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February 26, 2016

VIA EMAIL AND MESSENGER

Honorable Chief Justice Tani Cantil-Sakauye  
and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

SUPREME COURT  
FILED

FEB 26 2016

Frank A. McGuire Clerk  

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Deputy

Re: *Brown v. Superior Court*, Case No. S232642

To the Honorable Chief Justice and Associate Justices  
of the California Supreme Court:

Petitioners Governor Edmund G. Brown Jr., Margaret R. Prinzing, and Harry Berezin respectfully submit this supplemental letter brief and the attached supporting declaration to underscore the urgency of their request for an immediate stay of the superior court's decision below, and to renew their request for an immediate stay as of February 26, 2016, the urgency deadline identified in the Petition.

Upon receiving this Court's February 25, 2016 order setting a briefing schedule next week, petitioners consulted Fred Kimball, their professional signature gatherer, about the impact of a stay remaining in place until at least Tuesday, March 2, 2016. Mr. Kimball, who has qualified more than 200 statewide initiatives for the ballot over the course of more than thirty years, advised petitioners that, in his professional opinion, a delay of four or more calendar days beyond today would likely make it impossible to qualify "The Public Safety and Rehabilitation Act of 2016" for the November 2016 ballot.<sup>1</sup> As Mr. Kimball attests, in the current signature gathering environment, even a short delay like this will likely make the critical difference.

<sup>1</sup> Because the proponents of the measure relied upon the Attorney General's determination that the amendments were reasonably germane to the original measure, they have also lost the opportunity to qualify the original measure for the ballot.


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For this reason, petitioners respectfully renew their request that this Court issue an immediate stay of the superior court's ruling. This would enable the Attorney General to issue her title and summary for the Act today, the statutory deadline, and would enable proponents immediately to begin the time consuming process of printing the petitions and circulating the measure while this Court considers the issues presented in the underlying Emergency Writ.

As explained in the Petition, real parties CDAA and Schubert would suffer no conceivable harm if a title and summary issued and petitioners were allowed to begin the process of printing and gathering signatures. A stay would merely allow this Court to consider the merits of the important issues now before this Court. If the Court were ultimately to affirm the decision below, petitioners would halt their efforts to qualify the measure for the November 2016 ballot, or alternatively, the Court could issue an order prohibiting the petitioners from utilizing the signatures they collected while the stay was in effect. On the other hand, even one day of delay is likely to cause irreparable injury to petitioners in light of the changed circumstances described in Mr. Kimball's declaration. Without a stay, the superior court's decision could effectively deprive voters of the opportunity to consider signing the ballot petition and to vote for or against the measure in November 2016.

Respectfully submitted,

REMCHO, JOHANSEN & PURCELL, LLP

A handwritten signature in black ink, appearing to read 'James C. Harrison', written over a horizontal line.

James C. Harrison  
Attorney for Petitioners  
Governor Edmund G. Brown Jr., et al.

JCH:NL  
Attachment

**ATTACHMENT**

## DECLARATION OF FRED KIMBALL

I, Fred Kimball, declare as follows:

1. I am the owner of Kimball Petition Management, Inc., which specializes in circulating state and local initiative and referendum petitions to be signed by voters in order to qualify the initiative or referendum for the ballot. I have been in business for more than 30 years and have qualified more than 200 statewide initiatives for the ballot. My firm is currently circulating four statewide initiatives whose proponents seek to qualify the initiative for the November 2016 statewide general election. Given this experience, I am very knowledgeable about both the legal requirements and relevant timeline for qualifying a statewide initiative for the November 2016 statewide general election ballot and the current circumstances confronting signature gatherers who are now in the field.

2. The sponsors of the "The Public Safety and Rehabilitation Act of 2016" retained me to circulate the measure in January. At that time, I advised the sponsors of the measure that even if the Attorney General issued the title and summary on the last day permitted by law, February 25, 2016, I would have sufficient time to gather enough signatures to qualify the measure for the November 2016 ballot. Because the Legislative Analyst's Office took one additional day to issue its analysis of the measure, the Attorney General now has one additional day. In the absence of the trial court's order, therefore, the Attorney General would be compelled to issue the title and summary today. To avoid losing any additional time, I have already prepared the petition for printing and am awaiting the title and summary in order to send the measure to the printers. If the title and summary were issued today, printing would begin overnight and continue through Sunday morning and petition circulators would begin to collect signatures for the measure on Sunday afternoon.

3. Based on my experience, if the title and summary were issued today, I believe that the proponents would be able to gather a sufficient number of signatures to qualify the measure in time for the Secretary of State to certify the measure for the November 2016 ballot. However, it will be challenging even if the title and summary were timely issued. Since

the proponents retained me, it has become increasingly difficult to gather signatures for initiative measures. This is primarily attributable to two factors. First, shopping center owners across the state have become increasingly aggressive in enforcing a policy prohibiting all expressive activity on their property. Because shopping centers continue to serve as the modern day “town square,” the inability of circulators to gain access to shopping centers is inhibiting their ability to engage with voters. Second, there are currently approximately 14 measures in circulation. This competition for signatures not only increases the cost but makes it more difficult to gather an adequate number of signatures. In short, after signing one or two petitions, few voters are willing to spend the time to sign another one. In my experience, these changes have resulted in one of the most difficult climates in which to gather signatures since I have been in the business.

4. I understand that petitioners in this case, following the trial court order preventing the Attorney General from issuing a title and summary, requested an emergency stay in this Court. I also understand that the Court has not issued an immediate stay, but that it has requested that the measure’s opponents and proponents submit their opposition and reply briefs on Monday and Tuesday, respectively. As a consequence, it appears that the Court will not rule before Tuesday evening, four days after the date that the Attorney General was scheduled to issue the title and summary.

5. Because of the change in circumstances described above, the loss of these four days is critical, because it equates to the loss of approximately 60,000 to 70,000 signatures. In my professional opinion, if the Attorney General does not issue the title and summary until late Tuesday at the earliest, it will dramatically jeopardize our chances of qualifying the measure for the November 2016 ballot, regardless of the price the sponsors are willing to pay.

I declare under penalty of perjury that the foregoing is true and correct. I have firsthand knowledge of the same, except as to those matters described on information and belief, and if called upon to do so, I could and would testify competently thereto. Executed this 22nd day of February, 2016, in Thousand Oaks, California.



FRED KIMBALL

**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On February 26, 2016, I served a true copy of the following document(s):

**Letter to the To the Honorable Chief Justice  
and Associate Justices of the California Supreme Court**

on the following party(ies) in said action:

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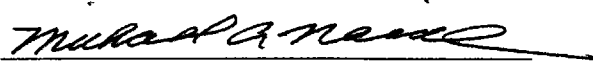
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General Kamala Harris*

- BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
- depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.

- BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.
- BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.
- BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on February 26, 2016, in San Leandro, California.

  
Michael Narciso