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12 Attorneys for Petitioners and Plaintiffs  
13 SAN DIEGO PUBLIC LIBRARY FOUNDATION  
14 and SAN DIEGO PARKS FOUNDATION

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF SAN DIEGO**  
17 **UNLIMITED JURISDICTION**

18 SAN DIEGO PUBLIC LIBRARY  
19 FOUNDATION and SAN DIEGO  
20 PARKS FOUNDATION,

21 Petitioners and Plaintiffs,

22 v.

23 DIANA FUENTES, in her capacity as  
24 SAN DIEGO INTERIM CITY CLERK;  
25 CYNTHIA PAES, in her capacity as  
26 SAN DIEGO COUNTY REGISTRAR  
27 OF VOTERS; and DOES 1 through 25,  
28 inclusive,

Respondents and Defendants.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**04/07/2023** at 02:38:11 PM

Clerk of the Superior Court  
By Marfil Estrada, Deputy Clerk

Case No. 37-2023-00014954-CU-WM-CTL

**VERIFIED PETITION FOR WRIT  
OF MANDATE AND COMPLAINT  
FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

**(California Code of Civil Procedure  
sections 1085, 526 and 1060, et seq.)**



1           5.     As permitted by law, Petitioners conducted a detailed review of the  
2 Registrar’s signature determinations and concluded that the Registrar made numerous  
3 legal and factual errors and that judicial relief is required to protect Petitioners, the  
4 voters, and the integrity of the initiative process.

5           6.     The Registrar’s legal and factual errors include, but are not limited to:

- 6           A)     Determining that 82,566 valid signatures (or ten percent of the 2020  
7                 General Election registered voters) are required, when in actuality,  
8                 upon information and belief, 80,020 valid signatures (or ten percent  
9                 of the 2022 General Election registered voters) are required.
- 10          B)     Invalidating approximately 125 signatures on the grounds that  
11                 voters’ addresses as written on the Initiative petition were different  
12                 from the addresses as contained in the voters’ registration records,  
13                 when in actuality the voters’ street name was either slightly  
14                 misspelled or merely difficult to read (e.g., “Louisiana” Street  
15                 instead of “Louisiana” Street) or the voters used an imperfect U.S.  
16                 Postal Service abbreviation of their street names (e.g., for  
17                 “Mountain,” using “Mt.” instead of “Mtn.”).
- 18          C)     Invalidating more than 150 signatures on the grounds that there were  
19                 discrepancies between the dates that petition circulators placed on  
20                 the petition and the dates that petition signers placed on the petition  
21                 (e.g., writing one’s birthday instead of the day they signed the  
22                 petition).
- 23          D)     Determining that voters were required to affix a date next to their  
24                 signatures on the Initiative petition;
- 25          E)     Invalidating more than 20 signatures on the grounds that there were  
26                 discrepancies between the dates that petition signers placed on the  
27                 petition and the dates that they re-registered to vote at a different  
28                 address (e.g., moving to a new residence and re-registering to vote at

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that new address, but then listing their old address on the petition the very next day).

- F) Invalidating nearly 20 signatures on the grounds that there were discrepancies between the signatures on the Initiative petition and the signatures on the voters’ registration records.
- G) Failing to take into account that electronic signatures, such as those obtained from voters on electronic screens at the Department of Motor Vehicles, can appear not to match signatures obtained from voters on paper.
- H) Failing to validate certain signatures that had previously been invalidated, even after admitting that such signatures should not been invalidated.
- I) Applying overly strict and legally unsupported criteria to several other categories of signatures, thus tainting the entire signature review process.
- J) Depriving Petitioners, their supporters, voters, petition signers, and others of their constitutional rights under the United States and California Constitutions.

7. Accordingly, Petitioners seek this Court’s issuance of a writ of mandate, an injunction, and a declaration, as prayed for herein, that would require the Registrar to review the petition signatures again based on criteria established pursuant to this litigation.

**PARTIES**

8. Petitioner and Plaintiff SAN DIEGO PUBLIC LIBRARY FOUNDATION (the “Library Foundation”) is a 501(c)(3) non-profit organization dedicated to supporting library efforts to help San Diegans learn new skills, pursue lifelong ambitions, and achieve a better life with the help of dedicated staff, committed volunteers, and generous donors and partners. The Library Foundation strengthens communities by supporting

1 excellence in the San Diego Public Library system through philanthropy, advocacy and  
2 outreach. The Library Foundation is a catalyst for creating stronger communities  
3 through investment in the San Diego Public Library system - where access to resources  
4 supporting literacy, work readiness, and lifelong learning ensure equal opportunities for  
5 success.

6 9. The Library Foundation is based in the City of San Diego and County of  
7 San Diego, is one of the official proponents of the Initiative, is beneficially interested in  
8 this matter, and has standing to bring this action.

9 10. Petitioner and Plaintiff SAN DIEGO PARKS FOUNDATION (the “Parks  
10 Foundation”) is a 501(c)(3) non-profit organization dedicated to improving the quality of  
11 life of communities throughout the City of San Diego through equitable investments in  
12 parks, greenspace, and recreational opportunities. The Parks Foundation was established  
13 to provide critical support to the City of San Diego’s Parks and Recreation Department.  
14 The Parks Foundation secures funds from private and public supporters to address Parks  
15 and Recreation’s funding gaps in programming and maintenance of neighborhood parks  
16 as well as implement projects directly. This support helps foster community health and  
17 connection by providing opportunities for exercise, spending time in nature, social  
18 interaction, and accessing resources.

19 11. The Parks Foundation is based in the City of San Diego and County of  
20 San Diego, is one of the official proponents of the Initiative, is beneficially interested in  
21 this matter, and has standing to bring this action.

22 12. Respondent and Defendant DIANA FUENTES is the Interim Clerk of the  
23 City of San Diego, and is charged by law with overseeing the initiative process in the  
24 City of San Diego, including reviewing, or contracting with the San Diego County  
25 Registrar of Voters to review, initiative petitions to determine whether they contain a  
26 sufficient number of valid signatures to qualify for the ballot.  
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1           18.    The City Clerk informed Petitioners that they would have until December  
2 15, 2022 to collect at least 82,566 valid signatures in order to qualify the Initiative for the  
3 ballot. This number was derived by calculating ten percent of the 825,660 registered  
4 voters in the City as of the last general City election, which was November 3, 2020.

5           19.    On December 15, 2022, Petitioners submitted the Initiative petition to the  
6 Registrar, with whom the City Clerk had contracted to review and verify petition  
7 signatures. The Registrar determined that the petition contained 111,189 signatures.

8           20.    The Registrar selected a three percent random sample of signatures and  
9 reviewed 3,336 of the 111,189 signatures that had been submitted.

10          21.    On or about January 12, 2023, Petitioners transmitted a letter to the City  
11 Clerk to seek clarification as to the amount of signatures required for the Initiative  
12 petition to qualify for the ballot. Petitioners' letter noted that San Diego Municipal Code  
13 section 27.1020(c)(2) refers to the "last general City election" as the election which the  
14 City Clerk must use to tabulate the amount of signatures required in order for an  
15 initiative to qualify for the ballot. The letter continued that since the petition signatures  
16 had been submitted on December 15, 2022, the "last general City election," and thus the  
17 election to be used to calculate the required number of signatures, must be the November  
18 8, 2022 election, and not the 2020 general City election.

19          22.    On or about January 13, 2023, the City Clerk responded to Petitioners' letter  
20 and informed them that she had consulted with the San Diego City Attorney and that  
21 based thereon she would be unable to change her decision about which election was the  
22 proper one to use. The City Clerk therefore continued to base her signature requirement  
23 calculations on the 2020 general City election and not the 2022 election.

24          23.    On or about January 24, 2023, the Registrar determined that only 2,201 of  
25 the 3,336 random sample signatures were valid, 1,135 were invalid, and that therefore the  
26 Initiative petition was projected to contain 72,285 valid signatures and thus failed to  
27 qualify for the ballot. The Registrar also concluded that because the Initiative petition  
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1 failed to contain at least 78,438 valid signatures, it also failed to qualify for a "full count"  
2 of signatures to determine if it in fact contained the required number of valid signatures.

3 24. On or about January 27, 2023, Petitioners asked the Registrar and the City  
4 Clerk for more information about the 1,135 random sample signatures that the Registrar  
5 deemed invalid. That same day, the City Clerk provided Petitioners with a document  
6 entitled "Petition Statistics," which had been prepared by the Registrar and which set  
7 forth thirteen reasons why signatures were deemed insufficient. These included  
8 allegedly mismatched voter addresses, signature dates, circulation dates, voter  
9 registration dates. and signatures.

10 25. Also on January 27, 2023, Petitioners requested, pursuant to California  
11 Government Code section 7924.110, that the Registrar and City Clerk permit Petitioners  
12 to review the initiative petition signatures and to determine the grounds upon which the  
13 Registrar rejected the signatures.

14 26. Petitioners' signature review began on or about February 8, 2023 and  
15 continued through February 15, 2023. During the signature review process, Petitioners  
16 challenged more than 300 of the Registrar's determinations regarding invalid signatures,  
17 well over the 185 additional signatures needed for the Initiative to qualify for a "full  
18 count."

19 27. On or about February 13, 2023, the City Clerk's office notified Petitioners  
20 that the San Diego Municipal Code does not contain a challenge process regarding the  
21 signatures and that therefore the notice of insufficiency and any challenges will therefore  
22 need to be decided by the courts.

23 28. Between mid-February and early April 2023, Petitioners and the City (via  
24 both the City Clerk and City Attorney) met and conferred multiple times regarding how  
25 the various disputes as to invalid signatures might be resolved. Ultimately, there was no  
26 resolution, and thus Petitioners began preparing this writ petition/complaint.  
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1 **FIRST CAUSE OF ACTION**

2 **Writ of Mandate (CCP Section 1085, et seq.)**

3 **(Against All Respondents and Defendants)**

4 29. Petitioners reallege and incorporate herein by reference the allegations of  
5 paragraphs 1 through 28, inclusive.

6 30. Pursuant to CCP section 1085:

7 “A writ of mandate may be issued by any court to any inferior . . . person to  
8 compel the performance of an act which the law specially enjoins, as a duty  
9 resulting from an office, trust, or station . . . .”

10 31. Pursuant to CCP section 1086:

11 “The writ must be issued in all cases where there is not a plain, speedy, and  
12 adequate remedy, in the ordinary course of law. It must be issued upon the  
13 verified petition of the party beneficially interested.”

14 32. The issuance of a writ of mandate is necessary to enforce Petitioners’ rights  
15 in that Petitioners, as beneficially interested parties, are entitled to such a writ and have  
16 no plain, speedy, or adequate remedy in the ordinary course of law by which their rights  
17 can be upheld and Respondents can be compelled to comply with the law.

18 33. Should the requested writ not issue, irreparable harm will occur in that  
19 Petitioners and others will be deprived of their rights to have the Initiative petition  
20 signatures reviewed in accordance with applicable law and the voters will be deprived of  
21 their rights to vote on a matter of substantial importance.

22 34. Accordingly, the Court should issue a writ of mandate directing  
23 Respondents to verify signatures on the Initiative in accordance with applicable law.

24 **SECOND CAUSE OF ACTION**

25 **Injunctive Relief (CCP Section 526, et seq.)**

26 **(Against All Respondents and Defendants)**

27 35. Petitioners reallege and incorporate herein by reference the allegations of  
28 paragraphs 1 through 28, inclusive.

1 36. Pursuant to CCP section 526:

2 “(a) An injunction may be granted in the following cases:

3 (1) When it appears by the complaint that the plaintiff is entitled to the  
4 relief demanded, and the relief, or any part thereof, consists in restraining the  
5 commission or continuance of the act complained of, either for a limited period or  
6 perpetually. . . .

7 (4) When pecuniary compensation would not afford adequate relief.”

8 37. The issuance of an injunction is necessary to enforce Petitioners’ rights  
9 in that Petitioners are entitled to the relief demanded – which consists of restraining the  
10 commission or continuance of the act complained of – and pecuniary compensation will  
11 not afford adequate relief.

12 38. Should the requested injunctive relief writ not issue, irreparable harm will  
13 occur in that Petitioners and others will be deprived of their rights to have the Initiative  
14 petition signatures reviewed in accordance with applicable law and the voters will be  
15 deprived of their rights to vote on a matter of substantial importance.

16 39. Accordingly, the Court should issue injunctive relief directing  
17 Respondents to verify signatures on the Initiative in accordance with applicable law.

18 **THIRD CAUSE OF ACTION**

19 **Declaratory Relief (CCP Section 1060, et seq.)**

20 **(Against All Respondents and Defendants)**

21 40. Petitioners reallege and incorporate herein by reference the allegations of  
22 paragraphs 1 through 28, inclusive.

23 41. Pursuant to CCP section 1060, et seq.:

24 “Any person . . . who desires a declaration of his or her rights or duties with  
25 respect to another . . . may, in cases of actual controversy relating to the legal  
26 rights and duties of the respective parties, bring an original action . . . in the  
27 superior court . . . . The court may make a binding declaration of these rights or  
28 duties. . . and the declaration shall have the force of a final judgment.”



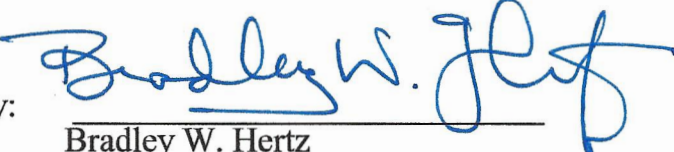


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6. That this Court grant such other and further relief as it deems just and proper.

Respectfully Submitted:

THE SUTTON LAW FIRM, PC



Dated: April 7, 2023

By:

Bradley W. Hertz  
Attorneys for Petitioners and Plaintiffs  
SAN DIEGO PUBLIC LIBRARY FOUNDATION  
and SAN DIEGO PARKS FOUNDATION

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VERIFICATION

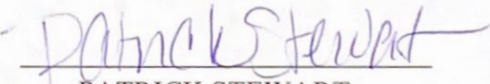
STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, PATRICK STEWART, am the Chief Executive Officer of the San Diego Public Library Foundation, which is a Petitioner and Plaintiff in the above-entitled action.

I have read the foregoing "Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief" and know the contents thereof. The matters stated therein are true and correct of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed this 7<sup>th</sup> day of April, 2023 at San Diego, California.

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

  
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PATRICK STEWART

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**VERIFICATION**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, MICHEL ANDERSON, am the Chair of the San Diego Parks Foundation, which is a Petitioner and Plaintiff in the above-entitled action.

I have read the foregoing "Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief" and know the contents thereof. The matters stated therein are true and correct of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed this 7<sup>th</sup> day of April, 2023 at San Diego, California.

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



MICHEL ANDERSON