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and Richard Arney

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF SACRAMENTO  
9 (UNLIMITED JURISDICTION)

10 ALASTAIR MACTAGGART, CELINE  
11 MACTAGGART, and RICHARD ARNEY,

12 Petitioners,

13 vs.

14 ALEX PADILLA, in his official capacity as  
15 Secretary of State of the State of California,

16 Respondent.

No.: \_\_\_\_\_

Action Filed: June 8, 2020

**VERIFIED PETITION FOR WRIT  
OF MANDATE**

**ELECTION MATTER —  
IMMEDIATE RELIEF REQUESTED  
[Cal. Elec. Code § 13314(a)(3)]**

**CRITICAL DATE: JUNE 18, 2020**

Hearing:

Date: TBD  
Time: TBD  
Dept.: TBD  
Judge: TBD

1                   Petitioners ALASTAIR MACTAGGART, CELINE MACTAGGART, and RICHARD  
2 ARNEY petition this Court pursuant to Elections Code section 13314 and Code of Civil Procedure  
3 sections 1085 and 1086 for a writ of mandate commanding respondent ALEX PADILLA, in his  
4 capacity as Secretary of State of the State of California, to direct county elections officials to report the  
5 results of their random sample of signatures submitted to qualify the California Privacy Rights Act  
6 of 2020 (Initiative No. 1879) to the Secretary of State’s Office no later than 5:00 p.m. on June 25,  
7 2020, so that the measure may be certified in time to be placed on the November 3, 2020 ballot.

8                   Under Elections Code section 9030(c), the Secretary of State was required to  
9 “immediately” notify the counties to begin the random sampling process for the measure as soon as  
10 counties reported that the petitions contained at least 623,212 signatures, which occurred on May 13,  
11 2020. Counties have 30 working days to complete that random sampling process, and 30 working days  
12 after May 13 is June 25, the very last day on which statewide measures can be certified as qualifying  
13 for the November 3, 2020 General Election ballot. In contravention of this statutory mandate, the  
14 Secretary of State did not notify the counties until late in the afternoon of the following day, May 14,  
15 which means that the counties now have until June 26 to complete their random sample of signatures,  
16 one day after the deadline for qualification for the November 3, 2020 ballot. As a result of the  
17 Secretary of State’s failure to notify the counties to begin the random sample of signatures on May 13,  
18 2020, the qualification of the measure is at risk.

19                   **INTRODUCTION**

20                   ALASTAIR MACTAGGART, the proponent of the California Privacy Rights Act of  
21 2020 (the “Initiative”), CELINE MACTAGGART, a registered California voter who signed a petition  
22 qualify the Initiative for the ballot and would like the opportunity to vote for it in November, and  
23 RICHARD ARNEY, a registered California voter who helped draft and circulate the Initiative and who  
24 signed a petition to place the Initiative on the ballot, request emergency writ relief to protect ““one of  
25 the most precious rights of our democratic process,”” the power of initiative. *Rossi v. Brown*,  
26 9 Cal. 4th 688, 695 (1995) (quoting *Associated Home Builders, Inc. v. City of Livermore*, 18 Cal. 3d  
27 582, 591 (1976)).

1 From December 2019 until March 19, 2020, MACTAGGART and consumer privacy  
2 advocates, including CELINE MACTAGGART and ARNEY, collected approximately  
3 920,000 signatures to qualify the Initiative for the November 2020 ballot. Despite the enormous  
4 difficulties posed by doing so during the COVID-19 pandemic and the resulting shelter-in-place  
5 orders, MACTAGGART submitted petitions containing more than 930,000 signatures to county  
6 registrar of voters' offices by May 1, 2020, to ensure that the measure would qualify in time to be  
7 certified for the ballot by June 25, 2020, based on the Elections Code requirements for signature  
8 verification. Under Elections Code section 9030(b), within eight working days after the filing of  
9 signatures, county elections officials must determine the total number of signatures (the "raw count")  
10 and transmit the results to the Secretary of State. *Id.*, § 9030(b). Once counties report 623,212 or more  
11 signatures, the Secretary of State is required to "immediately" notify the counties to conduct a random  
12 sample of signatures, the results of which must be reported to the Secretary of State within 30 working  
13 days after notification. *Id.*, § 9030(c) & (d). If counties report that more than 110 percent of the  
14 number of qualified voters needed to qualify the measure for the ballot have signed petitions, then the  
15 Secretary of State is required to certify the measure for the ballot pursuant to Elections Code  
16 section 9033. *Id.*, § 9030(g). Elections Code section 9033 requires the Secretary of State to issue a  
17 certificate of qualification 131 days before the date of the election, or June 25, 2020, as specified in  
18 article II, section 8(c) of the California Constitution, for all measures that have qualified for the ballot.  
19 Measures that qualify after June 25 will not appear on the November 3, 2020 ballot.

20 By submitting petitions containing more than 623,212 signatures to multiple counties by  
21 May 1, MACTAGGART ensured that each of the required steps would be completed in time for the  
22 Secretary of State to certify the measure for the ballot on June 25, 2020, even if the counties took the  
23 full time allowed by the Elections Code for each step.

24 On May 13, 2020, county registrar of voters' offices reported to the Secretary of State's  
25 office that MACTAGGART had submitted a sufficient number of signatures to trigger the Secretary of  
26 State's random sample notice. The Secretary of State's own spreadsheet reflects that county elections  
27 officials had reported a cumulative total of 667,062 signatures by May 13, 2020, nearly 44,000 more  
28

1 signatures than the 623,212 signature threshold required to trigger a random sample under Elections  
2 Code section 9030(c).<sup>1</sup>

3           According to the Secretary of State’s office, they received Riverside County’s report of  
4 56,346 signatures, which put the Initiative over the signature threshold necessary to trigger the  
5 Secretary of State’s random sample notice, at 5:27 p.m. on May 13, 2020. Although Elections Code  
6 section 9030(c) states that the Secretary of State “shall *immediately*” notify the counties once that  
7 threshold is met, the Secretary of State’s office did not notify the county registrar of voters’ offices  
8 until 4:02 p.m. on May 14, 2020, *nearly 24 hours later*. That one-day delay, for which the Secretary of  
9 State’s office had no authority, may prove fatal to the people’s right to vote on the Initiative this  
10 November, because it pushed the counties’ deadline to complete the verification process to June 26,  
11 2020, one day past the deadline for qualification for the November ballot.

12           The Secretary of State’s office maintains that they did not send the random sample  
13 notice on May 13th because the office closed at 5:00 p.m., prior to receiving Riverside County’s  
14 report. Yet just one day earlier, on May 12, 2020, the Secretary of State notified the counties at  
15 8:18 p.m. to begin the random sample for Initiative 1880 (stem cell research), more than 3 hours after  
16 the alleged 5:00 p.m. “close” of business. Indeed, in 2020, the Secretary of State issued a total of three  
17 random sample notices after 5:00 p.m., representing 50 percent of the random sample notices sent this  
18 year.<sup>2</sup> Nor is this practice limited to this election cycle. In 2018, the Secretary of State also issued  
19 four random sample notices after 5:30 p.m.<sup>3</sup> Thus, it appears that the Secretary of State regularly  
20 issues random sample notices after 5:00 p.m.

21  
22 <sup>1</sup> See <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/may/20094jh.pdf>.

23 <sup>2</sup> See [Initiative: Random Sample of #1864, Related to Property Tax \(PDF\)](#) (March 10, 2020,  
24 5:04 p.m.); [Initiative: Random Sample of #1882, Related to Dialysis Clinics \(PDF\)](#) (May 1, 2020,  
25 5:02 p.m.); [Initiative: Random Sample of #1880, Related to Medical Research \(PDF\)](#) (May 12, 2020,  
8:18 p.m.).

26 <sup>3</sup> See [Initiative: Random Sample of #1841, Related to Hospital Bonds](#) (May 14, 2018, 5:47 p.m.);  
27 [Initiative: Random Sample of #1845, Related to Lead Paint \(PDF\)](#)(May 14, 2018, 5:50 p.m.);  
28 [Initiative: Random Sample of #1846, Related to Taxes \(PDF\)](#) (May 16, 2018, 6:06 p.m.); [Initiative:  
Random Sample of #1851, Related to Taxes \(PDF\)](#) (August 28, 2018, 5:46 p.m.).

1 Furthermore, the Secretary of State's office did not issue the notice the first thing the  
2 next morning. Instead, they waited nearly 24 hours after receiving Riverside's raw count before  
3 sending the notice, depriving the counties of a full business day during which they could have begun  
4 the random sampling process.

5 In order to protect the precious right of initiative and the First and Fourteenth  
6 Amendment rights of petitioners and the more than 930,000 California voters who signed petitions to  
7 qualify the Initiative for the November 2020 ballot, this action is brought to require the Secretary of  
8 State to notify counties that they must report their random sample results to the Secretary of State no  
9 later than June 25, 2020, so that the Secretary of State certifies the measure for the November 3, 2020,  
10 ballot as required by article II, section 8 of the California Constitution and Elections Code  
11 section 9033, provided that the measure has attained the requisite number of signatures. In the absence  
12 of this relief, there is a significant risk that the Initiative will not qualify for the November 2020 ballot,  
13 and California voters will be deprived of the opportunity to strengthen consumer privacy when it is  
14 most at risk.

### 15 PARTIES

16 1. Petitioner, ALASTAIR MACTAGGART, is the official proponent of the  
17 Initiative, signed the petition to qualify the measure for the ballot, and collected signatures from  
18 friends and neighbors. He is a United States citizen who resides, and is registered to vote, in Alameda  
19 County. As the proponent of the Initiative, Petitioner has a beneficial interest in the issuance of a writ  
20 of mandate to ensure that the Initiative appears on the November 2020 ballot. He seeks the  
21 enforcement of an official duty to ensure that the public may exercise its constitutional right to  
22 legislate by initiative. Petitioner therefore has an interest in ensuring that the election laws of the State  
23 of California are executed and the official duty in question is enforced.

24 2. Petitioner CELINE MACTAGGART is a United States citizen who resides, and  
25 is registered to vote, in Alameda County. She signed the petition to qualify the Initiative for the ballot  
26 and would like the opportunity for vote for the measure in November to strengthen existing consumer  
27 privacy laws and to prevent consumer privacy rights from being eroded by the Legislature.  
28

1           3.       Petitioner RICHARD ARNEY is a United States citizen who resides, and is  
2 registered to vote, in Alameda County. He gathered signatures in Alameda County to qualify the  
3 Initiative for the ballot in November 2020, signed the petition himself, and is concerned that consumer  
4 privacy laws will be eroded if voters like him do not have the opportunity to strengthen and protect  
5 these rights by approving the Initiative in November 2020.

6           4.       Respondent ALEX PADILLA is the Secretary of State and is the State's chief  
7 elections officer. Among his other duties, the Secretary of State has the duty under state law to  
8 determine whether a sufficient number of signatures have been collected in support of an initiative to  
9 require county elections officials to conduct a random sample to verify the validity of the signatures  
10 collected, and to certify whether a sufficient number of signatures have been verified to qualify the  
11 measure for the ballot. Section 13314 of the Elections Code requires that the Secretary of State be  
12 named as a respondent in this proceeding. He is sued in his official capacity only.

#### **JURISDICTION AND VENUE**

13  
14           5.       This court has jurisdiction over this matter pursuant to Elections Code  
15 section 13314 and Code of Civil Procedure sections 1085 et seq.

16           6.       Elections Code section 13314 provides that the appropriate venue for this action  
17 is Sacramento Superior Court because the subject of the proceeding is a statewide measure seeking to  
18 be placed on the ballot. Cal. Elec. Code § 13314(b)(3).

#### **PRIORITY MATTER**

19  
20           7.       Pursuant to Elections Code section 13314(a)(3), as an election law writ petition,  
21 this matter "shall have priority over all other civil matters."

22           8.       Immediate action is necessary. Section 8(c) of article II of the California  
23 Constitution and Elections Code section 9033 mandate that the Secretary of State certify measures for  
24 the November 3, 2020 Statewide General Election on June 25, 2020. If this Court does not act  
25 promptly, this measure may not qualify for the November 3, 2020 ballot. In order to provide sufficient  
26 time for the counties to complete the verification process by June 25, 2020, we request that the Court  
27 rule on this matter by June 18, 2020.  
28

**FACTUAL ALLEGATIONS**

1  
2           9.       In 2018, MACTAGGART and consumer privacy advocates, including CELINE  
3 MACTAGGART and ARNEY, qualified the California Consumer Privacy Act of 2018 for the  
4 November 6, 2018 ballot. As part of a compromise with the Legislature, which enacted the California  
5 Consumer Privacy Act of 2018 (the “CCPA”) on June 26, 2018, MACTAGGART agreed to withdraw  
6 the measure from the ballot. The CCPA gives consumers the right to: learn what information  
7 businesses have collected about them and how they use it; stop businesses from selling their personal  
8 information; and hold businesses accountable if they fail to protect their personal information from  
9 security breaches.

10           10.       Since the CCPA became law, the Legislature has considered dozens of bills,  
11 some of which would water down the rights afforded by the compromise legislation. Concerned that  
12 hard-won consumer privacy rights could be weakened in the future and desiring to extend the gains  
13 that were made, MACTAGGART drafted the California Privacy Rights Act of 2020 and submitted it  
14 to the Attorney General for title and summary in 2019. If approved by the voters, the Initiative would  
15 strengthen existing consumer privacy rights and protect them from being undermined by future  
16 legislation.

17           11.       The COVID-19 pandemic has underscored both the value and utility of personal  
18 information, and the risk that the misuse of such information could pose to consumers. The Initiative  
19 addresses these concerns by expanding the right of consumers to limit the use of their sensitive  
20 personal information, including health data and precise geolocation, and by creating a new agency to  
21 implement and enforce the law. Critically, the Initiative would also restrict the Legislature’s authority  
22 to amend the law by requiring that any amendments further clearly delineated purposes. If the measure  
23 does not qualify in time for the November 3, 2020 ballot, California voters would be denied the right to  
24 consider the timely and important issues presented by the Initiative, and over the ensuing two years,  
25 the Legislature, under pressure from businesses, could dramatically weaken or even repeal the existing  
26 consumer privacy protections afforded by the CCPA.

27           12.       The California Constitution and the Elections Code provide the procedural  
28 requirements pursuant to which the voters may qualify an initiative measure for the ballot. Under

1 article II, section 8, of the California Constitution, the voters have the right to propose an initiative  
2 measure by presenting to the Secretary of State a petition that sets forth the text of the proposed statute  
3 and is certified to have been signed by electors equal in number to five percent of the votes for all  
4 candidates for Governor at the last gubernatorial election. Cal. Const. art. II, § 8(b). The Secretary of  
5 State must then submit the measure at the next general election held at least 131 days after it qualifies  
6 or at any special statewide election held prior to that general election. *Id.* § 8(c).

7 13. Additionally, the Legislature is vested with the authority to provide for the  
8 manner in which a petition shall be circulated, presented, certified, and the manner in which a measure  
9 shall be submitted to the voters. *Id.* § 8(b). The Legislature has enacted numerous provisions in the  
10 Elections Code related to the initiative process, including requirements for the submission and review  
11 of initiative petitions. *See* Article 3 of Chapter 1 of Division 9 of the Elections Code.

12 14. Pursuant to section 10(d) of article II of the California Constitution, on  
13 October 9, 2019, petitioner MACTAGGART began the process of qualifying the Initiative for the  
14 November 2020 ballot by submitting a request for preparation of a title and summary to the Office of  
15 the California Attorney General. Pursuant to Elections Code section 9002(b), MACTAGGART  
16 submitted amendments to the text of the Initiative to the Office of the Attorney General. On  
17 December 17, 2019, the Department of Justice transmitted a copy of the title and summary for the  
18 Initiative to MACTAGGART.

19 15. As described in the Attorney General’s title and summary, the Initiative  
20 “[p]ermits consumers to: (1) prevent businesses from sharing personal information; (2) correct  
21 inaccurate personal information; and (3) limit businesses’ use of ‘sensitive personal  
22 information’ - such as precise geolocation; race; ethnicity; religion; genetic data; union membership;  
23 private communications; and certain sexual orientation, health, and biometric information.” In  
24 addition, the Initiative “[t]riples maximum penalties for violations concerning consumers under  
25 age 16” and “[e]stablishes [the] California Privacy Protection Agency to enforce and implement  
26 consumer privacy laws, and impose administrative fines.”

27 16. Beginning on or about December 17, 2020, MACTAGGART and consumer  
28 privacy advocates, including CELINE MACTGGART and ARNEY, began collecting voters’



1 signatures to qualify the Initiative for the November ballot. From December 2019 until March 19,  
2 2020, they collected approximately 920,000 signatures.

3 17. While 920,000 signatures are more than sufficient to meet the requirement of  
4 623,212 valid signatures to qualify a statutory initiative for the ballot, California law requires that  
5 proponents obtain 110 percent of the required number of signatures, or 685,534 valid signatures, in  
6 order to qualify for the ballot using a random sample technique rather than a full count. Cal. Elec.  
7 Code §§ 9030, 9031. In order to meet that requirement, it is necessary to collect more than  
8 685,534 signatures because a certain percentage of signatures will be invalidated by county registrars  
9 for various reasons. For example, a county registrar might strike an individual's signature if the  
10 individual is registered to vote in a different county. Accordingly, MACTAGGART's goal was to  
11 collect between 950,000 and one million signatures.

12 18. In the absence of the COVID-19 crisis, MACTAGGART and his supporters  
13 could have easily collected enough signatures to qualify the measure by early April, having collected  
14 approximately 920,000 signatures before the shelter-in-place orders took effect, including  
15 approximately 80,000 signatures in the final full week before the shutdown occurred. However, once  
16 the COVID-19 pandemic and the resulting statewide shelter-in-place orders made it impossible to  
17 collect the remaining signatures from voters in public spaces, the ability to collect signatures was  
18 dramatically impeded. As a result, MACTAGGART was not able to collect a sufficient number of  
19 signatures to ensure the qualification of the measure by random sample until the end of April.

20 19. COVID-19 also delayed the processing of signatures for submission to the  
21 counties. Because MACTAGGART collected signatures in all 58 counties, the petitions first had to be  
22 segregated by county. Next, the petitions were reviewed to ensure that they were signed by registered  
23 voters and to eliminate duplicate signatures. This laborious and time-consuming process had to be  
24 completed by employees working at least six feet apart from one another. As a result of limited space,  
25 this meant that employees worked in different shifts, prolonging the time it took to process petitions  
26 for filing with the counties.

27 20. COVID-19 also made the task of county elections officials more complicated.  
28 As a result of the shelter-in-place orders and guidance issued by the Secretary of State, county

1 elections officials closed their offices to the public. This meant that the proponents of ballot measures,  
2 like MACTAGGART, had to schedule appointments with the counties to file petitions. Given the  
3 coordination involved in filing petitions in 58 different counties in the midst of a pandemic, these  
4 conditions also caused delays in the submission of petitions.

5           21. Notwithstanding the numerous obstacles, MACTAGGART and his supporters  
6 began to file petitions with the counties on April 30, 2020. Because the signature verification process  
7 involves three distinct steps, MACTAGGART deliberately submitted petitions to the counties in a  
8 manner that would ensure that, if he had submitted a sufficient number of signatures, the Secretary of  
9 State would certify the Initiative for the November ballot on June 25, 2020, the date the Constitution  
10 and Elections Code specify for the qualification of measures for the November 3, 2020 ballot, even if  
11 the counties took the full amount of time permitted by the Elections Code to verify signatures.  
12 Working backwards from this date and relying on the deadlines imposed on county elections officials  
13 by the Elections Code, MACTAGGART submitted petitions containing more than 623,212 signatures  
14 to various counties by May 1, 2020. Under Elections Code section 9030(b), the counties have eight  
15 working days to determine the total number of signatures on petitions and to transmit that number to  
16 the Secretary of State. Once the Secretary of State receives county reports showing that the measure  
17 has been signed by at least 100 percent of the number of voters required to qualify the measure (in this  
18 case, 623,212 voters), Elections Code section 9030(c) requires him to “*immediately* so notify the  
19 elections officials.” County elections officials then have 30 working days under Elections Code  
20 section 9030(d) to conduct a random sample of signatures and to report their results to the Secretary of  
21 State. MACTAGGART’s carefully designed calendar, which assumed that the counties would take the  
22 full amount of time permitted by the Elections Code for each step, looked like this:

- 23           • April 30, 2020: Begin filing petitions with county elections offices.
- 24           • May 1, 2020: Submit petitions containing a cumulative total of more than  
25           623,212 signatures to additional counties. Counties have eight working days, or  
26           until May 13, 2020, to count signatures and report to the Secretary of State. Cal.  
27           Elec. Code § 9030(b).
- 28           • May 13, 2020: Counties report more than 623,212 signatures to the Secretary of  
            State, who “immediately” notifies counties to begin random sample of

1 signatures. Cal. Elec. Code § 9030(c). Counties have 30 working days, or until  
2 June 25, 2020, to report their random sample results to the Secretary of State.  
3 Cal. Elec. Code § 9030(d).

- 4 • June 25, 2020: Counties report the result of their random sample to the  
5 Secretary of State, who certifies that the Initiative has qualified for the  
6 November 3, 2020 ballot, provided a sufficient number of signatures had been  
7 gathered. Cal. Elec. Code §§ 9030(g) and 9033(b)(2).

8 22. By May 13, 2020, county elections officials had reported a cumulative total of  
9 667,062 signatures, nearly 44,000 more signatures than the 623,212 signature threshold required to  
10 trigger a random sample under Elections Code section 9030(c), to the Secretary of State. At  
11 approximately 5:27 p.m. on May 13, Riverside County reported 56,346 signatures to the Secretary of  
12 State, putting the Initiative over the signature threshold necessary to trigger the Secretary of State's  
13 random sample notice.

14 23. Notwithstanding the fact that Elections Code section 9030(c) requires the  
15 Secretary of State to *immediately* notify the counties to begin to conduct a random sample of signatures  
16 upon receipt of raw count reports totaling at least 623,212 signatures, the Secretary of State did not  
17 issue the notice until on or after 4:02 p.m. on May 14, 2020, nearly 24 hours later, depriving the  
18 counties of a *full* business day during which they could have begun the random sampling process.

19 24. The Secretary of State asserts he did not issue the random sample notice on  
20 May 13, the date the counties reported signatures exceeding the threshold, because the office had  
21 closed for business 5:00 p.m., 27 minutes before Riverside County submitted its report. The day  
22 before (May 12), however, the Secretary of State issued a random sample notice for another measure at  
23 8:18 p.m. Indeed, the Secretary of State has issued random sample notices for other measures after  
24 5:00 p.m. on at least seven different occasions over the last two election cycles.

25 25. If the Secretary of State had sent the random sample notice on May 13th, as he  
26 was required to do by Elections Code section 9030(c), county elections officials would have been  
27 required to report their random sample results to the Secretary of State by June 25th, the deadline for  
28 qualification for the November ballot. Instead, because the Secretary of State did not send the notice  
until the following day, the counties have until June 26th to report their results. Therefore, if a

1 sufficient number of counties do not report their results until June 26th, the Initiative will not be  
2 eligible to appear on the November 3, 2020 ballot, thwarting the will of the more than 930,000 voters  
3 who signed petitions to qualify the measure for November 2020.

4           26.     The Secretary of State has a ministerial duty to immediately notify counties to  
5 begin to conduct a random sample upon receipt of county reports reflecting a raw count of signatures  
6 in the amount of 623,212 or more. The Secretary of State failed to carry out that duty in this case.

7           27.     Article IV, section 1, of the California Constitution vests the legislative power of  
8 the state in the Legislature, “but the people reserve[d] to themselves the powers of initiative and  
9 referendum” in order “to tear through the exasperating tangle of the traditional legislative procedure  
10 and strike directly toward the desired end.” Cal. Const. art. IV, § 1, and art. II, § 8; *Amador Valley*  
11 *Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 228-29 (1978), quoting Key  
12 & Crouch, “The Initiative and the Referendum in California” (1939) p. 435. The power of initiative is  
13 “one of the most precious rights of our democratic process,” and it is the “solemn duty [of the courts]  
14 to jealously guard the precious initiative power.” *Associated Home Builders of the Greater Eastbay,*  
15 *Inc. v. City of Livermore*, 18 Cal. 3d 582, 591 (1976) (citation omitted); *California Family Bioethics*  
16 *Council v. California Institute for Regenerative Medicine*, 147 Cal. App. 4th 1319, 1338 (2007)  
17 (citation omitted). “[I]t has long been our judicial policy to apply a liberal construction to this power  
18 wherever it is challenged in order that the right be not improperly annulled.” *DeVita v. County of*  
19 *Napa*, 9 Cal. 4th 763, 776 (1995) (quoting *Associated Home Builders, supra*, 18 Cal. 3d at 591).

20           28.     In this case, a mere 27 minutes could mean the difference between the  
21 Initiative’s qualification for the November 3, 2020 ballot, and a delay of two years, during which time  
22 the right of California consumers, like MACTAGGART, CELINE MACTAGGART, and ARNEY, to  
23 protect the privacy of their personal information could be dramatically eroded. Given the on-going  
24 collection and use of consumers’ personal information, including sensitive personal information such  
25 as health information and geolocation data, particularly during a pandemic, the risk of delay is real and  
26 would undermine the right of initiative, in contravention of the protection afforded by the California  
27 Constitution and the First and Fourteenth Amendments of the U.S. Constitution.

1           29. There is no harm to the Secretary of State in granting this writ petition. His  
2 office has repeatedly notified counties to begin the random sampling process after 5:00 p.m. in the  
3 past, even during this pandemic period when state offices are closed, and likely will continue to do so  
4 in the future. On information and belief, petitioners are aware of no other measure whose qualification  
5 is at risk due to circumstances similar to those attested here. Granting this petition will in no way  
6 delay or interfere with preparation of the ballot materials for the November 3, 2020 general statewide  
7 election.

8           30. Through his counsel, MACTAGGART brought this issue to the Secretary of  
9 State's attention, beginning on May 14, 2020, and requested that the Secretary of State correct its  
10 random sample notice, including through a formal written request made on May 29, 2020. On June 5,  
11 2020, the Secretary of State declined MACTAGGART's request.

**CAUSE OF ACTION**  
**(Writ of Mandate)**

14           31. Petitioners re-allege and incorporate herein by reference paragraphs 1 through  
15 30, inclusive.

16           32. Elections Code section 13314 provides that a writ shall issue upon proof (1) that  
17 any neglect of duty has occurred or is about to occur in violation of the Elections Code or the  
18 Constitution, and (2) issuance of the writ will not substantially interfere with the conduct of the  
19 election.

20           33. Code of Civil Procedure section 1085 authorizes issuance of a writ of mandate  
21 to compel the performance of a duty by government officials.

22           34. Based on the foregoing, Respondent had a ministerial duty to notify counties on  
23 May 13, 2020, that they had until June 25, 2020, to submit their random sample results to the Secretary  
24 of State, but Respondent failed to fulfill that duty.

25           35. This action is timely and will not interfere with the conduct of the November 3,  
26 2020 Statewide General Election or with the printing of the official ballot materials for the same.

27           36. Petitioners have no other plain, speedy or adequate remedy in the ordinary  
28 course of law. If the counties are not directed to submit their random sample results by June 25, 2020,

1 there is a significant risk that the Initiative will not qualify for the November 2020 ballot. Such an  
2 outcome would deprive millions of Californians, including Petitioners, of the opportunity to vote on  
3 whether to strengthen consumer privacy laws and prevent them from being undermined by future  
4 legislation.

5 **PRAYER**

6 WHEREFORE, Petitioners pray that this Court:

7 1. Issue a writ of mandate compelling Respondent to notify county elections  
8 officials that they must file their random sample results with the Secretary of State's office no later  
9 than 5:00 p.m. on June 25, 2020, so that the Secretary of State may certify the Initiative for the  
10 November 3, 2020 ballot, provided that the certificates filed by the counties total more than  
11 110 percent of the number of qualified voters needed to find the petition sufficient.

12 2. Award Petitioners attorneys' fees and costs incurred in connection with this  
13 matter; and

14 3. Grant such other and further relief as may be just and proper.

15 Dated: June 8, 2020

Respectfully submitted,

16 OLSON REMCHO, LLP

17  
18 By:   
19 James C. Harrison

20 Attorneys for Petitioners Alastair Mactaggart,  
21 Celine Mactaggart, and Richard Arney

**VERIFICATION**

I, Alastair Mactaggart, hereby declare as follows:

I am the proponent of the California Privacy Rights Act of 2020 and the petitioner in this action. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof. I certify that the facts contained therein are true of my own knowledge except as to those facts which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8<sup>TH</sup> day of June, 2020, at Piedmont, California.

  
\_\_\_\_\_  
ALASTAIR MACTAGGART

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States, over the age of 18, and not a party to the within  
4 cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

5 On June 8, 2020, I served a true copy of the following document(s):

6 **Verified Petition for Writ of Mandate**

7 on the following party(ies) in said action:

8 Natasha A. Sagar Sheth  
9 California Department of Justice  
10 455 Golden Gate Avenue, Suite 11000  
11 San Francisco, CA 94102-7020  
12 Phone: (415) 510-3818  
13 Email: Natasha.Sheth@doj.ca.gov

*Attorney for Respondent Secretary of State  
Alex Padilla*

- 12  **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
  - 13  depositing the sealed envelope with the United States Postal Service, with
  - 14  the postage fully prepaid.
  - 15  placing the envelope for collection and mailing, following our ordinary
  - 16  business practices. I am readily familiar with the business's practice for
  - 17  collecting and processing correspondence for mailing. On the same day
  - 18  that correspondence is placed for collection and mailing, it is deposited in
  - 19  the ordinary course of business with the United States Postal Service,
  - 20  located in Oakland, California, in a sealed envelope with postage fully
  - 21  prepaid.
- 19  **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- 22  **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.
- 23  **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.
- 24  **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.
- 25  **BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.



1 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on  
2 June 8, 2020, in Kings Beach, California.

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5 Nina Leathley  
Nina Leathley

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