supra*, 97 Cal. at p. 89.) These provisions ensured the "means of impeaching the returns of the election officers" via contest, by "preserving the integrity of the sealed packages of ballots . . . in the same condition in which they were taken from the ballot-box." (*Ibid.*) The provisions also preserved secrecy by requiring the clerk to "burn the [ballot] package, without opening or examining its contents" if "there is not a contest commenced" within the twelve-month period. (1872 Pol. Code, § 1265.)

[4] Rules governing contests were set forth in former sections 1111-1127 of the Code of Civil Procedure, as enacted in 1872, and sections 273-283 and 288-295 of the 1872 Political Code.

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The next major change was spurred by a felony prosecution of a precinct officer for the election of 1892. Benjamin Napthaly, a San Francisco lawyer who served as a precinct officer, was arrested for election fraud at the behest of a community group called the Citizens' Defense Association. (*In Trouble Once More: Ben Napthaly, the Police Court Lawyer, Arrested for Felony: Charged with Election Frauds*, S.F. Examiner (Dec. 21, 1892) p. 2.)[5] He was accused of fraudulently "calling off votes" for the wrong candidate while counting ballots, a felony offense. (*Ibid.*) During Napthaly's preliminary hearing, the prosecutor sought to obtain the sealed ballots from the Registrar of Voters and open them for use as evidence. (*Hearing of Napthaly: The Preliminary Examination Begun by Judge Slack*, S.F. Examiner (Dec. 23, 1892) p. 4.) "The sealed envelope" containing the ballots "was brought to the courtroom." (*Ibid.*) William Brown, the Registrar, opposed their opening. Relying on the 1872 Political Code provisions discussed above, Brown's attorney argued that the superior court "had no jurisdiction to open ballots excepting in cases where a recount was demanded." (*Ibid.*)

The superior court ruled that the ballots must be opened notwithstanding those provisions, concluding that the

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[5] Although limited records are available from these proceedings, newspaper articles and other historical materials can inform this Court's understanding of the *Brown* case and the Legislature's response. (E.g., *People v. Martinez* (2023) 15 Cal.5th 326, 351, fn. 16.) The newspaper articles cited in this brief are accessible via the ProQuest and NewsBank databases. For the Court's convenience, they are also attached to this brief. (Cal. Rules of Court, rule 8.520(h).)

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Legislature could not have intended the elections statute to "destroy the best, if not the only, method of obtaining evidence of [election] fraud." (*Napthaly's Case: The Ballots Ordered Into Court*, S.F. Chronicle (Dec. 24, 1892) p. 8.) The superior court issued a subpoena for Brown to appear with the ballots from Napthaly's precinct. (*Will Open the Ballots: Judge Slack Orders the Registrar to Break the Envelope*, S.F. Examiner (Dec. 24, 1892) p. 6.) Brown refused; he was held in contempt and taken into custody. (*Held for Contempt*, L.A. Times (Dec. 25, 1892) p. 6.) Brown then brought a habeas petition in this Court, which ruled that the ballots could not be opened for use as evidence in a criminal proceeding. (*Brown*, *supra*, 97 Cal. at pp. 88-90.) Without the ballots, the superior court concluded that the other evidence was insufficient to hold Napthaly for trial and ordered him discharged from custody. (*Napthaly Set Free: The Supreme Court Sustains the Registrar: Sealed Ballots Cannot Be Opened Except in Cases of Contest*, S.F. Chronicle (Dec. 25, 1892) p. 17.)

In *Brown*, this Court emphasized that the text of the 1872 Political Code provisions required the ballots to be kept "unopened and unaltered," with inspection authorized only in the event of a contest. (*Brown*, *supra*, 97 Cal. at pp. 86, 88-90; see 1872 Pol. Code, § 1265.) *Brown* acknowledged the "general legal principle that all courts have the power to compel the production of the best evidence within the reach of their process," but noted that the Legislature had authority to "set aside" courts' general power "in pursuance of a policy which it deems of paramount importance." (*Brown*, *supra*, at p. 87.) The Court concluded that

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the Legislature's "paramount object" in enacting the Political Code's ballot provisions was "to preserve the evidence (of the actual vote), and protect it by all the safeguards that can be conveniently thrown around it, until it can be examined in a tribunal authorized to try contested election cases." (*Id.* at pp. 88, 89.) Allowing ballots to be "removed from the custody of the registrar" for any other purpose, including a criminal prosecution, where they might be "opened, handled, and exposed to the danger of all sorts of changes and mutilations," would be "destructive of [that] policy" because it would "impair[]" and "possibly destroy[]" ballots' "value as evidence for the only purpose for which the law has directed their preservation," i.e., contests. (*Id.* at pp. 89, 90.) *Brown* recognized that this policy could pose "an obstacle to the enforcement of . . . frauds of election officers," but noted that it was necessary to "preserv[e] the integrity of the sealed packages of ballots . . . in the same condition in which they were taken from the ballot box." (*Id.* at pp. 89-90.) *Brown* concluded with an invitation to the Legislature: "If it is thought necessary to make the ballots available as evidence in criminal proceedings, the legislature can do so under such limitations and restrictions as may be deemed essential to their integrity." (*Id.* at p. 90.)

Less than a month after *Brown*, the Legislature took up the Court's invitation by introducing legislation to amend the Political Code to authorize use of ballots as evidence in cases other than contests. (See Assemb. J. (1893 Sess.) p. 131 [introduction of A.B. 349 on Jan. 19, 1893]; Stats. 1893, ch. 220,

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§ 10, p. 309 [enactment on Mar. 23, 1893].) The 1893 legislation made two significant changes to Political Code section 1265, one of the ballot-retention provisions at issue in *Brown*. First, it allowed superior court judges to authorize ballot packages to be "opened for inspection in any case" during the twelve-month retention period if "necessary. . . to establish the proof of any material issue of fact," but only "after the time limited for a contest" had passed. (Stats. 1893, ch. 220, § 10, p. 309; see also *Chatham v. Mansfield* (1905) 1 Cal.App. 298, 302–303 ["It is intended by the statute that the ballots shall be preserved inviolate and above suspicion, so that they may be used in a contest."].) The Legislature did not limit the class of cases in which ballots could be opened, but permitted court-ordered ballot inspection in "*any case*" so long as the time for a contest had elapsed. (Stats. 1893, ch. 220, § 10, p. 309, italics added.)[6]

Second, the Legislature added the mandate at the heart of this case: "In no event shall the said packages, or any of them, or the ballots contained therein, be taken from the custody of the County Clerk." (Stats. 1893, ch. 220, § 10, p. 309.) At that time, section 1266 of the 1872 Political Code specified that in the event of a contest (but no other case), the court or legislative tribunal with jurisdiction could order the ballot package "brought and opened before it . . . , in which event the package and contents are in the custody of such tribunal." (1872 Pol. Code, § 1266.) The

[6] The 1872 statutes required most contests to be brought "within forty days after the return day of the election." (Code Civ. Proc., former § 1115, as enacted 1872.) A shorter deadline applied to certain elections. (E.g. 1872 Pol. Code, §§ 274, 289.)

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1893 amendment left this tribunal-custody language unchanged, but required that, after being "inspected and examined," the ballots be "restored to the exclusive control and custody of the County Clerk, who shall reseal the packages with the ballots contained therein, and keep the same until he shall burn them." (Stats. 1893, ch. 220, § 10, p. 309.)

2. Today, the successors to those Political Code provisions are codified as sections 17302 and 15551 of the Elections Code. Section 17302 provides, in relevant part:

> (b) The packages containing [voted ballots and other specified materials] shall be kept by the elections official, unopened and unaltered, for six months from the date of the election[.] . . .
>
> (c) If a contest is not commenced within the six-month period, or if a criminal prosecution involving fraudulent use, marking or falsification of ballots, or forgery of vote by mail voters' signatures is not commenced within the six-month period, either of which may involve the vote of the precinct from which voted ballots were received, the elections official shall have the items identified in subdivision (b) destroyed or recycled. The packages shall otherwise remain unopened until the items are destroyed or recycled.

And section 15551 states:

> (a) If a contest or any such criminal prosecution[7] has been commenced before the date fixed for its

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[7] Although sections 17302 and 15551 no longer appear back-to-back in the Elections Code, their origin as consecutive sections makes clear that the phrase "any such criminal prosecution" in section 15551 refers to the list of crimes in section 17302, subdivision (c). (See Stats. 1955, ch. 517, §§ 1.5-2, pp. 993-994 [specifying categories of criminal prosecutions that

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> destruction, the package containing the voted ballots shall be subject to the order of the court in which the contest or criminal prosecution is pending and shall not be destroyed until after final determination of the contest or criminal prosecution.
>
> (b) In the case of a congressional election contest, the elections official shall hold the ballots of that congressional district in custody subject to the inspection of any committee of the House of Representatives having in charge the investigation of the contest, until the final determination of the contest by the House of Representatives.
>
> (c) In the case of a contest in the State Legislature, the elections official shall hold the ballots of the Senate or Assembly district in custody subject to the inspection of any committee of the Senate or Assembly having in charge the investigation of the contest until the final determination of the contest or the final adjournment of the session of the Legislature in which the contest is filed, whichever is the later.
>
> (d) In no event shall the package or its contents be taken from the custody of the elections official.

These provisions reflect several changes made in the 133 years since *Brown* was decided and the 1893 statutes enacted. Most notably, the Legislature has repeatedly recalibrated the set of proceedings in which ballots may be inspected. As noted, the 1893 statute allowed inspection of ballots in "any case," after the

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warrant inspection in former section 7201 of the Elections Code and referring to "any such criminal prosecution" in former section 7202]; Stats. 1994, ch. 920, § 2, pp. 5098, 5117 [renumbering relevant sections as 17302 and 15551], 4690-4691 [stating that new provisions, "insofar as they are substantially the same as existing statutory provisions . . . , shall be construed as restatements and continuations, and not as new enactments"].)

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contest deadline had passed. (Stats. 1893, ch. 220, § 10, p. 309.) In 1933, as part of a consolidation of the ballot-retention provisions, the Legislature removed courts' authority to permit inspection in "any case" and reverted to the rule that ballots could be subject to court order only during a contest. (Stats. 1933, ch. 156, § 1, pp. 607-608.) Then, in 1955, this provision was amended again to permit inspection in cases other than contests, but the Legislature specified a much narrower set of proceedings than in the 1893 statute. Rather than "any case," the 1955 statute limited inspection to "criminal prosecution[s] involving fraudulent use, marking or falsification of ballots or forgery of absent voters' signatures." (Stats. 1955, ch. 517, § 1.5, p. 993.)

The 1933 amendment also repealed Political Code section 1266, the provision that authorized judicial or legislative tribunals with jurisdiction over a contest (but not other cases) to exercise joint "custody" over the ballots, along with the elections official. (See 1872 Pol. Code, § 1266.) Rather than "custody," the 1933 revision specified that in the event of a contest in a court, the ballot package would be "subject to the order of the court in which the contest is pending." (Stats. 1933, ch. 156, § 1, pp. 607-608.) Similarly, for a contest before a legislative committee, the 1933 revision specified that the elections official "shall hold such ballots in his custody subject to the inspection" of the committee. (*Ibid.*) This approach—allowing court "order[s]" and "inspection" but not full "custody"—is now codified in section 15551.

The Legislature also made other minor adjustments, such as shortening the retention period from twelve to six months (Stats.

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1929, ch. 749, § 14, p. 1426), applying the statute to absentee ballots (Stats. 1945, ch. 585, § 1, p. 1121), removing gendered pronouns, and allowing ballots to be recycled rather than burned or destroyed (Stats. 1975, ch. 1203, § 9, p. 2995). Finally, earlier this year, S.B. 73 authorized civil penalties against anyone who "[t]akes a package containing the voted ballots or its contents from the custody of the elections official in violation of subdivision (d) of Section 15551." (Stats. 2026, ch. 10, § 8 [amending Elec. Code, § 18564.5].)[8] But since the Legislature first ordered in 1893 that "[i]n no event shall the said packages, or any of them, or the ballots contained therein, be taken from the custody of the County Clerk" (Stats. 1893, ch. 220, § 10, p. 309), the Legislature has never substantively altered that rule.

The upshot of these provisions is that courts generally have no authority to compel or authorize production or inspection of sealed ballot packages, which must be "kept . . . unopened and unaltered" by elections officials. (Elec. Code, § 17302, subd. (b).) The only exception to this rule is in the event of a "contest" or a "criminal prosecution involving fraudulent use, marking or falsification of ballots, or forgery of vote by mail voters'

[8] On other occasions, the Legislature has consolidated, clarified, renumbered, and retitled these provisions without making major substantive changes. (E.g., Stats. 1939, ch. 26, pp. 49-318 [creating Elections Code]; Stats. 1961, ch. 23, § 3, p. 582 [enacting recodifications intended "as restatements and continuations, and not as new enactments"]; Stats. 1994, ch. 920, § 2, pp. 4690-4691, 5098, 5117 [similar, and recodifying the provisions relevant here as sections 17302 and 15551]; Stats. 2026, ch. 10, § 4 [numbering section 15551's subdivisions].)

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signatures." (*Ibid.*) In such cases, courts have limited authority to authorize inspection of ballots. (See *id.*, § 15551, subd. (a).) But even then, the materials can never be "taken from the custody of the elections official." (*Id.*, § 15551, subd. (d).)

These laws reflect the Legislature's effort to strike a deliberate balance among several competing interests—preserving ballot secrecy, ensuring correct results, enabling accurate contests, and facilitating the investigation of elections fraud. As this Court and others have long recognized, any set of rules governing the retention, inspection, and destruction of voted ballots after an election requires tradeoffs between and among these interests. (See, e.g., *Brown*, *supra*, 97 Cal. at pp. 88-89; *Ex parte Arnold* (Mo. 1895) 30 S.W. 768, 770-772; *Bryan v. Yungblut* (Ky. 1910) 125 S.W. 251, 251-252; see also *Elections——Preservation of Ballots—Inspection.—Bryan v. Yungblut, 125 S.W. 251 (Ky.)* (1910) 19 Yale L.J. 662.) For over a century, the Legislature has adjusted this balance by fine-tuning the State's elections laws in response to changing circumstances, emerging problems, and decisions from this Court. But throughout this period, it has retained the core requirements that ballots remain unopened and unaltered except as authorized, and that they remain in the custody of the elections official. This long history reinforces what the text commands: voted ballots can be inspected only in narrow, specified circumstances, and even then they must always remain in elections officials' custody.

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B. The Penal Code's warrant provisions do not override the Elections Code's requirements

The Sheriff appears to concede that if section 15551 "means exactly what it says," his physical seizure, custody, and opening of the ballots violates this provision. (Bianco Return 34.) His principal defense is that his seizure of the ballots is authorized by Penal Code section 1524, subdivision (a)(4) (hereafter 1524(a)(4)). (See, e.g., *id.* at pp. 17-18; see also Petitioner's Appen. of Exhibits, *Attorney General v. Bianco* (No. S295901) pp. 4, 12, 38 [invoking section 1524(a)(4) as sole basis for warrants].) In the Sheriff's view, section 15551 should be read to contain an implicit "exception" (Bianco Return 31), which would authorize courts to issue search warrants for sheriffs to physically seize and maintain custody over voted ballots despite the Elections Code's contrary language.

That reading of section 15551, which the Sheriff acknowledges is not the "most natural" one (Bianco Return 31), is incorrect for several reasons. To start, this Court rejected essentially the same arguments in *Brown*. The Court held that the statutory requirement that ballots be kept "unopened and unaltered" displaced courts' "general . . . power to compel the production of the best evidence within the reach of their process." (*Brown*, *supra*, 97 Cal. 83, 87.) In other words, *Brown* recognized that the ballot-retention statute may, in fact, "immunize ballots from judicial process" and "strip courts of authority over evidence." (Bianco Return 17.) Nothing in *Brown* suggests any reason for a different result here.

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True, *Brown* involved a court's "power to compel the production of . . . evidence," rather than a search warrant. (*Brown*, *supra*, 97 Cal. at p. 87.) In *Brown*, the superior court had issued a subpoena duces tecum (see *id.* at p. 85), as was then authorized by sections 1326 and 1327 of the 1872 Penal Code.[9] One reason the superior court may have issued a subpoena rather than a warrant is that in 1892, it was understood that search warrants could not be used as a means of obtaining mere evidence of a crime. (See, e.g., *Gouled v. United States* (1921) 255 U.S. 298, 309, citing *Boyd v. United States* (1886) 116 U.S. 616, 623-624.) Accordingly, the Penal Code in 1892 authorized search warrants only to recover property that had been stolen or used

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[9] At that time, a subpoena duces tecum was the means of compelling production of documents. (E.g., 1 Greenleaf, Evidence (11th ed. 1863) § 559, pp. 735-736.) This authority developed at common law. (See 3 Wigmore, Evidence in Trials at Common Law (1904 ed.) §§ 2193, 2200, pp. 2969-2970, 2978-2980.) In California, this common law subpoena power was codified by statute beginning with the 1850 Criminal Practice Act. (Stats. 1850, ch. 119, §§ 579, 585, p. 319; see also Pen. Code, former §§ 1326-1327, as enacted 1872 [including similar language].) Those early criminal procedure statutes were based on New York's Field Code, which aimed to codify the common law. (See Swisher, Stephen J. Field: Craftsman of the Law (1930) p. 54; Kadish, *The Model Penal Code's Historical Antecedents* (1988) 19 Rutgers L.J. 521, 534-537.) The statutory subpoena authority was thus coextensive with the preexisting, general common law subpoena power. (See generally *Keeler v. Superior Court* (1970) 2 Cal.3d 619, 625 ["[W]hen [the Legislature] couches its enactment in common law language, [it will be presumed] that its intent was to continue those rules in statutory form."].) So, regardless of whether *Brown* is understood as interpreting the scope of courts' statutory power or common law authority to compel production of evidence, the relevance of that holding here is the same.

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(or intended to be used) to commit a felony. (Pen. Code, former § 1524, as enacted 1872.) It was not until 1957, when this understanding began to shift, that the predecessor to present section 1524(a)(4) was added to authorize search warrants for "evidence" of a crime. (Stats. 1957, ch. 1884, § 1, p. 3289.)[10]

Any differences between a subpoena and a warrant are immaterial to *Brown*'s application here. The subpoena statute in effect in 1892 allowed courts to require witnesses to produce "books, papers, or documents." (Pen. Code, former § 1327, as enacted 1872.) These terms are just as general as "property" and "things" as used in the present warrant statute. (Pen. Code, § 1524(a)(4).) Yet in *Brown*, even though ballots fell within the literal meaning of "papers" or "documents," this Court held that the ballot-retention provision displaced courts' "power to compel [their] production." (*Brown*, *supra*, 97 Cal. at p. 87.)

Given how the statutory subpoena and warrant authorities developed over time, it is both unsurprising and immaterial that "section 15551 does not expressly repeal Penal Code warrant authority" as to ballots. (Bianco Return 17.) When section 15551's predecessor was originally enacted, the Penal Code warrant authority to seize evidence did not yet exist. And when the warrant statute was extended to evidence in 1957, *Brown* had already established that the ballot-retention statute displaced

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[10] For discussion of the shift, see, e.g., *People v. Thayer* (1965) 63 Cal.2d 635, 637-642 (discussing section 1524 and rejecting application of "mere evidence" rule in California); *Warden, Maryland Penitentiary v. Hayden* (1967) 387 U.S. 294, 300-301 (rejecting "mere evidence" rule in federal cases).

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courts' general powers to "compel the production of the best evidence within the reach of their process," so there was no need to add a ballot-specific carveout. (*Brown*, *supra*, 97 Cal. at p. 87.)

If anything, the Legislature's changes to the Elections Code and Penal Code after *Brown* reflect a clear intent *not* to allow law enforcement to physically seize voted ballots. As noted, *Brown* invited the Legislature "to make the ballots available as evidence in criminal proceedings, . . . under such limitations and restrictions as may be deemed essential to their integrity" if it thought doing so was "necessary." (*Brown*, *supra*, 97 Cal. at p. 90.) Rather than authorizing physical seizure, the Legislature added the rule that "[i]n no event shall the said packages, or any of them, or the ballots contained therein, be taken from the custody of the County Clerk." (Stats. 1893, ch. 220, § 10, p. 309.) Even in relation to one of the specified categories of crimes that the Legislature later added to the statute (Stats. 1955, ch. 517, § 1.5, p. 993), ballots may be inspected—under court supervision in specified circumstances—but never removed from the elections official's custody (Elec. Code, § 15551, subds. (a), (d)).

Today, contests and the set of criminal proceedings specified in section 17302 are the exclusive set of circumstances in which the statute permits ballot packages to be opened. In the event of a contest or a specified criminal proceeding, the "court in which the contest or criminal prosecution is pending" can compel inspection of the ballots and other protected materials. (See Elec. Code, § 15551, subd. (a).) In addition to allowing a court to authorize inspection—whether by subpoena duces tecum,

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warrant, or some other means—section 15551, subdivision (a)'s direction that the ballot packages "shall be subject to the order of the court" also allows the court to require additional measures to safeguard the materials, such as the security measures proposed in the Attorney General's letter brief dated April 15, 2026, in *Attorney General v. Bianco*. But subdivision (d)'s "in no event" command means that courts cannot authorize law enforcement officials to physically seize ballots and other protected materials and remove them from the elections official's physical custody.

The Sheriff's proposed approach—allowing ballots to be physically seized pursuant to a section 1524(a)(4) search warrant in *any* criminal investigation—contradicts *Brown* and would eviscerate the Legislature's careful response to that case. Indeed, as *Brown* explained, "[t]here is . . . no middle course between holding that the ballots must be kept as the law, in terms, directs them to be kept, i.e., sealed, and in the exclusive possession of the registrar or county clerk, or that any judicial officer of any grade may, in any judicial proceeding, civil or criminal, take them out of the possession and control of the officer charged with their custody, open them, and keep them during such time and subject to such precautions as he may deem necessary for the purposes of his investigation and the preservation of their integrity." (*Brown*, *supra*, 97 Cal. at pp. 85-86.) If "in no event" actually means "sometimes," as the Sheriff would have it, then section 15551's protections would largely be meaningless.

The Sheriff also argues that "it is not clear" that seizing ballot packages from an elections official and transporting them

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to a law enforcement site "removes ballots 'from the custody of the elections official,'" so long as the ballots are "court-supervised" and "under seal." (Bianco Return 36.) This argument conflates three separate Elections Code requirements: (1) that ballot packages must remain "unopened and unaltered" except in the event of a contest or specified prosecution (Elec. Code, § 17302, subds. (b), (c)); (2) that even in such circumstances, the packages are "subject to the order of the court" (*id.*, § 15551, subd. (a)); and (3) that the ballots may *never* be "taken from the custody of the elections official" (*id.*, § 15551, subd. (d)). Physically removing the ballots from the custody of an elections official violates section 15551's requirement that the ballots never be taken from that custody—even if the ballots remain sealed and even if they are subject to court order.[11] In other words, in the narrow circumstances in which section 17302 authorizes the opening of ballot packages, the elections official is responsible for transporting and handling the ballots. It is never permissible for a sheriff or other law enforcement official to seize ballots for the purpose of an investigation.

Finally, the Sheriff suggests that interpreting section 15551 to place voted ballots beyond the reach of the warrant statute would be "unconstitutional" as "applied here" because it would "defeat" or "impair" exercise of the "judicial power." (Bianco Return 34, citing Cal. Const., art. VI, § 1.) This argument is

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[11] Notably here, the ballots seized by the Sheriff have not remain sealed. (See Petitioner's Appen. of Exhibits, *Attorney General v. Bianco* (No. S295901), at p. 46 ["22 boxes were opened and the ballots contained within the boxes were counted."].)

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meritless. As discussed above, the power to issue search warrants for evidence of a crime was conferred *by statute,* and relatively recently; it is not an inherent judicial power that the Constitution places beyond legislative control. (See *ante*, pp. 26-27; Stats. 1957, ch. 1884, § 1, p. 3289.) And as this Court explained in *Brown*, "courts are strictly bound by the laws enacted by the legislature" "with respect to rules of evidence." (*Brown*, *supra*, 97 Cal. at p. 87.) *Brown* established that "it is within the power of the legislature to set . . . aside" courts' "general . . . power to compel the production of . . . evidence" "in pursuance of a policy which it deems of paramount importance." (*Ibid.*) And it held that the ballot-retention statute is one such exercise of that authority. (*Id.* at pp. 88-90.) The Legislature does not violate the separation of powers when it decides to place certain evidence—including ballots—generally beyond the reach of compulsory judicial process. (See *id.* at p. 88 [comparing restrictions on ballot access to other forms of evidence not subject to judicial compulsion, such as privileged attorney-client or doctor-patient communications].)

C. Mandamus is warranted to rectify the Sheriff's ongoing violation of the Elections Code

The Elections Code imposes a mandatory duty not to seize ballots from the custody of the elections official. Petitioners here have no alternative way to enforce that duty. (See *Phelan v. Superior Court of San Francisco* (1950) 35 Cal.2d 363, 366 ["writ [of mandate] will not be issued if another such remedy was available *to the petitioner*," italics added].) Mandamus is therefore appropriate to order the Sheriff to cure that violation by

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returning the seized materials to the Registrar of Voters. (See, e.g., *Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 7 [mandamus appropriate to "prohibit official conduct"].) The Sheriff's primary argument that he does not have a mandatory duty to leave voted ballots in the custody of elections officials is his assertion that the Elections Code contains an implicit exception for warrants. (See Bianco Return 17-18.) That argument fails for the reasons addressed above. (See *ante*, pp. 25-31.)[12]

The Sheriff also appears to argue that the Elections Code imposes duties on "elections official and elections workers" but does not "regulate" the conduct of the Sheriff. (Bianco Return 16.) This argument similarly lacks merit. California courts have long held that third parties have a duty not to violate the Elections Code's ballot custody provisions and that "wilful . . . removal of the ballots from the custody of the county clerk" may be a felony. (*People v. Kennedy* (1937) 21 Cal.App.2d 185, 193 [upholding conviction of former sheriff's deputies who removed

[12] The Sheriff's reliance on the warrants he obtained also fails for the separate reason that the warrant applications do not establish probable cause that *any* crime was committed, as the Attorney General has argued throughout the *Attorney General v. Bianco* case, let alone one of the crimes specified in Elections Code section 17302. He also does not address whether the warrants were obtained in connection with a "criminal prosecution [that] has been commenced" under section 15551, subdivision (a). Because the Sheriff's physical seizure of the ballots alone violates section 15551, subdivision (d), however, the Court need not address when a prosecution has "commenced."

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ballots from the county clerk's locked basement and altered them to support a fraudulent election contest].)[13]

The Sheriff suggests that if the statute prohibits his physical seizure of ballots, he would be "barred from investigating possible crimes," and "election-related evidence" would be "immunize[d] . . . from criminal process." (Bianco Return 20.) Those assertions are incorrect. The Sheriff may and should investigate crimes within his jurisdiction, including any election-related crimes. And he is free to pursue evidence of such crimes from a wide range of sources, subject to applicable constitutional and statutory limits. But, as this Court confirmed more than a century ago in *Brown*, the Legislature has made the considered and deliberate decision to prioritize ballot integrity and secrecy by placing voted ballots beyond the reach of courts and law enforcement in criminal proceedings, except in narrowly defined circumstances not met here. And as the Legislature has repeatedly reaffirmed every time it has amended the elections statute since *Brown*, including earlier this year, "[i]n no event shall the package [containing voted ballots] be taken from the custody of the elections official." (E.g., Stats. 2026, ch. 10, § 4 [amending Elec. Code, § 15551].)

[13] *Kennedy* also rejected an argument that the ballot-custody statute was "void for uncertainty." (*Kennedy*, *supra*, 21 Cal.App.2d at p. 193.) That same reasoning resolves the Sheriff's argument that section 15551, subdivision (d) and the new civil penalty scheme is unconstitutionally vague. (See Bianco Return 35-37.)

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CONCLUSION

A writ of mandate directing the Sheriff to return all seized materials to the Registrar of Voters should be granted.

Respectfully submitted,

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ATTACHMENT

For the Court's convenience, pursuant to California Rules of Court, rule 8.520(h), the Attorney General attaches copies of excerpts of several historical newspaper articles from the San Francisco Bulletin, San Francisco Examiner, San Francisco Chronicle, and Los Angeles Times. Although available in online databases, these citable documents may not be readily accessible to the Court, the parties, or the public, and they do not exceed a total of 10 pages. (See Cal. Rules of Court, rule 8.520(h).)

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Letter from Sacramento.

[EDITORIAL CORRESPONDENCE.]

SACRAMENTO, March 30, 1863.

The Seat of Senator Quint Vacant.

At noon on Saturday the Senate resumed the consideration of the second part of Mr. Gaskill's resolution—the first part rescinding the action of last year having already passed—*ayes* 19; *noes*, 10. Not all of your readers may remember the Quint story of which the second part has just closed. Leander Quint is a Douglas Democrat, a New Hampshire-born and Vermont-bred man, who came to California in 1849, who is a lawyer of Sonora, Tuolumne county, and a very pleasant gentleman. He was President of the 4th of July Union Democratic State Convention, which shows his standing in his own party. Two years ago, Judge Quint was elected—or if that is begging the question—received in the regular manner his certificate of election as Senator from the 12th District, including Tuolumne and Mono counties. But his majority was small, and he would have had no majority at all but for the return from the Big Spring district, which gave him 461 votes. Now, J. M. Cavis, a lawyer of Columbia, and also a man of New Hampshire birth, had run for the Senate on the Republican ticket in the same district, and he claimed that he was the truly elected man. He went to the capital and contested Quint's seat. A great deal of testimony was taken, and although some of the witnesses were discredited, it became pretty clear that the Big Spring precinct election was simply a big swindle. Possibly there may have been in that distant, solitary recess, among the Mono mountains, a mining camp where half a dozen voters gathered together, but that any such a multitude as it takes to make up a district of 461 voters was ever there, at one time, was proved impossible. There was nothing to indicate that the Big Springs had ever seen a score of men together. In the telling language of Senator Chamberlain, there was not a broken whisky bottle to testify to any such crowd.

But the Senate was Democratic last year, and that fact was stronger than *all* the evidence on the other side—so they passed a resolution declaring Leander Quint entitled to a seat on the floor.

And here in justice to the Judge let it be said that nobody intimates that he was privy to the fraud of the Big Springs district that elected him. It was presumed that it was the result of the excess of zeal of some scamps who did not scruple to manufacture votes enough to make their party win. Nor, until attention was called to it, was there anything so ridiculously absurd in getting several hundred votes from a mining camp, in a region of which nobody knew anything—150 miles away from anywhere. It never surprises a Californian to be told that there is a settlement of several hundred people in some gorge of the mountains, which the latest traveler through the region represented an unbroken solitude; but when attention is called to it and exploring parties go out hunting for the settlement and find only one little camp of 5 or 6 men, and none of those signs that more have been there and gone—the broken ground, the short chimney stack, the smoke begrimed boulder, the smashed whisky bottle, it is sure as fate that the great camp never was there.

Nor, again, was there any whisper at any time of secession proclivities in Mr. Quint. True, the Secesh voted for him in the Senate, but that is easily explained without any reflection upon his loyalty. The Secesh here are in a miserable minority, and minorities always "bet on the bottom dog in a fight," and every day by their aid they help some otherwise helpless minority scheme into favor. For such services they are courted and flattered alternately by the factions, then kicked off and denounced in turn. Of course they stood by Quint because the majority were down on him.

The Arguments For and Against.

The matter was revived this winter by Mr. Gaskill's resolution to rescind the resolution of 1862, and declaring Quint not legally elected. The question was divided, and the debate upon each part long and serious. Senator Cavis, whose claims were not recognized last year, by the Senate, had gone before the people again, and had been elected as the successor to Senator Williamson. Of course there was no contestant for Quint's seat. The matter lay now solely between the people of the State and Quint. No new testimony had been taken. The friends of Gaskill's resolution held that on that testimony an untrue verdict had been rendered, and they proposed even at so late an hour to reverse and rectify it. They argued that debauching the election returns is a crime against the people, which it is never too late to repudiate and punish. Senator McCullough made an able argument, citing instances in point where the U. S. Senate had reversed the decision of a previous session, and rectified an obvious wrong. On the other hand, Mr. Quint insisted that his right to a seat had been once passed upon by the Senate, without prejudice or partisanship; no new evidence had arisen, and a reconsideration would simply reflect discourteously upon the Senate of last year. Senator Van Dyke held that the conclusion arrived at by the Senate of 1862 was not justified by the facts, and that the Big Spring vote was a big fraud, and still he doubted the competency of a succeeding Senate, in a judicial case, to revise its action.

Mixed up with the Capitol Question.

One curious side issue was raised. Senator Cavis repeatedly said that he could have had the seat last year if he had promised to vote with Sacramento on the capitol question. But he held himself unpledged on that, and was counted hostile to Sacramento's wish, while Quint was reckoned with the Sacramentans. On that ground Senator Hoacock (Republican) of Sacramento voted to give Quint the seat. Some professed to see a confirmation of such a bargain, in the present course of Senator Booth of Sacramento, opposing the reopening of the Quint case; but Mr. Booth pronounced any such intimation as more base than any parliamentary language could express; and Mr. Quint stated, upon his honor as a man, that whoever, there or elsewhere, said there was any understanding, direct or indirect, between himself and any representative of Sacramento, agreeing that in consideration of his vote, or any other consideration, he should vote for Sacramento, uttered that which was basely false.

Quint Thrown over the Tarpeian Rock.

As I have said the debate on the second part of the resolution commenced at noon Saturday. Senator Holden defended the action of the last Senate and even held it quite probable that there was an election at Big Springs in August, 1861. Mr. Quint reviewed the testimony but very briefly. Prior to the session of 1862, and subsequent to the election, learning that Mr. Cavis was about to contest his seat, he had proposed to submit it to the people, but that was declined. He only complained that the present session had been allowed to proceed so far that "if they honor him with expulsion" he would not have time to go again before the people and get their verdict before the session was ended. Senator Parks took ground against passing upon the matter a second time. Last year he voted to sustain Mr. Quint in his seat—he did not then think the printed evidence would, before any jury, issue in any other verdict than what the Senate of 1861 rendered.

It was getting near 2 o'clock, and so many were going to San Francisco that it was difficult to keep a quorum present. A call of the Senate obtained enough, however, to let them go ahead. At 2½ P. M. they came to a vote. Mr. Booth declined to vote, his convictions were clear that they had no right to make the seat vacant. Mr. Cavis hated to vote, but he must lay aside his scruples or there would not be a quorum of the whole Senate voting, for though there were more than a quorum present several had their hands tied by "pairing off." Finally, the 21 votes were found, and the result was announced—*ayes* 16, *noes* 5. The *ayes* were Birdseye, Cavis, Chamberlain, Gaskill, Harvey, Higby, Higgins, Kutz, McCullough, McNabb, Quilton, Porter of Santa Cruz, Powers, Saxton, Shannon, Wallis—all "Union." The *noes* Anderson, Bogart, Holden, Lewis, Shurtleff—all Democrats. Senator Quint rose up, no longer a Senator, and retired, the Senate instantly adjourning. He left the same night for home.

The old Roman Senate-House was built on the very verge of the Tarpeian rock. When they found a traitor among them, or one whom they thought deserving death, they took him to the window and pitched him out. The fall was so long that generally the victim left his life mid-air, and his breathless body fell a mere lump of disjointed, shattered bones and quivering flesh, on the rocks below. But they said that when the Senators made a mistake, as Roman Senators sometimes would, the victim felt no pain of the fall. That and all the death-agony reverted to the party that misjudged him. In the Quint case there are two parties well satisfied. The minority think a cruelly intollerant faction has made a martyr whose blood will be the seed of a thrifty opposition in Tuolumne and Mono. The majority think they have punished a fraud upon the ballot-box with so exemplary severity that it will not be repeated for many years.

The Regular Election Bill Passed.

Van Dyke's Senate bill fixing the time for the General Election for Members of Assembly and other officers on the first Wednesday in September every second year, was reported by the Committee on Elections and passed on Saturday.

A Bill to Provide Three Comfortable Salaries.

The Senate Act to provide for the collection of taxes due this State on consigned goods was on Saturday evening favorably reported by the Assembly Committee on Ways and Means. It was introduced by Senator Chamberlain. It appoints H. J. Wells, J. Warren Mason and William Heufner a Board of Commissioners to ascertain the sums due the State under the Act of 1854 for taxes on consigned goods. The Commissioners are to hold their office for one year and receive $175 a month, and the Commissioner who shall be elected Secretary of the Board shall have $50 a month more, but they are to get all their salary out of the moneys they collect; and if they don't collect enough to eke out their salaries they must go without, and indeed their salaries and expenses shall not exceed 25 per cent. of the amount collected and paid into the State Treasury under this act.

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IN TROUBLE ONCE MORE.

Ben Napthaly, the Police Court Lawyer, Arrested for Felony.

CHARGED WITH ELECTION FRAUDS.

The Citizens' Defense Association Will at Once Begin a Series of Prosecutions—Many Election Officers Implicated.

That the Citizens' Defense Association is not a defunct organization was proved yesterday by the beginning of the first of a series of prosecutions for fraud committed at the election.

The first man who was made to feel the weight of the association's arm is B. F. Napthaly, the Police Court lawyer.

The charge on which he was arrested is that he fraudulently called off votes for candidates to which they were not entitled and deprived other candidates of votes to which they were justly entitled while serving as a Republican inspector in the Election Board of the Seventh Precinct of the Thirty-sixth District.

The association has been engaged in a still-hunt for evidence of fraud in the precinct boards ever since the day of election. From the statements of its agents at the polls, as well as those of honest election officers, it was soon made evident that the association would have its hands full. Reports came in from every quarter that glaring frauds had been committed in the count, and the work of gathering evidence was at once begun.

It was decided by the association to take no decisive steps in the matter of bringing the dishonest election officers to justice until after the Election Commissioners had nearly completed the official canvass. That time arrived yesterday, and the association fired its first gun in causing Napthaly's arrest at the Old City Hall.

THE WAY NAPTHALY CALLED OFF.

The complaint against Napthaly is signed by J. B. Brighton, a member of the Precinct Election Board to which Napthaly belonged, and was sworn to before Judge Slack. Brighton will testify at the trial that his duty during the count was to string the ballots after they had been called off by Napthaly. It was not long after the count began when he had reason to suspect that Napthaly was cheating. He determined to keep a tally for himself on the vote for the principal municipal officers, and his suspicions were soon verified. He found that Napthaly was deliberately calling off O'Donnell votes for Baldwin, Scott votes for McDade and Beatty votes for Barnes.

The fraud became so palpable that the watchers interfered, but Napthaly still persisted in calling off the votes as he pleased.

Brighton was powerless to prevent the fraud, but on the following day he presented the facts of the case to the Citizens' Defense Association.

The association has reason to believe that Napthaly was assisted in his fraud by J. T. McCormick, a Democratic inspector, but as the evidence against him is not sufficiently strong to warrant his arrest, legal proceedings against him have been temporarily delayed.

Several arrests for similar offenses will be made by the association during the week. The evidence so far gathered implicates a large number of election officers, and seems to show that wholesale frauds were perpetrated in favor of a few of the most prominent candidates. Who these officers are or the precincts in which the frauds occurred are unknown except to the members of the association, and their policy is to keep the facts concealed until the time for making them public arrives.

THE ALMSHOUSE PRECINCT.

Napthaly was not locked up when the warrant was served upon him. Policeman Hutchings was permitted to accompany him about town in search of bonds. At 11 o'clock last night Napthaly was placed inside the gate at the City Prison, having been unable to obtain sureties. He then made the following statement:

"The Seventh Precinct of the Thirty-sixth District is what is known as the Almshouse precinct, the total vote of which is 360. Out of that number about ninety-five were registered from the Almshouse. Mr. Weaver, Superintendent of the Almshouse, brought those men down in wagons and for an assistant had Special Officer Slagg, and started in to have them vote the Non-Partisan ticket. I was a Republican inspector and interested in the success of the Republican ticket, and at 8 o'clock in the morning I sent word to Bert Mahoney, the Republican nominee for the Assembly, that the Almshouse contingent had arrived and was in a saloon at Twenty-fourth and Douglass streets, and was waiting for stuff, and that if he wanted to carry the precinct to send up stuff.

"Mahoney sent answer that a man named Hall was on the board and looking out for that matter. Mr. Mahoney came about 12 o'clock and asked me how they were voting. I told him to go to the corner and see, and he found them selling their votes at from 50 cents to $2 50 each. He asked me to stem the tide, and I tried to do so by sending out for money, but none came. For lack of money the district went against Bert Mahoney.

"At one time during the progress of the count one or two of the officers of the board, who had evidently been out handling the paupers, returned in a comatose condition. By my right as Inspector I appointed J. V. Brighton, the complaining witness against me, and several other bystanders, as allowed by law, to act as officers in their places.

"During the counting of the ballots I remained continually in the election booth from the closing of the polls until the finish of the count, under the supervision at all times of John and James McCormick and John and James Collins, Democratic officers of the board, and I know of no irregularity in the count.

NEGOTIATING FOR COIN.

"On the morning preceding that of election Bert Mahoney came to me and said, 'I want to carry this district.' I said, 'Bert, what is in it?' He said, 'I have received $400 from Mr. De Young to carry this precinct, and I am to get $600 more if I carry it.' I said, 'Where do I stand on this proposition?' He answered, 'You will be all right if I pull through.' I said, 'You can't carry this Almshouse contingent unless you put up stuff.' He said, 'That's all right; I've got the Almshouse fixed. Jack McCarty, Charlie Bauer and Hall are my friends; they will attend to that.' I said, 'Now, just send up some stuff or quit in this precinct, for you are gone in if you do not do so.'

"He failed to send any stuff, and the result was that he was beaten three to one and blames me for his defeat, hence my arrest. I claim my arrest is simply a scheme to get into court the election returns before the official count is declared, as it is well known that any court of competent jurisdiction has the power and authority to order the Registrar of Election, or any person having charge of the ballots cast at the late election, to bring into court any and all papers touching the subject-matter at issue. In this case the matter at issue is the validity of the whole election, and if pressed as against me will save the contesting candidates many dollars of expenses."

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HEARING OF NAPTHALY.

The Preliminary Examination Begun by Judge Slack.

HE CONDUCTED HIS OWN DEFENSE

W. A. Beatty Appeared for the Prosecution—Questions Arise Over the Court's Right to Open Ballot Envelopes.

The preliminary examination of B. F. Napthaly, the attorney who was arrested for election frauds at the instance of the Citizens' Defense Association, was begun in Judge Slack's Court yesterday morning at 9 o'clock.

It was agreed that W. A. Beatty, who was the Non-Partisan candidate for District Attorney, should conduct the prosecution, because the frauds that Napthaly is alleged to have committed were to the advantage of District Attorney Barnes.

The first witness was J. V. Brighton, who swore to the complaint on which Napthaly was arrested. He was in the Seventh Precinct of the Thirty-sixth District during the counting of the ballots. Napthaly called off the names of the different candidates, together with the number of votes they were supposed to have received.

Brighton said he watched the actions of the election officers very closely, and noticed that Napthaly called off fifteen votes for Barnes that should have been accredited to Beatty and Foote. In the same way he decreased the number of votes cast for O'Donnell and Scott. The witness said that the defendant had said that Barnes was going to get him a job after election in return for the support he was giving him.

HIRED BY BEATTY.

When Brighton had finished Napthaly, who acted as his own attorney, began the cross-examination.

"You told me, did you not, that Beatty hired you to look out for his interests?" asked Napthaly.

"I did."

"And that Beatty was to get you a job?"

"That I don't remember."

"Why did you not denounce me at once, when you saw me committing frauds?"

"I did tell one man."

"Did you tell any member of the Election Board?"

"No."

"Why?"

"I had been instructed by Mr. Beatty to say nothing excepting to the officers of the Citizens' Defense Association," was the answer.

"Isn't it a fact," queried Napthaly, "that you swore to the warrant for my arrest because of my friendship for Albert Mahoney, the candidate for the Legislature?"

Brighton replied that that had nothing to do with it.

On being closely questioned he said that he saw the defendant take two votes from O'Donnell and two from Blattner. The latter votes were given to McDade. He remembered swearing in the complaint that he had seen O'Donnell and Blattner defrauded out of ten votes each, but he attempted no explanation of the variance, although persistently urged by Napthaly to do so.

MUTILATING A BALLOT.

Then Mr. Beatty questioned the witness again, and elicited the statement that he had seen Napthaly mutilate a ballot by stamping a cross opposite Barnes' name, so the vote would not be counted so far as District Attorney was concerned. While watching the count he remarked that he had tried in every way to gain Napthaly's confidence in order to catch him in some illegal action. In several rather sarcastic questions the defendant commented on the witness' detective ability, and asked him why in the world he had told his business to the very man he was there to entrap.

J. J. Woodhouse testified to having seen Napthaly call a vote for Barnes that should have gone to Beatty. He called attention to it right away, and the defendant said it was a mistake and rectified it immediately. Numerous watchers were stationed about, and it would have been almost impossible for any false calling to have been done without detection.

Michael Walsh, one of the judges of the precinct, was asked whether he had told Brighton that he knew Napthaly had called three names wrong. He replied that he had made no such statement and anybody that said so stated an untruth. He said that during the whole progress of the count Napthaly was closely watched, and was not seen to commit any fraud.

WANTED THE BALLOTS PRODUCED.

Mr. Beatty then asked that the ballots of the mooted precinct be produced and opened. The sealed envelope was brought to the courtroom, but immediately Matt I. Sullivan, appearing for Registrar Brown, opposed that action of the Court on the ground that the Court had no jurisdiction to open the ballots excepting in cases where a recount was demanded.

A. J. Clunie, as a friend of the Court, also urged that the step asked by Beatty should not be taken. He said that sections 1,265 and 1,266 of the Penal Code prohibited the breaking of a ballot envelope excepting during an election contest. If ballots could be taken out of envelopes in the Police and Justices Courts it would lead to a great deal of fraud, and election contests would be of no practical good. Cases might be arranged by collusion, simply to procure a look at the tally sheets and ballots.

Attorneys Beatty and Thornton both thought Judge Slack had the power to open the envelopes. If he had not, then the possibility of punishing persons guilty of election frauds would be precluded.

The Court said that it would like time to look up authorities on the question, which it considered a very serious one and worthy of careful study. So the entire case was postponed until this morning at 11 o'clock.

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NAPTHALY'S CASE.

THE BALLOTS ORDERED INTO COURT.

The Registrar Will Not Obey and Will Appeal to the Supreme Court.

The preliminary examination of Benjamin F. Napthaly for alleged misconduct as an officer of election in the Seventh precinct of the Thirty-sixth district was resumed before Judge Slack yesterday.

Attorney Beatty renewed his request to have the envelope containing the ballots opened that they might be used in evidence. If the ballots could not be used except in the event of an election contest it would be almost impossible, he argued, to secure the conviction for frauds against the elective franchise. He thought the court should apply the same rule that allows the production of divorce records as evidence in criminal cases, although the statute provides that they shall be kept sealed up.

Barclay Henley and Crittenden Thornton spoke to the same effect.

Napthaly said he had no objection to have the ballots produced.

Attorney Matt Sullivan, on behalf of the Registrar, opposed the opening of the ballots as a dangerous precedent.

Judge Slack suggested that there might be sufficient evidence without the ballots to warrant him in holding the defendant to answer. On that reason he withheld his ruling until he had heard all the testimony.

B. F. Napthaly then testified in his own defense. He was inspector of election in the Seventh precinct of the Thirty-sixth district, and he knew the witness J. B. Brighton, who was also a member of the board. He, Napthaly, did nothing but call off the votes, and all the time a number of watchers sat close behind him.

Cross-examined, Napthaly denied that he was at any time during the count alone with Brighton. A few days before the election Brighton told him he had been employed by Mr. Beatty to watch the count, and had been specially instructed to watch the defendant. Napthaly flatly denied that he called off the vote for any candidate falsely, as testified to by Brighton. The only time Mr. Barnes' name was in controversy was when the witness, in calling off the vote for District Attorney, made a mistake, which was corrected. Napthaly admitted that he was a great friend of Barnes.

"Did you secure votes for him?" asked Beatty.

"Yes, I got every one I could to vote for Barnes, and everybody I could to vote against you."

"When his name was called during the count did you not frequently say, 'Good for Barnes?'"

"Yes, sir, I did," returned Napthaly; "and every time a vote was called for you I said —— it."

Napthaly denied having an agreement with John McCormack, the other inspector, to call off Scott votes for McDade in consideration of McCormack calling off Beatty and Foote votes for Barnes. The witness also denied having told Brighton that out of fifteen votes called he had "managed to sneak nine for Barnes." Napthaly also denied having worked against O'Donnell. "As a matter of fact," he added, "I voted for the doctor, and was for him first, last and all the time."

John McCormack, another inspector, testified that Napthaly was closely watched during the entire count. The witness was sure his precinct had been one of the purest in the city and assured counsel that there had been no fraud.

In the afternoon Charles Bower, John F. McAuliffe, Timothy Collins, John Collins and Stephen A. Born, all officers of election for the same precinct, were called, and all said they had seen nothing crooked about Napthaly's calling. They all admitted they had not been there all the time, and some had been at the booth only a few hours.

W. A. Beatty was then called to corroborate the testimony of Brighton, but the court ruled that the examination was on collateral matter and so stopped it.

Judge Slack then made his ruling on the ballot question, as the prosecution had requested. In doing so he said that the Legislature having made laws to prevent and punish election frauds would hardly, at the same time, destroy the best, if not the only, method of obtaining evidence of such frauds. He therefore made an order directing the Registrar to appear before him this morning at 9 o'clock with the ballots.

It is understood that Brown will refuse to produce the ballots; that he will be cited for contempt, and that the matter will go before the Supreme Court.

Document received by the CA Supreme Court.

WILL OPEN THE BALLOTS.

Judge Slack Orders the Registrar to Break the Envelops.

He Will Be Committed for Contempt and the Matter Will Go to the Supreme Court on a Writ of Habeas Corpus.

The argument as to the power of the Court to open the ballot envelope of an election precinct in order to obtain evidence in a criminal proceeding was resumed before Judge Slack yesterday morning.

Attorneys Beatty and Thornton presented reasons to show why they thought the envelope could be opened, while M. I. Sullivan contended that no such power belonged to the Court.

After listening to the different arguments Judge Slack stated that he did not think he could hold Napthaly without the ballot envelope was opened, but he would not decide the question at that time, so the hearing went on.

Napthaly took the stand for himself and denied all of Brighton's criminating statements. The principal witness for the prosecution had informed him that he was a private detective and had been employed by Beatty to especially watch him.

"Brighton," said the defendant, "had the fullest opportunity to watch anybody he liked. During all the counting I was corrected but once in calling votes for Barnes. In that instance there were crosses opposite the names of both Beatty and Barnes. I did not notice the last one."

LUNCH FROM THE POOR-BOX.

On being cross-examined Napthaly replied that he had been closely watched and had no opportunity of calling off incorrectly or fraudulently. He did less calling than any of the other inspectors.

Mr. Beatty asked the witness whether the election officers had plenty of whisky in the booth.

"We had two twenty-five-cent flasks given us by that eminent statesman, Mr. Mahoney," was the reply.

"What did you do with the contents of the poor-box?"

"There was only $4 in it and we bought crackers and cheese."

"Did you have an agreement with another inspector to call off Barnes votes for Beatty while you called Beatty votes for Barnes?"

"I did not."

"Did you tell Brighton that out of the last fifteen votes counted you had stolen seven for Barnes?"

"Of course not. I would not be quite so fatwitted as to tell that to a man who told me he had been hired to watch me, even if I had done it."

"Well, did you promise Brighton that Barnes would get him a job if he would throw Beatty down?"

"No. Brighton couldn't throw anybody down."

Then John McCormick, Democratic judge of the precinct, testified that Napthaly had been corrected but once while calling. He had been watching very closely and saw nothing wrong.

Charles Bowers, Non-Partisan ballot-clerk; John F. McAuliffe, Democratic supervisor; Timothy Collins and John Collins, Democratic clerks, and Stephen A. Birn, Democratic ballot clerk, all testified that they had at intervals watched the ballots as Napthaly called, and that he had not called incorrectly.

Attorney Beatty was called to the stand by the defense for the purpose of proving that Brighton had been instructed by him not to call attention to any frauds should he see them committed, but Judge Slack would not allow the testimony.

That ended the case, so far as the defense was concerned, and Attorney Crittenden asked for a ruling on the question of opening the ballots.

BROWN WILL NOT OBEY.

Judge Slack said that he thought the same rule would not apply in criminal proceedings as in civil cases.

"I scarcely think," he continued, "that the Legislature would provide for the punishment of the violation of the election laws, one minute, and in the next destroy all possibility of obtaining evidence against the malefactors. And there might be cases when the defendant would desire the ballots as a portion of his defense. I think the Court has a right to open them, and the Clerk will make out a subpœna for the Registrar to forthwith appear, bringing with him the ballots of the Seventh Precinct of the Thirty-sixth District."

At this juncture Mr. Heggerty addressed the Court stating that he represented Registrar Brown, and that the latter would decline to obey the order of the Court. He asked Judge Slack to look upon the disobedience as a technical contempt.

Then there was some discussion about the method of procedure that would be followed in taking the matter before the Supreme Court.

Mr. Crittenden was quite indignant at Brown's determination, and stated that he didn't think any man outside of a lunatic asylum would take such a position.

Finally it was agreed to let the matter stand over until 9 o'clock this morning, when Brown will appear and refuse to comply with the Court's order. He will then be committed for contempt, and immediately the matter will go to the Supreme Court on a writ of habeas corpus.

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HELD FOR CONTEMPT

A New Phase of the 'Frisco Election Squabble.

Modesto's Missing Man Writes to His Friends from Maine.

Riverside Orange-growers Combine for Protection.

How the Late L. L. Baker Disposed of His Large Estate—Racing at Bay District—Other Pacific Coast News.

By Telegraph to The Times.

SAN FRANCISCO, Dec. 24.—[By the Associated Press.] Yesterday Judge Slack made an order directing Registrar Brown to appear in court this morning and open the sealed envelope containing the ballots polled in the seventh precinct of the Thirty-sixth Assembly District at the recent election. The court desires to inspect the ballots, as they are evidence in the matter of the charge preferred against Ben Napthaly of having falsely called off votes while an officer of election.

The Registrar refused to produce the ballots and was ordered into custody for twelve hours. An application of the Registrar for a writ of habeas corpus was considered by the Supreme Court. They *finally issued the writ, made* returnable before the Supreme Court in bank this afternoon.

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NAPTHALY SET FREE.

THE SUPREME COURT SUSTAINS THE REGISTRAR.

Sealed Ballots Cannot Be Opened Except in Cases of Contest.

The preliminary examination of B. F. Napthaly came to a sudden stop in Judge Slack's court yesterday morning. When the case was called Registrar Brown announced that, acting on the advice of his attorney, he would decline to obey the order of court directing him to produce for use as evidence the ballots for the Seventh precinct of the Thirty-sixth district, where Napthaly acted as inspector.

Crittenden Thornton immediately asked that the Registrar should be adjudged guilty of contempt and that the court should impose a penalty of both fine and imprisonment.

Judge Slack said that he did not consider a fine necessary. The Registrar was guilty of only a technical contempt and a nominal punishment would suffice. The court then ordered that Brown be committed to the custody of the Sheriff for twelve hours.

Further hearing of the Napthaly case was continued until afternoon in order that Brown might apply to the Supreme Court for a writ of habeas corpus. The petition for the writ was presented at 11 o'clock, and the Justices, after an hour's consultation, handed down an order granting the writ, which was made returnable at 2 o'clock.

The court met at that hour and found all the attorneys present. Attorney Matt Sullivan urged in support of the petition that there was no power in law to compel the opening of the sealed envelope. He relied upon sections 1265 and 1266 of the political code, which direct that the ballots shall be kept under seal until required in an election contest. It was further urged that to open the ballots before the institution of a contest would be an injustice to candidates and establish a most dangerous precedent.

Justice McFarlane inquired on what ground it was urged that the apparently plain provision of the statute might be disregarded. A reply was presented by Attorney Thornton, who appeared in opposition to the writ. Mr. Thornton thought his position was supported by a general principle which might be deduced from all the statutes regulating the custody and production of public or official records. He did not believe the Legislature intended the law to be construed in the manner pursued by opposing counsel.

Attorney Thornton urged further that to decide against Judge Slack's decision would be to rule out the only evidence which could render a conviction of the defendant possible. It was contended that to open the ballots would work no injury to a candidate successful through fraud and place a contestant at a disadvantage.

Attorney Sullivan in reply called attention to a statement of Mr. Thornton that he represented Henry H. Scott, a defeated candidate for Sheriff.

Counsel termed the course of the prosecution as an effort to conduct an election contest in the criminal courts. Authority was cited to show that if the ballots were opened by Judge Slack they could not thereafter be used as evidence in a contest.

When the argument had been concluded the Justices retired for consultation. Half an hour later they returned, and through the Chief Justice an order was made granting the writ and discharging the Registrar from custody. It was held that Judge Slack's decision was illegal in that the Legislature had intended just what it said in sections 1265 and 1266 of the political code. Both sections were to be mandatory and not directory. To hold otherwise would obligate the Registrar to produce ballots in both civil and criminal courts and possibly lead to great evils.

This decision was immediately communicated to Judge Slack, and attorney Beatty announced that the prosecution had no further evidence to offer. Judge Slack, after stating that the evidence introduced was insufficient to convict, ordered Napthaly discharged from custody.

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CERTIFICATE OF COMPLIANCE

I certify that the attached Amicus Brief uses a 13-point Century Schoolbook font and contains 8,464 words.

ROB BONTA
Attorney General of California

s/ Zachary W. Sorenson

ZACHARY W. SORENSON
Associate Deputy Solicitor General
Attorneys for the Attorney General

June 29, 2026

Document received by the CA Supreme Court.

DECLARATION OF ELECTRONIC SERVICE

Case Name: *Clarissa Cervantes, et al. v. Chad Bianco, as Sheriff, etc., et al.*,
No. S295866

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar. 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 collecting and processing electronic correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

On June 29, 2026, I electronically served the **Amicus Brief of the Attorney General in Support of Petitioners** by transmitting a true copy via this Court's TrueFiling system.

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 June 29, 2026, at San Francisco, California.

Zachary W. Sorenson	*s/ Zachary W. Sorenson*
Declarant	Signature

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Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 6/30/2026 by Priscilla Tang, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **CERVANTES v. BIANCO (RIVERSIDE COUNTY CITIZENS)**
Case Number: **S295866**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **zach.sorenson@doj.ca.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION FOR EXTENSION OF TIME	Unopposed Application to File Amicus Brief of the Attorney General One Day Out of Time
BRIEF	Amicus Brief of the Attorney General in Support of Petitioners

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

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

6/29/2026

Date

/s/Zachary Sorenson

Signature

Sorenson, Zachary (363078)

Last Name, First Name (PNum)

California Department of Justice

Law Firm