

Case No. S168047

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KAREN L. STRAUSS, et al.,

Petitioners,

v.

MARK D. HORTON, as State Registrar of Vital Statistics, etc., et al.,

Respondents;

DENNIS HOLLINGSWORTH et al.,

Interveners.

SUPREME COURT
FILED

JUN - 5 2009

Frederick K. Orrick Clerk

PETITION FOR REHEARING

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Pursuant to Rules 8.532(c) and 8.264(c) of the California Rules of Court, Petitioners Karen Strauss and Ruth Borenstein, *et al.* (“Petitioners”) bring this petition for rehearing for the limited purpose of respectfully requesting that this Court modify its opinion in *Strauss v. Horton* (May 26, 2009, S168047), __ Cal.4th __ [2009 WL 1444594] to correct a likely inadvertent omission of facts bearing on statements made on page 96 of the Court’s opinion. This Court retains the authority to modify its opinion until the opinion becomes final, which occurs 30 days after the decision is filed. (Cal. Rules of Court, Rule 8.532 and Rule 8.264(c). See *Market St. Ry. Co. v. Railroad Commission* (1946) 28 Cal.2d 363, 366-67 [California Supreme Court can entertain application for modification of an order where the order is not yet final].) A petition for rehearing is timely when filed no later than 15 days after the decision is filed. (Cal. Rules of Court, rules 8.536(b), 8.268(b)(1).) In this case, the decision was filed on May 26, 2009, and thus this request for modification is timely because it is being submitted prior to June 10, 2009.

On page 96 of the majority opinion, the Court states that “vigorous legal challenges were waged against” Proposition 14 (1964), but that in *Mulkey v. Reitman* (1966) 64 Cal.2d 529, *affd. sub nom. Reitman v. Mulkey* (1967) 387 U.S. 369, “the challengers [did not] *even argue* that the measure at issue should be characterized as a constitutional revision rather than as a constitutional amendment[, which] affords a realistic indication of the weakness and unprecedented nature of petitioners’ present claim.” (*Strauss*

v. Horton, supra, __ Cal.4th __ [p. 96] [2009 WL 1444594, *48].) While the Court's statement that the briefs in *Mulkey v. Reitman* did not raise a state constitutional challenge to Proposition 14 is technically correct, in fact, a companion case decided the same day as *Mulkey* did challenge Proposition 14 on the grounds that it constituted an impermissible revision to the California Constitution. Several of the briefs from that case, *Hill v. Miller* (1966) 50 Cal.Rptr. 908, vacated and revd. on reh'g., 64 Cal.2d 757, are attached to the Request for Judicial Notice submitted herewith.

The argument that Proposition 14 was a revision was raised in the briefs filed in this Court by Clifton Hill, the Plaintiff/Appellant in *Hill v. Miller*. Section VIII of Hill's opening brief to this Court is dedicated to the argument that Proposition 14 impermissibly revised the state Constitution. (See Request for Judicial Notice, Exh. A, at pp. 66-76.) The Respondent in that case, Crawford Miller, responded to that argument in his first brief to this Court (see Request for Judicial Notice, Exh. B, at p. 11), and Hill again argued that the measure was a revision in his reply brief (see Request for Judicial Notice, Exh. C, at p. 2). Because this Court found in *Mulkey v. Reitman* that Proposition 14 violated the federal Constitution, it did not reach the question raised in *Hill v. Miller* of whether the measure was also an impermissible revision of the California Constitution. (See *Mulkey v. Reitman, supra*, 64 Cal.2d at p. 533 ["we do not find it necessary to discuss claims of the unconstitutionality of [Proposition 14] based on California

constitutional provisions and law”], quoted in *Strauss v. Horton, supra*, ___ Cal. 4th ___ [p. 96, fn. 26] [2009 WL 1444594, *48, fn. 26].)

Petitioners respectfully call the Court’s attention to this omission, and request that the Court modify its opinion to reflect the facts as described in this petition and as demonstrated by the briefs from *Hill v. Miller* submitted with the accompanying Request for Judicial Notice.

Dated: June 5, 2009

Respectfully submitted,
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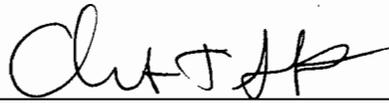
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PROOF OF SERVICE

I, Joshua Delgado, declare that I am over the age of eighteen years and I am not a party to this action. My business address is 870 Market Street, Suite 370, San Francisco, CA 94102.

On June 5, 2009, I served the document:

PETITION FOR REHEARING

and

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
PETITION FOR REHEARING;
DECLARATION OF ERIN BERNSTEIN**

- BY OVERNIGHT DELIVERY:** I caused such envelopes to be delivered on the following business day by FEDERAL EXPRESS service.
- BY PERSONAL SERVICE:** I caused the document(s) to be delivered by hand.
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INTERESTED PARTIES:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 5, 2009, at San Francisco, California.



Joshua Delgado

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