

No. S281977

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

LEGISLATURE OF THE STATE OF CALIFORNIA; GAVIN NEWSOM,

in his official capacity as Governor of the State of California; and

JOHN BURTON,

Petitioners,

v.

SHIRLEY N. WEBER, Ph.D., in her official capacity as

Secretary of State of the State of California,

Respondent,

THOMAS W. HILTACHK,

Real Party in Interest.

**RESPONDENT'S RETURN
TO ORDER TO SHOW CAUSE**

Steven J. Reyes (SBN 212849)

*Alexa P. Howard (SBN 309197)

Mary M. Mooney (SBN 287376)

Office of the California Secretary of State

1500 11th Street

Sacramento, CA 95814

Phone: (279) 224-0547

Email: lhoward@sos.ca.gov

Attorneys for Respondent Shirley N.

Weber, Ph.D., in her official capacity as

Secretary of State of the State of California

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3

RESPONDENT’S RETURN TO ORDER TO SHOW CAUSE 4

 I. To Ensure the Efficient Administration of the November 5, 2024, General Election, this Proceeding Should be Resolved by June 27, 2024..... 5

 II. If Enacted, the Initiative Would Have an Immediate Impact on Election Administration..... 7

 III. If Enacted, the Initiative May Result in Increased Election Administration Costs due to County and State Special Elections..... 8

CONCLUSION 9

CERTIFICATE OF COMPLIANCE 10

TABLE OF AUTHORITIES

Statutes

Elections Code

§ 10.....	7
§ 9033(b).....	6
§ 9050 <i>et seq.</i>	6
§ 9094.....	7
§ 9604(b).....	6

Government Code

§ 12172.5.....	7
----------------	---

Miscellaneous

Attorney General Initiative #21-0042A1, Secretary of State Initiative #1935 https://oag.ca.gov/system/files/initiatives/pdfs/21-0042A1%20%28Taxes%29.pdf	4
--	---

RESPONDENT’S RETURN TO ORDER TO SHOW CAUSE

Respondent Dr. Shirley N. Weber, Ph.D., in her official capacity as Secretary of State of the State of California, submits this return to the Emergency Petition for Writ of Mandate and Request for Stay filed by Petitioners on September 26, 2023, in response to the Court’s November 29, 2023, Order to Show Cause.

In their Emergency Petition for Writ of Mandate filed on September 26, 2023 (“Petition”), and their Reply in Support of Emergency Petition filed on November 9, 2023, Petitioners seek a writ of mandate and stay to prevent Respondent and all persons acting pursuant to her direction from qualifying a proposed ballot initiative — Attorney General Initiative #21-0042A1 and Secretary of State Initiative #1935, titled “Limits Ability of Voters and State and Local Governments to Raise Revenues for Government Services. Initiative Constitutional Amendment,”¹ known as the Taxpayer Protection and Government Accountability Act (“Initiative”) — for the November 5, 2024, General Election ballot.

On October 30, 2023, Respondent filed their Preliminary Response to Petition for Writ of Mandate to apprise the Court of relevant election deadlines for the November 5, 2024, General Election. Also on October 30, 2023, Real Party in Interest Thomas W. Hiltachk filed their Preliminary Opposition. On November 29, 2023, the Court ordered Respondent and Real Party to file returns to show cause before this Court why the relief sought by Petitioners should not be granted and denied Petitioner’s application for a stay.

¹ Attorney General Initiative No. 21-0042A1 and Secretary of State Initiative No. 1935, attached to the Petition as Exhibit A and at <https://oag.ca.gov/system/files/initiatives/pdfs/21-0042A1%20%28Taxes%29.pdf>.

Respondent provides this return to apprise the Court of relevant election deadlines for the November 5, 2024, General Election so that any decision by the Court minimizes any impact on the ability of the Secretary of State and county elections officials to administer the election.

Respondent takes no substantive position on the matters before the Court, except Respondent denies any liability for attorneys' fees and costs.

To ensure the efficient administration of the November 5, 2024, General Election, Respondent respectfully requests this proceeding be resolved by June 27, 2024, which is the date the Secretary of State must formally qualify the Initiative for the November 5, 2024, General Election ballot.

I. To Ensure the Efficient Administration of the November 5, 2024, General Election, this Proceeding Should be Resolved by June 27, 2024

The Secretary of State has numerous statutory duties regarding California ballot measures. These duties include qualifying eligible initiatives and other ballot measures for placement on the statewide ballot, the solicitation of arguments in favor of and against proposed ballot measures, the preparation and distribution of the state voter information guide, and the overall supervision of the State's election process.

Resolution of this case by 5:00 p.m. on June 27, 2024, which is the date the Secretary of State must formally qualify the Initiative for the November 5, 2024, General Election ballot, would promote the ability of the Office of Secretary of State to timely prepare the voter information guide and avoid unnecessary state resources and costs required to gather, print and distribute materials which are statutorily required to appear in the voter information guide.

If it is not possible to resolve this case by 5:00 p.m. on June 27, 2024, a resolution of this case by July 22, 2024, would enable the Office of the Secretary of State to meet its statutory duty to make the voter information guide—indicating what will appear on the ballot—available for public display between July 23, 2024 and August 12, 2024, and avoid unnecessary costs for typesetting and proofing additional materials for printing which occurs during the public display period.

Relevant election administration deadlines were highlighted to the Court in the Declaration of Jana Lean filed with Respondent’s Preliminary Response to Petition for Writ of Mandate on October 30, 2023² (Lean Decl.), and such dates are reiterated here for the Court’s convenience:

A. Absent an order by the Court, on June 27, 2024, the Secretary of State will certify the Initiative as qualified for the November 5, 2024, General Election ballot pursuant to Elections Code section 9033(b), unless the Initiative is withdrawn by its proponent prior to certification pursuant to Elections Code section 9604(b). (See Lean Decl. ¶ 4).

B. If the Initiative is certified as qualified for the ballot, the Secretary of State will be required to perform various duties pursuant to Elections Code section 9050 *et seq.* to finalize the contents of the state voter information guide prior to July 23, 2024, which is the date the voter information guide for the November 5, 2024, General Election is required to be placed on public display. Key deadlines for collecting and finalizing items for the state voter information guide for the November 5, 2024,

² Lean Decl. refers to the Declaration of Jana M. Lean with Respondent’s Preliminary Response to Petition for Writ of Mandate and Request for Stay filed in this case on October 30, 2023. Respondent requests the Court take judicial notice thereof.

General Election cycle have been published on the Secretary of State website.³ (See Lean Decl. ¶ 5).

C. The State Printer must receive the final version of the state voter information guide by 5:00 P.M. on August 12, 2024, to ensure that over 13.5 million required copies of the guide will be printed, bound, and distributed within the legally prescribed deadline. (See Lean Decl. ¶ 6).

D. Under applicable law, guides must be mailed to registered voters beginning on September 26, 2024, and the mailing must be completed by October 15, 2024, for voters who register on or before the 60th day prior to the election, and by October 26, 2024, for voters who register between 59 and 29 days prior to the election, pursuant to Elections Code section 9094. (*Id.*)

II. If Enacted, the Initiative Would Have an Immediate Impact on Election Administration

As California's chief elections officer, the Secretary of State is responsible for administering the provisions of the Elections Code and ensuring that elections are efficiently conducted and that state election laws are enforced. (Gov. Code, § 12172.5; Elec. Code, § 10.)

Respondent highlights for the Court that the Initiative, if adopted by voters, includes significant effects retroactive to January 1, 2022. The Initiative includes a directive that any tax or charge adopted on or after January 1, 2022, that was not adopted in compliance with the requirements of the Initiative is void within twelve months of the Initiative's effective date unless reenacted in compliance with the Initiative. (Initiative, Sec. 4, proposed art. XIII A, § 3, subd. (f); Sec. 6, proposed art. XIII C, § 2, subd. (g).) The Initiative does not provide for a specific process of conducting

³ <https://www.sos.ca.gov/elections/upcoming-elections/general-election-nov-5-2024/key-dates-deadlines>

what could possibly be a significant number of elections to ratify these potentially noncompliant taxes and charges adopted between January 1, 2022, and the effective date of the Initiative, which would be the fifth day after the Secretary of State certifies the election results.

If enacted, the Initiative would create immediate responsibilities for state and local government (including any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity), to (1) determine the relevant legislative enactments affected by the Initiative (including those made retroactively as of January 1, 2022); (2) determine which of those matters to place before its electorate; (3) take necessary actions to hold one or more elections to place those proposals on the ballot for voter approval; and (4) to prepare for and conduct those elections.

III. If Enacted, the Initiative May Result in Increased Election Administration Costs due to County and State Special Elections

If enacted, the Initiative may result in increased election administration costs due to special elections at the county and state level. Respondent offers data from the September 14, 2021, Gubernatorial Recall Election to provide the Court with some recent data points for election costs. Respondent does not speculate on the quantity or extent of potential special elections that may be needed if the Initiative were enacted. The following information is for illustrative purposes only and is not an opinion or estimate of possible costs of any future elections in connection with the Initiative or otherwise.

The Gubernatorial Recall Election Costs report dated February 1, 2022 (“Election Costs Report”), was issued by the office of the Secretary of State pursuant to Assembly Bill 128 (Chapter 21, Statutes of 2021); provides information about the total costs of the September 14, 2021,

Gubernatorial Recall Election;⁴ and additionally provides county-by-county costs (Attachment A to Election Costs Report).⁵ The Election Costs Report established that the total statewide cost of the gubernatorial recall election was \$200,241,680, consisting of \$174,059,031 in county costs and \$26,182,649 in Secretary of State costs. Further for illustrative purposes, costs ranged from the low of \$25,710 for Sierra County to the high of \$52,920,735 for Los Angeles County (Election Costs Report, p. 3-5).

CONCLUSION

Respondent informs the Court that the Initiative, if adopted by voters, will have an immediate impact on election administration in the state. Further, Respondent respectfully requests that, to minimize the potential for disruptions or waste of state resources in the Primary and General Elections and thereafter, this proceeding be resolved by June 27, 2024, to prevent interference with the administration of the November 5, 2024, General Election.

Dated: December 26, 2023

Respectfully submitted,

/s/ Alexa P. Howard

Alexa P. Howard
Office of the California Secretary of State
*Attorney for Respondent Dr. Shirley N.
Weber, Ph.D., in her official capacity as
Secretary of State of the State of
California*

⁴ <https://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/report-to-legislature.pdf>

⁵ <https://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/attachment-a.pdf>

CERTIFICATE OF COMPLIANCE

Pursuant to rules 8.204(c)(1) and 8.486(a)(6) of the California Rules of Court, I certify that this RESPONDENT’S RETURN TO ORDER TO SHOW CAUSE uses 13-point Times New Roman font and contains 1498 words.

Dated: December 26, 2023

/s/ Alexa P. Howard

Alexa P. Howard
Office of the California Secretary of State
*Attorney for Respondent Shirley N.
Weber, Ph.D., in her official capacity as
Secretary of State of the State of
California*

DECLARATION OF SERVICE

Case Name: *Legislature, et al. v. Shirley Weber, in her official capacity as Secretary of State of the State of California.* (Case No.: S281977)

I declare: I am over the age of 18 years and not a party to this matter. Electronic filings are transmitted using the TrueFiling electronic system. Participants who are registered with TrueFiling will be served electronically. Participants who are not registered with TrueFiling will be served by U.S. Mail. I am familiar with the Office of the Secretary of State's business practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence placed in the internal mail collection system at the Office of the Secretary of State is deposited with the United States Postal Service with postage fully prepaid that same day in the ordinary course of business.

On December 26, 2023, I served the attached **RESPONDENT'S RETURN TO ORDER TO SHOW CAUSE**

BY ELECTRONIC SERVICE: I transmitted a true copy of the foregoing document via the Court's TrueFiling system to the parties listed on the following "Electronic Service List."

BY U.S. MAIL: I effected a true copy thereof to be enclosed in a sealed envelope and placed in the internal mail collection system at the Office of the Secretary of State, at 1500 11th Street, Sacramento, CA 95814, addressed to the parties listed on the following "U.S. Mail Service List." I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 26th day of December, 2023, at Sacramento, California.

/s/ Alexa P. Howard

Alexa P. Howard

U.S. MAIL SERVICE LIST

Office of the Attorney General P.O. Box 944255 Sacramento, CA 94244-2550	<i>Pursuant to Rule 8.29 of the California Rules of Court</i>
--	---

ELECTRONIC SERVICE LIST

Thomas W. Hiltachk	tomh@bmhlaw.com
--------------------	-----------------

BELL, McANDREWS & HILTACHK, LLP

455 Capitol Mall, Suite 600

Sacramento, CA 95814

Real Party in Interest

Robin B. Johansen	rjohansen@olsonremcho.com
-------------------	---------------------------

Margaret R. Prinzing	mprinzing@olsonremcho.com
----------------------	---------------------------

Richard R. Rios	rrios@olsonremcho.com
-----------------	-----------------------

Inez Kaminski	ikaminski@olsonremcho.com
---------------	---------------------------

Olson Remcho LLP

555 Capitol Mall, Suite 400

Sacramento, CA 95814

Attorneys for Petitioners: Legislature of the State of California,
Governor Gavin Newsom, and John Burton

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **LEGISLATURE OF THE STATE OF CALIFORNIA v. WEBER
(HILTACHK)**

Case Number: **S281977**

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: **lhoward@sos.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
BRIEF	S281977 Return of Respondent Weber - 12-26-2023

Service Recipients:

Person Served	Email Address	Type	Date / Time
Mary Mooney Office of the California Secretary of State 287376	mmooney@sos.ca.gov	e-Serve	12/26/2023 4:12:56 PM
Margaret Prinzing Olson Remcho, LLP 209482	mprinzing@olsonremcho.com	e-Serve	12/26/2023 4:12:56 PM
Anita Ceballos California School Boards Association	aceballos@csba.org	e-Serve	12/26/2023 4:12:56 PM
Eric Eisenhammer Dauntless Communications	eric@dauntlesscommunications.com	e-Serve	12/26/2023 4:12:56 PM
Ben Granholm	ben@swingstrat.com	e-Serve	12/26/2023 4:12:56 PM
Michael Colantuono Colantuono, Highsmith & Whatley, PC 143551	mcolantuono@chwlaw.us	e-Serve	12/26/2023 4:12:56 PM
Inez Kaminski Olson Remcho, LLP 345584	ikaminski@olsonremcho.com	e-Serve	12/26/2023 4:12:56 PM
Alexa Howard California Secretary of State 309197	lhoward@sos.ca.gov	e-Serve	12/26/2023 4:12:56 PM
Adrian Granda City of San Diego	ADGranda@sandiego.gov	e-Serve	12/26/2023 4:12:56 PM
Robin Johansen Olson Remcho LLP 79084	rjohansen@olsonremcho.com	e-Serve	12/26/2023 4:12:56 PM
Neil Sawhney ACLU of Northern California	nsawhney@aclunc.org	e-Serve	12/26/2023 4:12:56 PM

300130			
Natalie Boust California Business Roundtable	natalie@cbrt.org	e-Serve	12/26/2023 4:12:56 PM
Mike Young California Environmental Voters	mike@envirovoters.org	e-Serve	12/26/2023 4:12:56 PM
Richard Rios Olson Remcho, LLP 238897	rrios@olsonremcho.com	e-Serve	12/26/2023 4:12:56 PM
Adam Skaggs Giffords Law Center 4211173	askaggs@giffords.org	e-Serve	12/26/2023 4:12:56 PM
Thomas Hiltachk Bell McAndrews & Hiltachk LLP 131215	tomh@bmhlaw.com	e-Serve	12/26/2023 4:12:56 PM
Paul Dress ARC	Paul.Dress@asm.ca.gov	e-Serve	12/26/2023 4:12:56 PM
Hector Barajas	hbarajas@gmail.com	e-Serve	12/26/2023 4:12:56 PM
Christopher Hoene California Budget & Policy Center	choene@calbudgetcenter.org	e-Serve	12/26/2023 4:12:56 PM
Steven Reyes California Secretary of State	steve.reyes@sos.ca.gov	e-Serve	12/26/2023 4:12:56 PM
Christina Williamson Mastagni Holstedt, A.P.C.	cwilliamson@mastagni.com	e-Serve	12/26/2023 4:12:56 PM
Thomas Hiltachk Bell, McAndrews & Hiltachk, LLP 131215	kmerina@bmhlaw.com	e-Serve	12/26/2023 4:12:56 PM

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.

12/26/2023

Date

/s/Alexa Howard

Signature

Howard, Alexa (309197)

Last Name, First Name (PNum)

California Secretary of State

Law Firm