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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

PETER LA FOLLETTE; and THE AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA,

Plaintiffs,

v.

ALEX PADILLA, in his official capacity as Secretary of State of the State of California; and WILLIAM F. ROUSSEAU, in his official capacity as Clerk-Recorder-Assessor-Registrar of Voters for the County of Sonoma,

Defendants.

No. CPF 17-515931

**PLAINTIFFS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR WRIT OF MANDATE**

Date: March 5, 2018
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Harold Kahn
RES ID: 01040305-03

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**Other Authorities**

Every Court that has addressed the issue at bar has held that allowing elections officials to reject vote-by-mail ballots or to otherwise disenfranchise voters without providing notice and an opportunity to be heard is unconstitutional; they have reached this conclusion under traditional due-process rules and under the *Anderson/Burdick* test. The Government has not provided any reason for this Court to depart from this unanimous line of decisions, much less a reason that § 3019[1] comports with the California Constitution's guarantee that every properly cast vote will count.

**A. Plaintiffs Have Standing to Bring this Facial Mandamus Challenge to § 3019(c)(2).**

Both Plaintiffs have standing as citizens and as persons directly affected by § 3019; ACLU-NC also has taxpayer standing. Standing under any one doctrine is sufficient. *Tobe v. City of Santa Ana*, 9 Cal. 4th 1069, 1086 (1995); *Common Cause v. Bd. of Supers.*, 49 Cal. 3d 432, 439 (1989).

**1. Both Plaintiffs have public-interest standing to request mandamus.**

Defendants' standing argument ignores the rule of public-interest standing in mandamus cases: "where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the petitioner need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 52 Cal. 4th 155, 166 (2011). In fact, our high court has specifically held that individuals and organizations have public-interest standing to seek a writ of mandate to compel officials to comply with elections laws. *Common Cause*, 49 Cal. 3d at 439. Plaintiffs here have standing for this same reason.

**2. Plaintiff ACLU-NC has taxpayer standing under C.C.P. § 526a.**

In Cause of Action 4, Plaintiff ACLU-NC charges that all Defendants are "illegally expending public funds by performing their duties in violation of the" Constitutions, citing Code of Civil Procedure § 526a. (Pet., ¶ 71.) Section 526a allows a taxpayer "to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement." *Van Atta v. Scott*, 27 Cal. 3d 424, 447 (1980). The statute thus gives taxpayers standing to sue government officials for mandamus (and other equitable) relief to prevent them from violating the constitution and to challenge the constitutionality of a statute. *See id.*; *Tobe*, 9 Cal. 4th at 1086;

[1] Unless otherwise indicated, all statutory references are to the California Elections Code.

*Blair v. Pitchess*, 5 Cal. 3d 258, 268-69 (1971). The statute authorizes suits against "all state and local agencies and officials." *Vasquez v. State of Cal.*, 105 Cal. App. 4th 849, 854 (2003).

A membership organization like the ACLU-NC has taxpayer standing if "at least one of its members" has taxpayer standing. *Gilbane Bldg. Co. v. Sup. Ct.*, 223 Cal. App. 4th 1527, 1531 (2014). Recent ACLU-NC Board chair Beverly Tucker is a California resident who has been a member of the ACLU-NC since 1988 and has been assessed and paid property taxes for more than 5 years. (Tucker Decl. ¶¶ 1-5.) She, and thus the ACLU-NC, therefore have taxpayer standing.

**3. Both Plaintiffs are beneficially interested in the outcome of this case.**

The beneficial-interest requirement is the same as the federal standing requirement: plaintiffs must show that they or their members are at risk of being injured by the challenged law. *Associated Builders & Contractors, Inc. v. S.F. Airports Com.*, 21 Cal. 4th 352, 361-62 (1999). Because a procedural-due-process violation is itself an injury, an eligible voter who was disenfranchised, without notice or an opportunity to cure, has standing to challenge the statute authorizing this procedure, regardless of whether his ballot is likely to be rejected in the future. *Raetzel v. Parks/Bellemont Absentee Election Bd.*, 762 F. Supp. 1354, 1355-56 (D. Ariz. 1990). Plaintiff La Follette thus has direct standing. And because least some of ACLU-NC's over 136,000 California members will be affected by § 3019, ACLU-NC does too. (*See* Tucker Decl. ¶ 6.)

**B. Defendant Rousseau's Compliance with the Elections Code Is Irrelevant.**

Defendant Rousseau claims that he correctly rejected Mr. La Follette's ballot in 2016 because he must enforce state statutes unless and until a court holds them unconstitutional. (Sonoma Opp'n at 9-11.) But Plaintiffs are not suing to overturn what happened in 2016; they want to stop future violations. Thus, Mr. Rousseau's discussion simply shows why this lawsuit is necessary—he, and all state and local officials, will continue to follow § 3019(c)(2) until this Court holds it unconstitutional. *See Fenske v. Bd. of Admin.*, 103 Cal. App. 3d 590, 595 (1980). Further, Mr. Rousseau's discussion of the *Wheelright* case, which did not involve a constitutional challenge to an elections statute, would be relevant only if Plaintiffs were accusing him of failing to comply with his statutory duties, which they are not. *See Wheelright v. Cty. of Marin*, 2 Cal. 3d 448 (1970). The California Supreme Court has specifically held that a mandamus action against local elections

officials is the proper way to challenge an unconstitutional elections statute and require elections officials to abide by the constitution. *Jolicoeur v. Mihaly*, 5 Cal. 3d 565, 570 n.2 (1971).

**C. The Law Does Not Require Voters to Sign Their Ballot Envelopes in a Particular Way.**

As an initial matter, all of the Secretary's arguments are built on the false premise that California requires voters to sign their ballots "consistent with their signature on file." (*See* Sec'y Opp'n at 12, 19.) The Elections Code requires only that vote-by-mail voters sign the envelope in their "own handwriting," without imposing any other requirement on the signature. § 3011(a)(7).[2] When no statute requires electors to sign a petition in any particular way, any form of a signature is proper. *Ley v. Dominguez*, 212 Cal. 587, 597-98 (1931) ("The charter merely requires that the petition be signed by registered qualified electors, and is silent as to the form the signature must take. Thus, in *Conn v. City Council*, 17 Cal. App. 705[], it was held that a person could sign a petition, using the initials of his given names, although, when he had registered, he had used his full given names.").[3] Although the Elections Code has certain requirements for signature stamps or marks (i.e., an "x" or cross), it does not otherwise limit the ways in which voters may sign their names. *See* § 354.5.[4] There is no indication that the Legislature intended to overturn the longstanding rule that any form of a person's name—including initials—is valid as a signature.

Moreover, § 3011(a)(7) must be read broadly in favor of the right to vote. First, the Elections Code says so: "This division shall be liberally construed in favor of the vote by mail voter." § 3000. Second, longstanding precedent requires that "no construction of an election law should be indulged that would disenfranchise any voter if the law is reasonably susceptible to any other meaning." *Walters v. Weed*, 45 Cal. 3d 1, 14 (1988). Discarding votes based on a non-existent requirement that people sign in a certain way is the opposite of what this rule requires.[5]

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[2] Technically, the law does not even require this: it requires that a voter sign the envelope, and that the envelope bear a warning that "that the voter must sign the envelope in his or her own handwriting in order for the ballot to be counted." § 3011(a)(7), (11).

[3] *See also, e.g.*, *Sec. Pac. Nat. Bank v. Chess*, 58 Cal. App. 3d 555, 561 (1976) ("a party may adopt any form of symbol as its signature for a particular transaction."); *Poag v. Winston*, 195 Cal. App. 3d 1161, 1179 (1987) ("The essential element is an intent to appropriate the name as a signature.... Hence, even initials may qualify."); *Weiner v. Mullaney*, 59 Cal. App. 2d 620, 634 (1943) ("Signature by initials [is] sufficient under the Statute of Frauds and the Statute of Wills.").

[4] Black's Law Dictionary (Mark: "A character, usually in the form of a cross, made as a substitute for his signature by a person who cannot write....").

[5] Thus, although the Government spends its briefing kicking up dust about Mr. La Follette's signatures appearing to be different, it concedes that the ballot submitted was his, signed in his own

**D. Rejecting Ballots Without Notice and Opportunity to Cure Violates Due Process.**

Instead of addressing Plaintiffs' due-process argument, the Government seeks to apply a balancing test applied in some voting-rights cases to determine which level of scrutiny to apply. (Sec'y Opp'n at 12-17.) The test does not apply here; but even if it applies, § 3019(c) fails it.

**1. Section 3019(c)(2) is unconstitutional under established due-process rules.**

Due process requires that before depriving a person of a protected interest—or in California, a statutorily or constitutionally protected interest—the government must provide notice and opportunity to contest the deprivation. (Mot. at 11-13.) The Government suggests it has provided due process to voters whose ballots are rejected because (i) ballot envelopes must contains a statement that "the voter must sign … in his or her own handwriting," § 3011(a), and (ii) elections officials must eventually provide "online access" to voters "confirm[ing] the receipt of voted vote by mail ballots," § 3017(c). (Sec'y Opp'n at 12-13.) But as to the first, signing in one's own handwriting informs voters only that they must sign the ballots themselves, not that the handwriting must match a signature on file. And access to an online database *after* the election is neither individualized nor timely. (*See* Mot. at 18); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799-800 (1983).[6] In addition, § 3017(c) requires the database to state only whether the ballot was received, not whether it was accepted, which does nothing to fix the notice problem at issue here. And the Government's suggestion that voters could "cure" before an election by "updat[ing] their signature if they believe it has changed," § 3019(a), would improperly shift the burden to provide notice from the government to the individual, and would not address the disenfranchisement of voters who had no idea their signature appeared different or who had inherently variable signatures (e.g., due to disability). *Mennonite*, 462 U.S. at 799-800.[7]

The Government also suggests § 3019 is constitutional because Los Angeles and Sonoma notify some signature-mismatch voters and allow them to cure. (Logan Decl. ¶ 6; Thompson-

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hand, and timely submitted in compliance with every provision of the Elections Code. (*See* Monagas Decl., Ex. A (La Follette Depo. Tr. at 35:8-16) ("It was your own signature? Yes"); Tarneja Decl., Ex. D (La Follette Depo. Tr. at 65:20-67:1, 71:24-72:6).)

[6] Indeed, Mr. La Follette would have cured his signature in the November 2016 election if he was given timely, individualized notice. (Tarneja Decl., Ex. D at 67:2-68-22.)

[7] Los Angeles additionally appears, although not required to do so, to advise voters to sign as they did when they registered to vote. (Logan Decl. ¶ 4.) There is no indication that other counties do this; Sonoma County's envelope contains no such advisement. (*See* Tarneja Decl., Ex. C.)

Stadler Decl. ¶ 2.) But even assuming this is lawful it does not fix the statute, because due process requires that the "statute authorizing the deprivation must explicitly provide a fair opportunity for the defendant to be heard." *In re Harris*, 69 Cal. 2d 486, 490 (1968). Notice cannot depend on "chance or … grace." *Id.* Moreover, that some voters receive notice and an opportunity to cure means that other voters—those who live in other counties or who do not deliver their ballots by an unspecified deadline—are arbitrarily discriminated against. This in itself is unconstitutional. *See League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477 (6th Cir. 2008).

The Government's real argument, of course, is that the Court should ignore these fundamental due-process rules and instead apply the *Anderson/Burdick* test, which it calls the *Burdick* test. *See Edelstein v. City & Cty. of S.F.*, 29 Cal. 4th 164, 168 (2002) (discussing *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992)). But although courts apply this test when addressing some challenges to elections-related laws, *Anderson/Burdick* does not displace the established rule that due process requires notice and an opportunity to be heard before the government deprives a person of a fundamental (or, under the California Constitution, a constitutional or statutory) right. The Government admits that cases overturning similar elections laws as violating due process did *not* apply the *Anderson/Burdick* test. (Sec'y Opp'n at 16-17 (citing *Zessar v. Helander*, 2006 WL 642646, at *5 (N.D. Ill. Mar. 13, 2006), *vacated as moot sub. nom. Zessar v. Keith*, 536 F.3d 788 (7th Cir. 2008) and *Raetzel*, 762 F. Supp. at 1358).)[8] Thus, contrary to the Secretary's claim, these cases are not distinguishable; instead, they demonstrate that the traditional due process requirements—notice and the opportunity to be heard—apply when the government would reject a mail-in ballot for signature mismatch. Numerous other cases, too, apply the bedrock due-process principles of notice and an opportunity to cure, rather than the *Anderson/Burdick* test, to denials of the right to vote. *See, e.g.*, *Miller v. Blackwell*, 348 F. Supp. 2d 916, 921-22 (S.D. Ohio 2004); *Bell v. Marinko*, 235 F. Supp. 2d 772, 777 (N.D. Ohio 2002) ("An elector cannot be disenfranchised without notice and an opportunity to be heard."); *Doe v. Rowe*, 156 F. Supp. 2d 35, 48-51 (D.Me. 2001) ("Maine's current voting

[8] Although *Raetzel* was decided before *Burdick*, it was decided nine years after *Anderson*, which set forth the same standard. *Burdick*, 504 U.S. at 438 ("The appropriate standard … is set forth in *Anderson.*").

restriction deprives [certain] mentally ill persons … of the right to vote without adequate notice and an opportunity to be heard in violation of the Due Process Clause").

Even if all of these courts are wrong and federal due process claims should be analyzed under the *Anderson/Burdick* test, that does not mean California claims should be, because the "federal approach [] undervalues the important due process interest in recognizing the dignity and worth of the individual by treating him as an equal, fully participating and responsible member of society." *People v. Ramirez*, 25 Cal. 3d 260, 267 (1979). This is itself a "cogent reason" not to follow federal law on this point. *See Edelstein*, 29 Cal. 4th at 179; *see* CAL. CONST., art. I, § 24. In California, it is well-settled that "before the constitutional right to vote may be taken away from a citizen, he must be given an opportunity to be heard in his own behalf." *Communist Party of U.S. of Am. v. Peek*, 20 Cal. 2d 536, 555 (1942).

In any event, the only procedural due process case the Government cites for its contention that *Burdick* applies is inapposite because it does not even involve voting, much less rejecting ballots. *Lemons v. Bradbury*, 538 F.3d 1098, 1101 (9th Cir. 2008). Instead, *Lemons* addresses the right to sign a petition, which, although it may *implicate* the right to vote, does not result in disenfranchisement and is not itself a fundamental right for purposes of federal due process. *See, e.g.*, *John Doe No. 1 v. Reed*, 561 U.S. 186, 212 (2010) (Sotomayor, J., concurring); *Kendall v. Balcerzak*, 650 F.3d 515, 523-24 (4th Cir. 2011); *Niere v. St. Louis Cty., Mo.*, 305 F.3d 834, 838 (8th Cir. 2002). Thus, federal due process does not require notice and an opportunity to be heard before the government invalidates petition signatures. *See Paul v. Davis*, 424 U.S. 693, 694 (1976). Indeed, *Lemons* itself distinguishes petition signatures from vote-by-mail signatures, concluding that the many "differences between referendum petitions and vote-by-mail ballots justify the minimal burden imposed on plaintiffs' rights [to sign a petition]." *Id.* at 1104.[9] Here, however, the government *is* denying voters' their fundamental right to vote by rejecting their ballots without

[9] Because the law at issue in *Lemons* did not deny anyone the right to vote, the court concluded that the burden on the right was "minimal." 538 F.3d at 1104. Referendum petitions were also distinct from vote-by-mail ballots because: (i) the "administrative burden of verifying a [] petition signature is significantly greater than the burden associated with verifying a vote-by-mail election ballot signature"; (ii) "fraudulent signatures are less likely in vote-by-mail elections" than for petitions; and (iii) the petition cover sheets instructed people to sign as they had when they registered, which is not generally the case for vote-by-mail ballots. *See id.* This is instructive here.

providing notice and an opportunity to be heard. As the cases confronting this denial of due process make clear, no fact-specific balancing test is needed to apply the rule that this violates federal due process, let alone California's broader due process protections, which *Lemons* does not address.

**2. Section 3019(c)(2) is invalid under the *Anderson/Burdick* test.**

In any event, § 3019(c)(2) fails *Anderson/Burdick*: rejecting a person's vote without notice or an opportunity to cure is "a severe burden on the right to vote." *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS, 2016 WL 6090943, at *6 (N.D. Fla. Oct. 16, 2016) (applying *Anderson*). "Burdens are severe if they go beyond the merely inconvenient." *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 205 (2008) (Scalia, J., concurring). The secret, incurable rejection of a properly cast ballot is far more than inconvenient; it is the complete denial of the right to vote. "Disqualification of one's ballot is no victimless legal abstraction; it is disenfranchisement, the loss of the fundamental right to participate in the democratic political process."[10] Thus, the percentage of voters whose votes are rejected is irrelevant; the Constitutions protect *individual* rights, providing due process to "any person" or "a person." U.S. CONST., amend. XIV; CAL. CONST., art. I, § 7. That the government allows others to vote is cold comfort to the thousands disenfranchised. *Cf. Detzner*, 2016 WL 6090943, at *6 ("If disenfranchising thousands of eligible voters does not amount to a severe burden on the right to vote, then this Court is at a loss as to what does.").

Under *Anderson/Burdick*, "when [voting] rights are subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S. at 434. Although preventing voter fraud is a legitimate interest, refusing to provide voters whose signatures are deemed not to match with notice and an opportunity to cure is not narrowly tailored to this interest. (Mot. at 15.) Indeed, Los Angeles, "the largest electoral jurisdiction in the United States," with some 5.2 million registered voters, notifies voters of signature mismatches and allows them to cure when it is administratively convenient to do so. (Logan Decl. ¶¶ 3, 6.) Sonoma County does the same. (Thompson-Stadler Decl. ¶ 2.) There is no indication that this has led, or could lead, to any sort of fraud. Indeed, there is no evidence that any of the tens of thousands of

[10] *Serv. Emps. Int'l Union, Local 1 v. Husted*, 906 F. Supp. 2d 745, 750 (S.D. Ohio 2012), *vacated as a result of settlement sub nom. Ne. Ohio Coal. for the Homeless v. Husted*, 2014 WL 12738004 (S.D. Ohio Feb. 7, 2014).

vote-by-mail ballots rejected each election cycle has even resulted in a prosecution, even though "fraudulently signing" another's name on the identification envelope is a felony. § 18578. Rather, the Secretary's request, in response to this lawsuit, that the Legislature amend § 3019 to require notice and an opportunity to cure before rejecting ballots for signature mismatch up to the date the election is certified suggests that he understands that this will not lead to any sort of fraud or other problems. (*See* Tarneja Decl., Ex. A at 2 (SB 759), Ex. B at 1, 6.)[11]

Thus, the only real reason the Secretary resists, in this litigation, requiring counties to do this uniformly is administrative convenience. But that cannot justify deprivation of the right to vote. (Mot. at 16); *see Young v. Gnoss*, 7 Cal. 3d 18, 28 (1972). And regardless, Defendants have not shown any undue burden. Although the Los Angeles Registrar states that an opportunity to cure within 8 days of the election would be burdensome because ballots may not be processed for several days after the election, Plaintiffs ask for an opportunity to cure within 8 days of the election *or* "before the results are certified," which is 30 days after the election. (*See* Mot. at 19); Elec. Code § 15372(a). The Government does not suggest that allowing voters to cure within 30 days would be unduly burdensome. Nor does Sonoma suggest that even an 8-day cure period would cause any problems. (*See* Thompson-Stadler Decl.) And again, the Secretary acknowledges that the burdens will not be undue by sponsoring a bill to require the notice and an opportunity to cure that Plaintiffs request. In fact, Senate floor analysis of the bill states that the statewide costs of doing this "is unknown, but could exceed $50,000 in a given year." (*See* Tarneja Decl., Ex. B at 6.) This is not an undue burden when balanced against the voting rights of thousands of Californians.

Even if the Government were correct that the complete denial of thousands of votes is not a severe restriction and a lower burden of review were to apply, § 3019(c)(2) would still be unconstitutional. Under *Anderson/Burdick*, a law that imposes *any* burden on voting must satisfy a balancing test that weighs the severity of the burden against the "precise interests" the state proffers as justifications for the law. *Burdick*, 504 U.S. at 434. "However slight that burden may appear, … it must be justified by relevant and legitimate state interests sufficiently weighty to justify the

[11] This proposed bill does not affect the need for a mandate from this Court: *even if* it is enacted, it will not go into effect until 2019 at the earliest. *See* CAL. CONST., art. IV, § 8(c)(1).

limitation." *Crawford*, 553 U.S. at 191; *see Burdick*, 504 U.S. at 439 (government must justify even "slight" burden). The "Court must not only determine the legitimacy and strength of each of [the State's] interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson*, 460 U.S. at 789. The ultimate question is whether the government's "legitimate interests" "outweigh" the burden the law imposes on the voters. *Burdick*, 504 U.S. at 440. As discussed above, refusing to provide notice and an opportunity to cure "has no rational relationship" to preventing fraud. *Detzner*, 2016 WL 6090943, at *7; (*see* Mot. at 15). And the Government has failed to show that providing these basic due-process protections would be so burdensome as to outweigh the complete denial of the right to vote for thousands of Californians.

**E. Rejecting Ballots Without Notice and Opportunity to Cure Violates Equal Protection.**

The Government's claim that voters whose ballots are rejected for signature mismatch are not similarly situated to those who fail to sign their ballots is wrong. The proper test is "whether two classes that are different in some respects are sufficiently similar with respect to the laws in question to require the government to justify its differential treatment of these classes." *People v. McKee*, 47 Cal. 4th 1172, 1202 (2010). Both classes comprise eligible voters who have submitted vote-by-mail ballots; the only difference is people like Mr. La Follette have fully complied with the law, whereas those who failed to sign have not. The government cannot treat a person who complied with the law worse than it treats a person who failed to do so any more than it can treat somebody who commits a minor violation worse than it treats somebody who commits a more serious one. *See Newland v. Bd. of Governors*, 19 Cal. 3d 705, 707 (1977). Doing so "is irrational—indeed, perverse—and constitutionally impermissible." *D.M. v. Dep't of Justice*, 209 Cal. App. 4th 1439, 1451 (2012). The difference between the two classes therefore cannot "justify its differential treatment of" them. *McKee*, 47 Cal. 4th at 1202. The Secretary's assertion that people whose signatures are rejected are not similarly situated to those whose signatures are accepted is even weaker because it rests on the false premise that the law requires voters to sign in a specific way.

On the merits, the Secretary's claim that § 3019(c)(2) passes *Anderson/Burdick* review is wrong for the same reasons discussed above: whatever the standard of review, the Government has failed to show that its interest in rejecting ballots without notice and an opportunity to cure outweigh

the rights of thousands of Californians to have their votes counted.

**F. § 3019(c)(2) Violates Article II, Section 2.5 of the California Constitution.**

The Government's argument that Article II § 2.5 allows it to reject ballots without notice and an opportunity to cure rests on its bizarre contention that when an election worker decides that a voter's signature does not compare, that means that the voter has failed to cast a lawful vote. (Sec'y Opp'n at 19.) This is precisely the type of disenfranchising sophistry that the people voted to eradicate when they enacted Article II § 2.5 in response to the Supreme Court's 2000 decision in *Bush v. Gore*. (*See* RJN at 48.) And the notion that this constitutional provision—enacted because the voters were dissatisfied with that decision—does no more than perpetuate the *Anderson/Burdick* test makes no sense at all, because initiatives are passed to change existing law, not to maintain the status quo. *See People v. Smith*, 212 Cal. App. 4th 1394, 1403-04 (2013) (judicial presumption).

As discussed above, California law requires only that vote-by-mail voters sign the envelope in their "own handwriting"; any form of voters' names may be used as a signature. *See* § C, above. Thus eligible voters who sign the ballot envelopes themselves cast valid votes, even if the envelope signatures do not look like one on file. (Mot. at 6-7, 9-10.)

Under the unambiguous language of Art. II § 2.5, voters who sign their ballot envelopes in their own hand have cast their votes "in accordance with the law of this State shall have th[ose] vote[s] counted." CAL. CONST., art. II, § 2.5. Elections officials cannot reject them without at least providing voters notice and an opportunity to show that they complied with California law.

**G. The Court Can Order the Government to Comply with the Constitution.**

Mandamus may issue to invalidate an unconstitutional statute and require elections officials to comply with the Constitution. *Jolicoeur*, 5 Cal. 3d at 570.[12] Thus, the Supreme Court has, in a mandamus action, invalidated a 54-day voter residency requirement and ordered elections officials to instead abide by a 30-day requirement, even if it meant violating statutory obligations. *Young*, 7 Cal. 3d at 28. This Court has ample authority to grant the requested relief, or whatever relief it deems appropriate. *See Lockyer v. City & Cty. of S.F.*, 33 Cal. 4th 1055, 1113 (2004).

[12] The Government's cases do not support their cramped view of judicial authority. *Butt v. State of California* held that a court's "equitable power to enforce the State's constitutional obligations" allowed it to "take over [a school] District's government." 4 Cal. 4th 668, 695 (1992), while *Barnes v. Wong* simply held that the case failed on its merits. 33 Cal. App. 4th 390, 395 (1995).

Dated: February 20, 2018

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