

Case No.: S238309

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Ron Briggs and John Van de Kamp,

Petitioners,

v.

**Jerry Brown, in his official capacity as the Governor of California; Kamala Harris,
in her official capacity as the Attorney General of California; California's Judicial
Council; and Does I through XX**

Respondents.

**MOTION FOR LEAVE TO FILE AMENDED AND RENEWED PETITION FOR
EXTRAORDINARY RELIEF AND [PROPOSED] AMENDED AND RENEWED
PETITION FOR EXTRAORDINARY RELIEF, INCLUDING WRIT OF
MANDATE AND REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS AND AUTHORITIES**

ORRICK, HERRINGTON & SUTCLIFFE, LLP

Christina Von der Ahe Rayburn (No. 255467)
2050 Main St., Suite 1100
Irvine, CA 92614
Telephone: (949) 567-6700
Fax: (949) 567-6710
e-mail: cvonderahe@orrick.com

Lillian Jennifer Mao (No. 267410)
1000 Marsh Rd.
Menlo Park, CA 94025
Telephone: (650) 614-7400
Fax: (650) 614-7401
e-mail: lmao@orrick.com

Attorneys for Petitioners Ron Briggs and John Van de Kamp

**SUPREME COURT
FILED**

DEC 19 2016

Jorge Navarrete Clerk

Deputy

RECEIVED

DEC 19 2016

CLERK SUPREME COURT

Case No.: S238309

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Ron Briggs and John Van de Kamp,

Petitioners,

v.

**Jerry Brown, in his official capacity as the Governor of California; Kamala Harris,
in her official capacity as the Attorney General of California; California's Judicial
Council; and Does I through XX**

Respondents.

**MOTION FOR LEAVE TO FILE AMENDED AND RENEWED PETITION FOR
EXTRAORDINARY RELIEF AND [PROPOSED] AMENDED AND RENEWED
PETITION FOR EXTRAORDINARY RELIEF, INCLUDING WRIT OF
MANDATE AND REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS AND AUTHORITIES**

ORRICK, HERRINGTON & SUTCLIFFE, LLP

Christina Von der Ahe Rayburn (No. 255467)
2050 Main St., Suite 1100
Irvine, CA 92614
Telephone: (949) 567-6700
Fax: (949) 567-6710
e-mail: cvonderahe@orrick.com

Lillian Jennifer Mao (No. 267410)
1000 Marsh Rd.
Menlo Park, CA 94025
Telephone: (650) 614-7400
Fax: (650) 614-7401
e-mail: lmao@orrick.com

Attorneys for Petitioners Ron Briggs and John Van de Kamp

Case No.: S238309

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Ron Briggs and John Van de Kamp,

Petitioners,

v.

**Jerry Brown, in his official capacity as the Governor of California; Kamala Harris,
in her official capacity as the Attorney General of California; California's Judicial
Council; and Does I through XX**

Respondents.

**MOTION FOR LEAVE TO FILE AMENDED AND RENEWED PETITION FOR
EXTRAORDINARY RELIEF**

ORRICK, HERRINGTON & SUTCLIFFE, LLP

Christina Von der Ahe Rayburn (No. 255467)
2050 Main St., Suite 1100
Irvine, CA 92614
Telephone: (949) 567-6700
Fax: (949) 567-6710
e-mail: cvonderahe@orrick.com

Lillian Jennifer Mao (No. 267410)
1000 Marsh Rd.
Menlo Park, CA 94025
Telephone: (650) 614-7400
Fax: (650) 614-7401
e-mail: lmao@orrick.com

Attorneys for Petitioners Ron Briggs and John Van de Kamp

Petitioners Ron Briggs and John Van de Kamp (“Petitioners”) hereby request leave of the Court to file the attached Amended and Renewed Petition for Extraordinary Relief, Including Writ of Mandate and Request for Immediate Injunctive Relief, and the Memorandum of Points and Authorities thereto. In the alternative, Petitioners hereby renew their Petition for Extraordinary Relief filed with this Court on November 9, 2016.

I. BACKGROUND

On November 9, 2016, it became apparent that California Proposition 66, the “Death Penalty Reform and Savings Act of 2016,” may have passed in the November 8, 2016 election. On the same day, Petitioners filed a Petition for Extraordinary Relief, Including Writ of Mandate and Request for Immediate Injunctive Relief and associated Memorandum of Points and Authorities. In that Petition and Memorandum, Petitioners argued that Proposition 66 is invalid because it: (1) illegally circumscribes the constitutionally-imposed jurisdiction of the state courts; (2) violates the separation-of-powers doctrine by materially impairing the courts’ exercise of their constitutional functions; and (3) violates the constitutional mandate that an initiative measure may not embrace more than one subject. Citing the great harm that Proposition 66 will cause if enforced, Petitioners asked this Court to stay certification and enforcement of Proposition 66 pending adjudication of its constitutionality.

On November 17, 2016, this Court issued an order denying Petitioners’ request to “stay any action by the Secretary of State to certify the election results with respect to Proposition 66 on the November 8, 2016 ballot.” The Court further ordered that “[t]he request for a stay of enforcement of Proposition 66 before the election results are

certified . . . , is denied as unnecessary.” The Court directed that “Petitioners may renew their motion for a stay or other relief if and when the certified results establish that Proposition 66 has been approved by the voters.”

On December 16, 2016, the California Secretary of State certified that Proposition 66 was approved by the voters in the November 8, 2016 election. *See* Appendix of Exhibits (“App.”) at 30 [Secretary of State Certification of Proposition 66, Ex. 4]. Accordingly, Petitioners hereby renew their motion for a stay and other relief, either by filing the attached Amended and Renewed Petition for Extraordinary Relief, or, in the alternative, by renewing their original petition.

II. GOOD CAUSE EXISTS FOR ALLOWING PETITIONERS TO FILE THE ATTACHED AMENDED AND RENEWED PETITION FOR EXTRAORDINARY RELIEF

Petitioners’ Amended and Renewed Petition differs from their original petition in the following ways:

1. It reflects that the Secretary of State certified election results on December 16, 2016;
2. It removes the Secretary of State as a Respondent in the case, since the Secretary of State has already taken the action that Petitioners originally sought to enjoin;
3. It makes various non-substantive edits, such as stylistic changes, corrections of typographical errors, corrections to citation format, addition of further authority on certain points, and reorganization of arguments;
4. It further explains how enforcement of Proposition 66 will harm attorneys who represent indigent defendants; and

5. It adds a cause of action arguing that Proposition 66 violates the equal protection clauses of the state and federal constitutions.

Good cause exists for allowing Petitioners to file their Amended Petition so that the petition may accurately reflect the status of the certification of Proposition 66, as well as reflect the proper respondents in the action. Good cause also exists for allowing Petitioners to add an additional cause of action regarding the validity of Proposition 66. Like the others, this cause of action raises serious constitutional questions about the validity of Proposition 66. It will serve judicial efficiency for the Court to entertain this constitutional challenge together with the others.

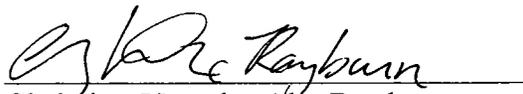
Respondents will suffer no prejudice if the Court allows Petitioners to file their Amended Petition. According to California Rule of Court 8.487, Respondents typically have 10 days after a petition is filed to file a preliminary opposition. In this case, Respondents have been in possession of Petitioners' original Petition—without having to respond—for 40 days. Because the Amended Petition only differs in minor respects from the original Petition, Respondents should have no problem responding to it in the 10 days allotted.

III. CONCLUSION

For the foregoing reasons, Petitioners respectfully request leave to file the attached Amended and Renewed Petition for Extraordinary Relief, Including Writ of Mandate and Request for Immediate Injunctive Relief, and the Memorandum of Points and Authorities thereto. In the alternative, Petitioners hereby renew their Petition for Extraordinary Relief filed with this Court on November 9, 2016.

Dated: December 19, 2016

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Christina Von der Ahe Rayburn", written over a horizontal line.

Christina Von der Ahe Rayburn

Lillian Mao

ORRICK, HERRINGTON & SUTCLIFFE LLP

Attorneys for Petitioners Ron Briggs and John Van de Kamp

[PROPOSED] ORDER

For good cause shown, Petitioners' Motion for Leave to File Amended and Renewed Petition for Extraordinary Relief is granted, and the Amended and Renewed Petition for Extraordinary Relief attached to Petitioners' Motion is hereby deemed filed.

Dated: _____

Presiding Justice