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*Counsel for Amici Curiae ACLU of Southern California,
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MARK BIXBY,
Petitioner,

vs.

ROBIN ESTANISLAU, Huntington Beach
City Clerk; BOB PAGE, Orange County
Registrar of Voters,

Respondents.

THE CITY OF HUNTINGTON BEACH, a
Municipal Corporation,

Real Party in Interest.

Case No. 30-2023-01366664-CU-WM-NJC

**NOTICE OF MOTION AND MOTION FOR
LEAVE TO FILE AMICI CURIAE BRIEF
IN SUPPORT OF PETITIONER'S EX
PARTE APPLICATION FOR WRIT OF
MANDATE AND FOR A TEMPORARY
RESTRAINING ORDER**

Accompanying Documents: [PROPOSED]
BRIEF OF AMICI CURIAE IN SUPPORT OF
PETITIONER'S EX PARTE APPLICATION
FOR WRIT OF MANDATE AND FOR A
TEMPORARY RESTRAINING ORDER

Hearing Date: January 19, 2024

Hearing Time: 9:30 AM

Dept: C25

Judge: Hon. Nick A. Dourbetas

1 PLEASE TAKE NOTICE THAT on January 19, 2024, at 9:30 a.m., or as soon thereafter
2 as counsel may be heard, in Department C25 of the above-captioned Court, located at 700 Civic
3 Center Drive West, Santa Ana, CA 92701 (Central Justice Center) the American Civil Liberties
4 Union of Southern California (“ACLU of Southern California”), the American Civil Liberties
5 Union of Northern California (“ACLU of Northern California”), and Disability Rights California
6 (“DRC”) will and hereby do move for leave to participate in this matter as amici curiae and for
7 permission to file the proposed brief attached as Exhibit A.

8 PLEASE TAKE FURTHER NOTICE THAT pursuant to Local Rule 375, the Court will
9 offer remote appearances for all law and motion, case management conferences, status
10 conferences, ex partes, and other non-evidentiary proceedings in civil unlimited and civil complex
11 cases. Information on how to appear remotely are available on the Orange County Superior Court
12 website at [https://www.occourts.org/mediarelations/covid/Civil_Unlimited_and_Complex_](https://www.occourts.org/mediarelations/covid/Civil_Unlimited_and_Complex_Appearence_Procedure_and_Information.pdf)
13 [Appearence_Procedure_and_Information.pdf](https://www.occourts.org/mediarelations/covid/Civil_Unlimited_and_Complex_Appearence_Procedure_and_Information.pdf).

14 The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan membership
15 organization with approximately two million members dedicated to the defense and promotion of
16 the guarantees of individual rights and liberties embodied in the state and federal constitutions.
17 The ACLU of Southern California and the ACLU of Northern California are regional affiliates
18 that have litigated voting rights and election law cases in support of these constitutional principles.
19 *See, e.g., Inland Empire United v. Riverside Cnty.*, No. CVRI2202423 (Super. Ct., Riverside
20 Cnty.) & No. 5:22-cv-01366 (C.D. Cal) (challenge to county’s supervisory map under California
21 Constitution and state redistricting law resulting in settlement); *AAAJ-LA v. Padilla*, No. CPF-18-
22 516155 (Super Ct., San Francisco Cnty.) & No. A155392 (Cal. Ct. of Appeal, First District)
23 (successful challenge to California’s erroneous determinations that resulted in limited language
24 assistance coverage); *La Follette v. Padilla*, No. CPF-17-515931 (Super Ct., San Francisco Cnty.)
25 (successful challenge to California’s practice of rejecting mail ballots without notice); *Soltysik v.*
26 *Padilla*, No. 2:15-cv-07916 (C.D. Cal.) & No. 16-55758 (9th Cir.) (successful appeal holding
27 ballot designation challenge could move forward); *Paik v. City of Fullerton*, No. 30-2015-
28 00777673 (Super. Ct., Orange Cnty.) (challenge under California Voting Rights Act resulting in

1 settlement changing city's election system from at-large to districts). Amici bring expertise in state
2 and federal constitutional protections of voting rights and have a strong interest in ensuring the
3 correct analysis and resolution of questions directly implicating the franchise.

4 DRC is California's federally mandated protection and advocacy system for people with
5 disabilities. In that capacity, DRC defends, advances and strengthens the rights and opportunities
6 of Californians living with disabilities. DRC was established in 1978 and is the largest disability
7 rights advocacy group in the nation. DRC advocates to ensure that voters with disabilities can vote
8 privately and independently, including through removal of barriers to voting. It has served as an
9 organizational plaintiff and represented voters with disabilities in litigation. *See, e.g., Senior and*
10 *Disability Action v. Padilla*, No. CPF-18-516265 (Super Ct., San Francisco Cnty.) (seeking the
11 designation of State-funded programs primarily serving people with disabilities as voter
12 registration agencies under the National Voter Registration Act).

13 DRC staff have extensive experience advocating for voters with disabilities in Orange
14 County and ensuring that the Orange County Registrar of Voters complies with voters'
15 accessibility rights under federal and state law, as well as the community-input requirements of the
16 California Voter's Choice Act. DRC provides a voice for the disability community as a regular
17 member of the Orange County Voting Accessibility Advisory Committee and Community
18 Election Working Group.

19 Amici respectfully submit this motion for leave to file an amici curiae brief in the present
20 action in support of Petitioner's Ex Parte Application for Writ of Mandate and for a Temporary
21 Restraining Order. This brief would assist the Court in deciding this matter by expanding on the
22 disproportionate burdens that Charter Amendment No. 1 would place on Latine, Black, young, and
23 low-income voters and on voters with disabilities. The proposed amici curiae brief will also
24 expand on the detailed and balanced system that California already has in place to ensure the
25 integrity of our elections and protect the right to vote, on the dearth of evidence that voter fraud is
26 a prevalent issue, and on the potential for Measure 1 to sow distrust in our election systems by
27 perpetuating the myth of voter fraud.

1 For these reasons, we respectfully request that this court issue an order permitting us to
2 appear as amici and file the attached brief, Exhibit A to this motion.

3 DATED: December 22, 2023

Respectfully submitted,

4 By: /s/ Julia A. Gomez
5 Julia A. Gomez

6 JULIA A. GOMEZ
7 PETER J. ELIASBERG
8 ACLU Foundation of Southern California

9 ANGÉLICA SALCEDA
10 BRITTANY STONESIFER
11 ACLU Foundation of Northern California

12 PAUL R. SPENCER
13 FREDERICK P. NISEN
14 Disability Rights California
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Exhibit A

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16 *Counsel for Amici Curiae ACLU of Southern California,
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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF ORANGE**

19 MARK BIXBY,
20 Petitioner,
21 vs.

22 ROBIN ESTANISLAU, Huntington Beach
City Clerk; BOB PAGE, Orange County
23 Registrar of Voters,
24 Respondents.

25 _____
26 THE CITY OF HUNTINGTON BEACH, a
Municipal Corporation,
27 Real Party in Interest.
28 _____

Case No. 30-2023-01366664-CU-WM-NJC

**[PROPOSED] BRIEF OF AMICI CURIAE
IN SUPPORT OF PETITIONER'S EX
PARTE APPLICATION FOR WRIT OF
MANDATE AND FOR A TEMPORARY
RESTRAINING ORDER**

Hearing Date: January 19, 2024

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Judge: Hon. Nick A. Dourbetas

INTRODUCTION AND BACKGROUND

The right to vote enjoys extraordinary protections as a matter of both constitutional and statutory law. (*Reynolds v. Sims* (1964) 377 U.S. 533, 562 (the right to vote “is preservative of other [rights],” and any infringement on this right must be “meticulously scrutinized”); *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 799-800 (statute prohibiting vote dilution applied to charter cities).) In a brazen attempt to undermine these protections, a divided Huntington Beach City Council placed Charter Amendment No. 1 on the March 2024 ballot (“Measure 1”). If passed, Measure 1 would allow Huntington Beach (the “City”) to require voter identification (“voter ID”) for all municipal elections, monitor dropboxes, and place at least 20 voting locations evenly throughout the City. (Pet. for a Writ of Mandate (“Pet.”), Ex. A (Resolution No. 2023-42).)

There is ample evidence throughout the country that voter ID laws impose severe burdens on voters, particularly on voters with disabilities and on Latine, Black, young, and low-income voters.¹ In contrast, there is very little evidence of voter fraud, and the few examples that exist would not have been prevented by voter ID.² Allowing City staff to monitor dropboxes without proper training could also result in voter intimidation and, along with the voter ID provision, in mass and improper voter challenges. And placing voting locations in the City without regard for state accessibility and equity requirements could make it more difficult for voters to cast a ballot. (*See* Elec. Code § 4005(a)(10)(B).) Finally, because the Huntington Beach City Charter (“Charter”) consolidates the City’s general elections with statewide general elections (*see* Charter § 700; Elec. Code §§ 1001, 1200), Charter Amendment No. 1 will either effectively give the City the authority to also impose these burdens for all general state and federal elections or would require the City and Orange County (the “County”) to run parallel elections, resulting in voter confusion.

Charter Amendment No. 1 not only imposes improper burdens on voters, but it is also unnecessary. California already has a process to ensure the security and integrity of our elections without compromising the right to vote. Charter Amendment No. 1 provides no discernible

¹ *See, e.g., The Impacts of Voter Suppression on Communities of Color*, Brennan Center for Justice (Jan. 10, 2022), <https://bit.ly/41tJRHo> (collecting studies).

² Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents Out of One Billion Ballots Cast*, Wash. Post (Aug. 6, 2014), <https://wapo.st/483P6js>.

1 benefits, but will no doubt deprive many Huntington Beach residents of their right to vote, cause
2 confusion, reduce overall participation, and stand in direct opposition to our state’s trend of
3 including more Americans in the democratic process. Allowing Measure 1 to remain on the ballot
4 would also result in misinformation by creating the false impression that impersonation fraud is
5 widespread. We therefore urge the Court to grant Petitioner’s motion for a writ of mandate to keep
6 Measure 1 off the March 2024 ballot.

7 **ARGUMENT**

8 **I. Charter Amendment No. 1 is Unconstitutional**

9 The California Constitution’s equal protection guarantee (Cal. Const. art. I, § 7) prohibits
10 government policies that infringe on the ability of a protected class to enjoy any fundamental right,
11 including the right to vote. (*Vergara v. State* (2016) 246 Cal.App.4th 619, 645, 648 n.13; *Bd. of*
12 *Supervisors v. LAFC* (1992) 3 Cal.4th 903, 913 (voting is a fundamental right under Cal. Const.
13 art. II, § 2.) If a facially neutral government policy has a disparate effect on a protected class’s
14 exercise of a fundamental right, “strict scrutiny will apply, irrespective of motive or intent.”
15 (*Vergara*, 246 Cal.App.4th at 648 & n.13 (citing *Crawford v. Bd. of Educ.* (1976) 17 Cal.3d 280,
16 297) (race is a suspect classification); *Inland Empire United v. Riverside Cnty.* (C.D. Cal. Jan. 23,
17 2023) 2023 WL 397035, *4.) Under strict scrutiny, “the state bears the burden of establishing not
18 only that it has a compelling interest which justifies the law but [also] that the distinctions drawn
19 by the law are necessary to further its purpose.” (*Vergara*, 246 Cal.App.4th at 645.)

20 Even when a policy or practice does not have a disparate impact on a protected class,
21 California courts will apply the *Anderson/Burdick* test to determine whether a burden on the vote
22 is justified by the government’s asserted interests. (*See Anderson v. Celebrezze* (1983) 460 U.S.
23 780, 788-89; *Burdick v. Takushi* (1992) 504 U.S. 428, 433-34; *Boydston v. Weber* (2023) 90
24 Cal.App.5th 606, 619-20.) A court must weigh the severity of the burden against the government’s
25 “precise interests,” and the scrutiny becomes more rigorous as the burden increases (*Burdick*, 504
26 U.S. at 434; *Howard Jarvis Taxpayers Ass’n v. Weber*, (2021) 67 Cal.App.5th 488, 497.)

27 Voter ID laws disproportionately burden voters with disabilities and Latine, Black, young,
28 and low-income voters. (*See infra* I.B.) Because it affects the rights of protected classes and

1 severely burdens the vote, strict scrutiny applies to this court’s review of Charter Amendment No.
2 1, and the amendment must be narrowly tailored to serve a compelling government interest.
3 Proponents of the amendment claim that it will restore trust in elections by addressing potential
4 voter fraud.³ Numerous studies confirm, however, that voter fraud rarely occurs, and voter ID and
5 dropbox monitoring are not an effective means to address the rare instances fraud that do occur.
6 (*See id.*) California already has a detailed voter verification system that is less burdensome on
7 voters than Measure 1 while still addressing the proponents’ election integrity concerns. The state
8 system confirms that Charter Amendment No. 1 does not pass constitutional muster because it is
9 not the least restrictive means of achieving the proponents’ interests.

10 **A. California Strikes a Careful Balance Between Protecting the Right to Vote and**
11 **Ensuring Election Integrity**

12 California has a robust election system that imposes reasonable requirements on voters
13 while ensuring the integrity of the system through the registration, ballot printing, ballot
14 collection, signature verification, and tabulation stages. The State follows federal requirements to
15 establish voter identity during the registration process. (2 C.C.R. §§ 19073, 20107(a).) To register
16 to vote, a person must provide their driver’s license number, their state identification number, or
17 the last four digits of their Social Security number. (Elec. Code §§ 2150, 2196(a)(7); 2 C.C.R. §
18 19073.) If a person includes this identifying information with their registration application, they
19 have met state and federal voter identification requirements and will not need to present proof of
20 identity each time they vote. (2 C.C.R. §§ 19073, 19075(a).) If a person does not include this
21 identifying information with their registration application, they must provide identification the
22 first time that they vote in a federal election after registering to vote. (*See* Elec. Code § 14216; 2
23 C.C.R. § 19075.) There are many acceptable forms identification, including utility bills and bank
24 statements with the person’s name and address, a valid government-issued ID, and other official
25 documents issued by government agencies. (2 C.C.R. § 2107(d).) Importantly, voter identification
26 requirements must “be liberally construed to permit voters and new registrants to cast a regular
27

28 ³ Rebuttal to Argument Against Charter Amendment Measure 1 by Mayor Tony Strickland & Mayor Pro Tem Gracey
Van Derk Mark (Nov. 13, 2023), <https://bit.ly/48pKfJ8> [hereinafter, “Rebuttal to Argument Against Measure 1”].

1 ballot,” and “[a]ny doubt as to the sufficiency of proof or a document presented shall be resolved
2 in favor of permitting the voter or new registrant to cast a regular ballot.” (*Id.* § 20107(a) & (b).)

3 At the ballot printing and collection stage, every mail ballot contains a barcode, and the
4 voter must sign the ballot envelope before returning their ballot. (Elec. Code §§ 3011(a)(2),
5 3019.7.) If a voter prefers to vote in person, county elections staff use an electronic poll book to
6 confirm the voter’s information, confirm that the voter has not already cast their mail ballot, and
7 request a signature.⁴ (*Id.* §§ 3015, 14216.) If a ballot is mailed or dropped off, county elections
8 staff compare the voter’s signature to the voter’s signature on file and confirm that the voter has
9 not already voted before counting the ballot. (*Id.* § 3019.) Elections officials are also responsible
10 for maintaining security at voting and dropbox locations. (*Id.* § 3025.) These existing mechanisms
11 ensure security without overly burdening voters: the measures do not force voters to continuously
12 prove that they are eligible to vote, provide voters with accessible voting options, and allow voters
13 to track their ballot so that they can feel confident that their ballot was received and counted.

14 **B. Charter Amendment No. 1’s Voter ID Provision will Severely Burden Voters**

15 Voter ID requirements place severe burdens on voters who do not have photo ID that do
16 not exist under the State’s framework. During the 2020 elections, seven million voters nationwide
17 did not have a current government-issued photo ID, and nearly 29 million voters did not have a
18 current driver’s license.⁵ Voters who lacked any form of photo ID were more likely to be voters
19 with disabilities and Latine, Black, young, and low-income voters.⁶ Black and Latine voters were
20 also twice as likely as white and Asian voters to lack photo ID, and low-income voters were more
21 likely than voters with a higher income to lack photo ID.⁷ In Huntington Beach, where 16% of
22 eligible voters are Latine, 11.3% of voting age residents have a disability, and 7.3% of voting age
23 residents live at the poverty level, the impacts of a voter ID requirement would be far reaching.⁸

25 ⁴ See Voting Technologies Used by Counties, California Secretary of State (Sept. 22, 2022), <https://bit.ly/3Rwr3CT>
(showing that Orange County uses electronic poll books).

26 ⁵ Michael J. Hanmer & Samuel B. Novey, *Who Lacked Photo ID in 2020?*, University of Maryland, Center for
Democracy & Civic Engagement at 3 (Mar. 13, 2023), <https://bit.ly/3NA0wTV>.

27 ⁶ *Id.* at 3-6.

⁷ *Id.* at 6.

28 ⁸ 2021 5-year Am. Comm. Survey (“ACS”) CVAP Special Tab, <https://bit.ly/41yflXr> (voting population by race);
2022 5-year ACS, Table S1810, <https://bit.ly/3GWSGjH> (disability); *id.* Table S1701, <https://bit.ly/479iyUe> (poverty).

1 There are obvious reasons why Black and Latine voters and voters with disabilities
2 disproportionately lack qualifying ID: they disproportionately lack access to transportation and
3 primary documents required to obtain an ID.⁹ Voters who do not have a current photo ID must
4 overcome what are sometimes significant bureaucratic hurdles to obtain the document in time for
5 an upcoming election. There is a \$39 fee for a California identification card and a \$45 fee for a
6 driver's license.¹⁰ If you are getting a photo ID or driver's license (collectively, "ID/DL") for the
7 first time, or if you do not qualify to instantly renew your driver's license, it can take anywhere
8 from 14 days to over 60 days after you submit an application to receive the document.¹¹ Applying
9 for an ID/DL often times also requires one or more trips to the DMV during business hours, either
10 as a walk-in, which can take hours of a person's day, or by appointment, adding to the total time
11 that it takes to obtain an ID/DL ahead of an election.¹² For individuals who cannot drive or who do
12 not have a current driver's license, getting to the DMV requires arranging transportation. For
13 some, it may be as uncomplicated as getting a ride to the DMV. For others, it may require the use
14 of public transportation, including paratransit, which often increases travel time.¹³ The entire visit
15 to the DMV, irrespective of the form of transportation, may require taking time off from school or
16 work and sacrificing education or wages.

17 The time and monetary costs of obtaining voter ID increase if a primary document has
18 errors, like an incorrect birth date or a misspelling, or if the person is missing one or more primary
19 documents altogether.¹⁴ For example, amending a birth certificate at a minimum requires a \$26
20 fee, plus an average of 15 to 19 weeks of wait time for processing, and sometimes may require a
21 court order in cases of a name change.¹⁵ To request a replacement copy of a birth certificate in
22 Orange County, an applicant must: 1) travel to the county administration office, submit a mail

23 _____
24 ⁹ See, e.g., Richard Sobel, *The High Cost of "Free" Photo Voter Identification Cards*, Harvard Law School Charles
Hamilton Houston Institute for Race & Justice (June 2014), <https://bit.ly/3RvGMSE>.

25 ¹⁰ Licensing Fees, California DMV, <https://bit.ly/3ROOg4y>.

26 ¹¹ Processing Times, California DMV, <https://bit.ly/4apuJit>.

27 ¹² Appointments, California DMV, <https://bit.ly/48sdYBn> (showing current wait times and appointment availability).

28 ¹³ See, e.g., Lydia DePillis, Emma Goldberg, and Ella Koeze, *Most Americans Still Have to Commute Every Day. Here's how that Experience has Changed*, N.Y. Times (Nov. 6, 2023), <https://nyti.ms/3RMh1in> (finding that people who commute by public transit spend roughly twice as much time traveling to and from work as people who drive).

¹⁴ See Federal Non-Compliant DL/ID Card – Document List, DMV (Jan. 2018), <https://bit.ly/3tvjweJ>.

¹⁵ Amending a California Birth Record, California Dep't of Public Health, <https://bit.ly/483k2AB>; Processing Times, California Dep't of Public Health, <https://bit.ly/3RwOE6k>.

1 application, or submit an online application; 2) pay a \$32 fee to the county and, if submitting a
2 mail application, a fee to a notary; and 3) present or submit a valid government-issued photo ID.¹⁶
3 The last requirement means that, for some, it is impossible to obtain an ID/DL because they do not
4 have a primary document like a birth certificate that in turn requires presenting an ID/DL. If
5 passed, Charter Amendment No. 1 will thus disparately impose time and monetary costs on certain
6 voters that may make it impossible for some of them to obtain an ID/DL ahead of an upcoming
7 election, disenfranchising them for that election, and, for voters missing primary documents, make
8 it impossible to obtain an ID/DL at all, disenfranchising those voters indefinitely.

9 **C. Charter Amendment No. 1 Will Result in Voter Suppression**

10 In addition to giving the City the power to require voter ID, Charter Amendment No.1
11 would give the City the power to disperse 20 voting locations evenly throughout the City and to
12 monitor all County dropboxes located within the City to ensure “compliance with all applicable
13 laws.” (Pet., Ex. A.) As explained below, these provisions will make it more difficult to vote, have
14 the potential to result in mass ballot challenges, and will no doubt suppress the vote.

15 The Orange County Registrar of Voters (“Registrar”) currently administers the City’s
16 elections and provides oversight over the security of voting locations and dropboxes in the City.
17 (See Elec. Code § 3025). Under state law, the Registrar must site voting locations in consultation
18 with the community by considering the proximity of voting locations to voters with disabilities,
19 language minority communities, public transportation, communities with low rates of vehicle
20 ownership, and communities with historically low vote-by-mail usage. (Elec. Code §
21 4005(a)(10)(B).) To ensure election security and protect voters, there is rigorous poll worker
22 training on topics like voter identification and intimidation,¹⁷ and elections staff may challenge the
23 eligibility of a voter only in extremely limited circumstances. (See Elec. Code § 14240(c).)

24 Charter Amendment No. 1 threatens to completely undermine this carefully balanced
25 system. Although evenly distributing voting locations throughout the City may give the illusion of
26 fairness, this formula disregards accessibility and equity. What’s more, the Charter consolidates
27

28 ¹⁶ How to Obtain a Birth or Death Certificate, Orange County, <https://bit.ly/485hEZW>.

¹⁷ 2022 Poll Worker Training Standards, Office of the California Secretary of State at 4, 5, <https://bit.ly/3RQdY8E>.

1 the City’s general elections with statewide general elections. (*See* Charter § 700; Elec. Code §§
2 1001, 1200.) If Measure 1 passes, the City will have to either attempt to impose Charter
3 Amendment No. 1’s provisions during all local, state, and federal elections or concurrently hold
4 elections with the County, imposing contradictory requirements on voters during the same election
5 season. Under either scenario, City staff may end up requesting ID from voters who are casting a
6 state or federal election ballot, or monitoring dropboxes while voters drop off their state or federal
7 election ballots, resulting in prohibited voter intimidation and in mass and improper voter
8 challenges. (*See* Elec. Code § 18370 (prohibiting persons from speaking to voters near a voting
9 location or dropbox about their eligibility to vote); 2 C.C.R. § 19075 (requiring voter ID at the
10 polls only in limited circumstances).) In addition, studies have found that strict photo ID laws
11 reduce turnout by as much as two to three percentage points,¹⁸ adding to the number of voters who
12 could potentially be disenfranchised if Measure 1 remains on the ballot. Charter Amendment No.
13 1’s provisions will thus severely burden the right to vote and will have far-reaching consequences.

14 **D. Charter Amendment No. 1 is Not Narrowly Tailored to Serve a Compelling**
15 **Government Interest**

16 Mayor Tony Strickland, a proponent of Measure 1, claims that there have been questions
17 about voter fraud in Orange County and insists that Charter Amendment No. 1 is needed to
18 prevent voter fraud and to restore faith in elections.¹⁹ Putting aside the fact that elections officials
19 already have robust voter verification and security systems in place (*see, supra* I.A.), there is
20 simply no evidence of any type of voter fraud that would be prevented through additional dropbox
21 monitoring or by requiring voter ID at the polls. Instead, studies consistently find that voter fraud
22 and impersonation are practically nonexistent, and imagined concerns about voter fraud are not a
23 compelling government interest that justifies the burdens that Charter Amendment No. 1 will
24 impose on voters. (*Williams v. Rhodes* (1968) 393 U.S. 23, 33 (“states cannot burden the right to
25 vote in order to address dangers that are remote and only ‘theoretically imaginable.’”)).

27 ¹⁸ *See, e.g., Issues Related to State Voter Identification Laws*, U.S. Gov’t Accountability Office at 37-38, 44 (Sept.
2014), <https://bit.ly/478ktbB> [hereinafter, “GAO Report”].

28 ¹⁹ Noah Biesiada, *Huntington Moves to Ask Voters if They Want Ballot Box Monitors, Voter IDs*, Voice of OC (Aug.
3, 2023), <https://bit.ly/3RroUIE>; *see also* Rebuttal to Argument Against Measure 1, *supra* note 3.

1
2 Elections officials, studies, experts, and courts have repeatedly confirmed that instances of
3 voter fraud are exceedingly rare.²⁰ Following unsubstantiated claims by former President Donald
4 J. Trump of fraud during the 2020 presidential elections, top federal agencies in charge of election
5 security issued a joint statement declaring that the November 2020 election was “the most secure
6 in American history,” assuring the public that they had the “utmost confidence in the security and
7 integrity of [] elections,” and encouraging the public to turn to elections officials—not
8 politicians—as trusted voices for any election-related questions.²¹ The New York Times did turn
9 to elections officials from dozens of states, and those officials confirmed that there was no
10 evidence of widespread fraud or other irregularities during the November 2020 presidential
11 election.²² Federal Bureau of Investigation Director Christopher Wray went even further in
12 dispelling the myth of voter fraud, informing Congress that his office had “not seen, *historically*,
13 any kind of coordinated voter fraud effort in a major election, whether [] by mail or otherwise.”²³

14 The evidence bears out these observations. One study reviewed general, primary, special,
15 and municipal elections nationwide between 2000 to 2012 and found that there were only 31
16 credible *allegations* of voter impersonation out of more than 1 billion ballots cast.²⁴ In 2014, the
17 U.S. Government Accountability Office came to the same conclusion that there is very little voter
18 fraud.²⁵ And, in a survey of state election authorities nationwide conducted after the 2016
19 presidential election, the authors also concluded that “[f]raud by voters casting ballots illegally is a
20 miniscule problem, but a potent political weapon.”²⁶ These findings are consistent over time,²⁷ are

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22 ²⁰ See, e.g., *It's Official: The Election Was Secure*, Brennan Center for Justice (Dec. 11, 2020),
<https://bit.ly/3GNzO6H> (collecting sources confirming there was no voter or election fraud during the 2020 election).

23 ²¹ Joint Statement from Elections Infrastructure Gov't Coordinating Council & the Election Infrastructure Sector
Coordinating Exec. Comms., U.S. Dep't of Homeland Sec., Cybersecurity & Infrastructure Sec. Agency (Nov. 12,
2020), <https://bit.ly/48j57T7>.

24 ²² Nick Corasaniti, Reid J. Epstein & Jim Rutenberg, *The Times Called Officials in Every State: No Evidence of Voter
Fraud*, N.Y. Times (Nov. 10, 2020), <https://nyti.ms/4apEggN>.

25 ²³ Christopher Wray, FBI Dir., September 24, 2020 Hearing Before U.S. Senate Comm. on Homeland Sec. & Gov't
Affairs, <https://nbcnews.to/3GLo5Wh> (*italics added*).

26 ²⁴ Levitt, *supra* note 2.

27 ²⁵ GAO Report, *supra* note 18 at 65-68.

²⁶ Michael Wines, *All This Talk of Voter Fraud? Across U.S., Officials Found Next to None*, N.Y. Times (Dec. 18,
2016), <https://nyti.ms/3RQD3jQ>.

28 ²⁷ See Br. of *Amici Curiae* Empirical Elections Scholars in Supp. of Resp'ts, *Brnovich v. Democratic Nat'l Comm.*,
No. 19-1257 (S.Ct.), <https://bit.ly/3tyzFkl> (collecting studies from the last few decades showing election fraud is rare).

1 not surprising because the cost of committing fraud, including a \$1,000 fine and up to three years
2 imprisonment (Elec. Code §§ 1850, 18578), far outweighs the benefit of an extra vote for a
3 preferred candidate, and confirms that fighting voter fraud is an illusory problem.

4 Studies have also shown that voter ID requirements have no effect on increasing
5 confidence or trust in the electoral process.²⁸ Thus, for voters with disabilities and for Latine,
6 Black, young, and low-income voters, the increase in the overall burdens on voting as a result of
7 voter ID exceeds the near-zero benefit from the City’s detecting or deterring non-existent voter
8 impersonation fraud or promoting voter “confidence,” particularly where the purported lack of
9 confidence arises largely from unfounded cries of “voter fraud.” (*See U.S. Student Ass’n Found. v.*
10 *Land* (6th Cir. 2008) 546 F.3d 373, 388-89 (“[T]he risk of actual voter fraud is miniscule when
11 compared with the concrete risk that [the State’s] policies will disenfranchise eligible voters”).)

12 **II. Measure 1 Sows Distrust in and Confusion about the Integrity of Elections**

13 The presence of an invalid measure on the ballot “steals attention, time, and money from
14 the numerous valid propositions on the same ballot,” while “confus[ing] some voters and
15 frustrat[ing] others.” (*Am. Fed. Of Labor v. Eu* (1984) 36 Cal. 687, 697.) Worst of all, “an ultimate
16 decision that the measure is invalid, coming after the voters have voted in favor of the measure,
17 tends to denigrate the legitimate use of the initiative procedure.” (*Id.* at 697.) These concerns are
18 particularly relevant here, where the existence of Measure 1 and statements by its proponents
19 spread misinformation about the prevalence of voter fraud that can in turn have real impacts on
20 election administration. For example, following the 2020 election, elections officials became
21 targets of voters who believed the presidential election was stolen, leading to a mass exodus of
22 elections officials from the field and to a huge loss of election administration expertise.²⁹

23 Election misinformation is having a demonstrably negative impact here in California. This
24 past January, the Shasta County Board of Supervisors (the “Board”) abruptly cancelled their
25 contract with Dominion Voting Systems based at least in part on lies about the 2020 election,
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27 ²⁸ See Stephen Ansolabehere & Nathaniel Persily, *Voter Fraud in the Eye of the Beholder: The Role of Public Opinion*
28 *in the Challenge to Voter Identification Requirements*, 121 Harv. L.R. 1737, 1756 (2008) <https://bit.ly/3vd6yDC>.

²⁹ Michael Wines, *After a Nightmare Year, Election Officials Are Quitting*, N.Y. Times (July 2, 2021),
<https://nyti.ms/3RuOz35>.

1 losing access to ballot scanning equipment and to voting machines needed by voters with
2 disabilities.³⁰ Instead of entering into a contract with another vendor to replace the machines, the
3 Board opted to hand-count its ballots,³¹ an extremely inaccurate way to tabulate election results.³²
4 The Board eventually agreed to secure voting equipment from another vendor after intense
5 demands from the Shasta County Registrar of Voters, advocates, community members, and state
6 officials,³³ but not before damage was done: the Registrar has been targeted by county supervisors
7 and residents, and officials and advocates had to monitor a local election last month.³⁴

8 One of the most egregious consequences of the Board’s decision to cancel its contract with
9 Dominion Voting Systems—the unavailability of accessible voting machines—was avoided
10 because of immediate steps by officials and advocates. Immediate steps must also be taken here to
11 avoid the most egregious consequences of Measure 1.

12 CONCLUSION

13 For the foregoing reasons, Amici urge the Court to grant Petitioner’s motion for a writ of
14 mandate and order the County to remove Measure 1 from the March 2024 ballot.

15 DATED: December 22, 2023

Respectfully submitted,

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25 ³⁰ Jessica Garrison & Hailey Branson-Potts, *Shasta County Ditched its Dominion Voting Machines. Now, Residents*
26 *are Braced for Turmoil on Nov. 7*, L.A. Times (Nov. 2, 2023), <https://lat.ms/3Ny3EQi>.

³¹ *Id.*

27 ³² Alice Chapman, *Hand-Counting Votes: A Proven Bad Idea*, Brennan Center for Justice (Nov. 23, 2022),
<https://bit.ly/41wCRcN>.

³³ Garrison & Branson-Potts, *supra* note 30.

28 ³⁴ *Id.*; see also Jenavieve Hatch, *In Shasta County, a Tense Special Election Draws Scrutiny from California Officials*,
Sacramento Bee (Nov. 8, 2023), <https://bit.ly/41ALGma>.