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Exempt from Filing Fees –Gov. Code § 6103

6 Attorneys for Respondent, TONI TABER, CITY
7 CLERK FOR THE CITY OF SAN JOSE,
8 in her official capacity

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA, UNLIMITED JURISDICTION

10 SHANNON BUSHEY, REGISTRAR OF
11 VOTERS FOR THE COUNTY OF SANTA
12 CLARA, in her official capacity

Case Number: 20CV365450

13 Petitioner/Plaintiff,

14 **DECLARATION OF TONI TABER IN
15 SUPPORT OF CITY'S CLERK'S
16 RESPONSE TO AMENDED PETITION
17 TO WRIT OF MANDATE AND
18 COMPLAINT**

14 v.

15 TONI TABER, CITY CLERK FOR THE
16 CITY OF SAN JOSE, in her official capacity;
17 and SALVADOR BUSTAMANTE,
18 RICHARD KONDA, and CAROL GARVEY,
19 as Proponents of the San Jose Fair
20 Elections Initiative,

Date: May 8, 2020

Time: 10:00 a.m.

Dept.: 19

Judge: Hon. Peter Kirwan

20 Respondents/Defendants.

20 I, TONI TABER, declare:

21 1. I know the facts herein stated of my own personal knowledge and if called
22 upon to do so, I could competently testify to them under oath.

23 2. I am the City Clerk for the City of San José ("City"). I have held this position
24 since 2013. Before I was the City Clerk, I served as the interim City Clerk for the city of
25 San José from 2012 to 2013. From 2011 through 2012, I was the Assistant City Clerk of
26 the City of San José. From 2008 to 2010, I was the City Clerk of the City of Covina in Los
27 Angeles County.

1 3. As the City Clerk for the City of San José, I have a range of duties, which
2 include, but are not limited to serving as the City's election official, posting Brown Act
3 notices, recording City Council actions, serving as the compliance officer for state and
4 local conflict of interest laws, and managing Public Records Act requests.

5 4. On July 31, 2019, I received a notice of intent to file a petition (1) to amend
6 the City Charter to hold mayoral elections at the same time as the presidential elections
7 beginning in 2024 and to create a two-year term for the Mayor elected in 2022 and (2) to
8 amend the San José Municipal Code to prohibit certain "special interests" from making
9 campaign contributions to candidates for City office and fundraising at the behest of an
10 elected City official.

11 5. On February 12, 2020, the proponents of the initiative submitted petitions
12 with the signatures they had gathered to the City Clerk's Office. I received thirty boxes
13 from Dianna Zamora Marroquin. She advised me that that she did not know how many
14 signatures or petitions were contained in the boxes. Assistant City Clerk Joy Rodriguez
15 helped me move the sealed boxes to my office. I locked the door.

16 6. In order to place a charter amendment on the ballot, the number of
17 signatures gathered must be at least 15% of the total registered voters in San José. (Elec.
18 Code §9255(c)(1).) I contacted the Secretary of State's Office and was advised that as of
19 February 12, 2020, there were 460,161 registered voters. Based on that number, 69,024
20 valid signatures are needed for the measure to be placed on the ballot.

21 7. On February 13, 2020, I oversaw my staff as they conducted a rough count
22 (not an exact count) of the number of signatures on the petitions. The purpose of the
23 rough count is to see if the number of total signatures submitted exceeded the minimum
24 number of signatures needed to qualify the measure for the ballot. Based on this rough
25 count, I determined that it did.

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1 8. After the rough count was conducted, I observed the petitions being placed
2 back in the boxes. I sealed the boxes. Ms. Rodriguez helped me move the sealed boxes
3 to my office. I locked my office.

4 9. On February 14, 2020, I and my staff moved the sealed boxes to a van. Ms.
5 Rodriguez and I delivered the sealed boxes to the County's Registrar of Voters (ROV). I
6 asked the ROV to conduct a random verification of the signatures under Elections Code
7 §9115(a).

8 10. From the time I received the boxes of petitions to the time I oversaw their
9 delivery to the ROV on February 14, 2020, all the petitions were secure.

10 11. As the City Clerk, I typically ask the ROV to conduct this count, given that it
11 has a larger staff and has voter signatures on file. It is through a review of these
12 signatures on file at the ROV and other records that the ROV conducts its signature
13 verification process. I typically request a random sample when evaluating the sufficiency
14 of signatures for proposed initiatives. Random samples are much less costly than
15 verifications of all signatures gathered.

16 12. In late February to early March 2020, before the ROV had finished its review
17 of the random sampling, I received approximately three or four calls from Shannon
18 Bushey, the Santa Clara County Registrar of Voters. During the first of these calls, Ms.
19 Bushey advised me that the ROV was projecting that the number of valid signatures would
20 be approximately 93% and the ROV would be double-checking on them. She indicated
21 that verification of the sampling did not appear to be reaching the 95% threshold and
22 asked me if the City wanted a full count. I confirmed that the City only wanted a random
23 sampling.

24 13. In late February to early March 2020, I received another call from Ms.
25 Bushey. She advised me that she could request a full verification herself. I stated that I
26 did not authorize payment for a full verification, reiterated that the City request a random
27 sample, and indicated that I wanted to follow the regular process.

1 14. On March 5, 2020, Ms. Bushey again made the request, asking words to
2 the effect of: "Are you sure you do not want a full count? My boss is here." I reiterated
3 that the City only wanted a random sampling. She asked for another written request to
4 that effect and I sent her an email with a copy of the original paperwork that I had
5 submitted to her requesting the random sample verification.

6 15. I cannot recall any other instance in which Ms. Bushey called me regarding
7 the status of a count before the ROV had issued its certification. It was my impression that
8 Ms. Bushey was under pressure from her superiors to conduct a review of all of the
9 signatures.

10 16. On March 11, 2020, I received the attached documents from Julia Saenz of
11 the ROV. Attached as **Exhibit A** are true and correct copies of the documents she sent to
12 me. According to the ROV's certification, based on the ROV's review of a random sample
13 of 2,826 signatures, it verified 2,061 signatures were sufficient and 765 were insufficient
14 (which included 4 being insufficient as duplicates). Based on Elections Code §9115(b), the
15 ROV concluded that the estimated number of valid signatures was 64,390, which was
16 under 95% of the number of signatures of qualified voters needed to declare the petition
17 sufficient. It consequently certified that under Elections Code §9115(e), no further action
18 would be taken on the petition.

19 17. On March 11, 2020, I notified the City Council that no action would be
20 taken pursuant to the ROV's certification. Attached as **Exhibit B** is a true and correct copy
21 of the memo I wrote to City Council.

22 18. On or about April 2, 2020, Ms. Bushey called me again. She advised me
23 that the ROV had found 25 errors in its verification of the sample. She said that they only
24 needed 36 errors to overturn the ROV's March 11, 2020 certification.

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19. The ROV's certification on March 11, 2020, represents the only certification I have received regarding its count of the signatures on the petitions.

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

Executed on May 1, 2020, at San José, Santa Clara County, California.

/s/Toni Taber
TONI TABER

EXHIBIT A

EXHIBIT A

County of Santa Clara

Registrar of Voters

1555 Berger Drive, Bldg. 2
San Jose, CA 95112
Mailing Address: P.O. Box 611360, San Jose, CA 95161-360
1(408) 299-VOTE (8683) 1(866) 430-VOTE (8683) FAX: 1(408) 998-7314
www.sccvote.org



March 11, 2020

Ms. Toni Taber, City Clerk
City of San Jose
200 E Santa Clara Street, 14th Floor
San Jose, CA 95113

RE: "An Initiative Measure to: (1) Amend the City Charter to Hold Mayoral Elections at the Same Time as Presidential Elections Starting in 2024 and to Create A Two-Year Term for the Mayor Elected in 2022 to Accomplish This Transition from the Current Mayoral Election Cycle; and (2) Amend the San Jose Municipal Code to Prohibit Certain "Special Interests" as Defined by the Measure, from Making Campaign Contributions to Candidates for City Office and Fundraising at the Behest of an Elected City Official."

Dear City Clerk Taber:

The petition named above that was submitted to our office on February 14, 2020 contained a raw count of 94,202 signatures. Pursuant to your request, 15 percent of the number of registered voters for the City of San Jose per the February 19, 2019 Report of Registration on file with the Secretary of State's office, would be required to have 69,024 valid signatures to pass.

Your jurisdiction requested that the Registrar of Voters' Office conduct a random sample signature verification on the petition. The Registrar of Voters' Office verified the necessary number of signatures filed in accordance with California Elections Code Section 9115.

The signature verification process resulted in the verification of 2,826 signatures of which 2,061 signatures were found valid. In accordance with California Administrative Code Section 20530, the Registrar of Voters computed the percent of valid signatures by dividing the total number of signatures found valid, 2,061 by the total number of signatures found in the sample, 2,826. The Registrar of Voter's then multiplied the raw count of 94,202 by the same sample validity rate to determine the number of total valid signatures. A duplicate signature factor of 1,078 was subtracted for each duplicate.

Per California Elections Code Section 9115(b), the statistical sampling shows that the estimated number of valid signatures is 64,390, which is under 95% of the number of signatures of qualified voters needed to declare the petition sufficient (95% of the 69,024 valid signatures needed is 65,573). Therefore, pursuant to California Elections Code Section 9115(e), no further action will be taken on the petition.

Please contact us to make arrangements to pick up your petition from our office. If you have any questions concerning this matter, please feel free to contact me at (408) 282-3009.

Sincerely,


Julia Saenz
Voter Registration Division Manager
County of Santa Clara

Enc: Certificate of Results
Petition Result Breakdown

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Susan Ellenberg, S. Joseph Simitian
County Executive: Jeffrey V. Smith



CLERK'S CERTIFICATE TO INITIATIVE

I, SHANNON BUSHEY, Registrar of Voters of the County of Santa Clara, State of California, hereby certify:

That the initiative "**An Initiative Measure to: (1) Amend the City Charter to Hold Mayoral Elections at the Same Time as Presidential Elections Starting in 2024 and to Create A Two-Year Term for the Mayor Elected in 2022 to Accomplish This Transition from the Current Mayoral Election Cycle; and (2) Amend the San Jose Municipal Code to Prohibit Certain "Special Interests," as Defined by the Measure, from Making Campaign Contributions to Candidates for City Office and Fundraising at the Behest of an Elected City Official**" was submitted for signature verification on February 14, 2020.

That said petition consists of 14,651 sections;

That each section contains signatures purporting to be the signatures of qualified electors of the City of San Jose;

That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her knowledge and belief each signature to that section was the genuine signature of the person whose name it purports to be;

Pursuant to California Elections Code Section 9115(a), the Registrar of Voters conducted a random sampling technique to verify the signatures. A random sampling shall include an examination of at least 500, or 3% of the signatures, whichever is greater.

That after the proponent filed this petition, I verified the required number of signatures by examining the records of registration in this county, current and in effect at the respective purported dates of such signing to determine what number of qualified electors signed the petition, and from that examination I have determined the following facts regarding this petition:

1.	Number of unverified signatures filed by proponent	<u>94,202</u>
2.	Number of signatures verified	<u>2,826</u>
a.	Number of signatures found SUFFICIENT	<u>2,061</u>
b.	Number of signatures found NOT SUFFICIENT	<u>765</u>
1.	NOT SUFFICIENT because DUPLICATE	<u>4</u>

In accordance with California Administrative Code Section 20530, the Registrar of Voters computed the percent of valid signatures by dividing the total number of signatures found valid, 2,061 by the total number of signatures found in the sample, 2,826. The Registrar of Voters then multiplied the raw count of 94,202 by the same sample validity rate to determine the number of total valid signatures. A duplicate signature factor of 1,078 was subtracted for each duplicate.

Per California Elections Code Section 9115(b), the statistical sampling shows that the estimated number of valid signatures is 64,390, which is under 95% of the number of signatures of qualified voters needed to declare the petition sufficient, 95% of the 69,024 valid signatures needed is 65,573. Therefore, pursuant to California Elections Code Section 9115(e), no further action will be taken on the petition.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 11th day of March 2020.

Shannon Bushey
Registrar of Voters

By: _____
Deputy



Petition Result Breakdown

JobE04 City of San Jose -Initiative Measure to Amend the City Charter

JobE04 An Initiative Measure to: (1) Amend the City Charter to Hold Mayoral Elections at the Same Time as Presidential Elections Start

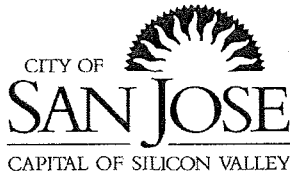
Signatures Required	69024		
Raw Count	94,202		
Sample Size	2,826	<i>Percent of Sigs</i>	<i>Percent of</i>
Sigs Checked	2,826	<i>Checked</i>	<i>Sample Size</i>
Sigs Not Checked	0		0.0 %
Sigs Valid	2,061	72.9 %	72.9 %
Sigs Invalid	765	27.1 %	27.1 %
Duplicated	4	0.1 %	0.1 %
Non-duplicate invalids	761	27.0 %	26.9 %

RESULT ABBR	RESULT DESCRIPTION		
Approved	Approved	2,061	72.9 %
NotReg	Not Registered	370	13.1 %
OutOfDist	Out of District	72	2.5 %
Duplicate	Signed more than once	4	0.1 %
RegLate	Registered Late	86	3.0 %
RegDiffAdd	Registered at a Different Address	199	7.0 %
NoResAdd	No Residence Address Given	7	0.2 %
NoSig	No Signature	2	0.1 %
SigNoMatch	Signatures Don't Match	22	0.8 %
CircInc	Circulator Declaration Incomplete	2	0.1 %
Inv	Invalid-See Doc	1	0.0 %

STATISTICS SUMMARY	Value	% Raw	% Req		
Pages Processed	14651	100.0 %			
Total Checked	2826	3.0 %	4.1 %		
Uncorrected Valid	68701	72.9 %	93.3 %	Min Required (95%):	65572.8
Duplicate Adjustment	4311			Min Required to pass	
Estimated Valid	64390	68.4 %	93.3 %	Based on Sample (110%):	75926.4

EXHIBIT B

EXHIBIT B



Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

**SUBJECT: ACTIONS RELATED TO THE
INITIATIVE RELATED TO
FAIR ELECTIONS**

FROM: TONI J. TABER, CMC

DATE: March 11, 2020

INFORMATION MEMO

On July 31, 2019, proponents of an initiative measure filed a Notice of Intent to Circulate a Petition with the City Clerk for the purpose of placing an initiative on the November 3, 2020 ballot. According to the title and summary of the proposed measure, prepared in accordance with Elections Code section 9203, the measure would:

- (1) Amend the City Charter to hold mayoral elections at the same time as presidential elections starting in 2024 and to create a two-year term for the mayor elected in 2022 to accomplish this transition from the current mayoral election cycle; and
- (2) Amend the San José Municipal Code to prohibit certain “special interests,” as defined by the measure, from making campaign contributions to candidates for city office and fundraising at the behest of an elected city official.

Elections Code section 9255(c)(1) requires that a petition to amend a city charter be signed by at least 15% of the total registered voters of the city. At the time the Notice of Intent was filed, the voter registration report on file with the California Secretary of State showed 460,161 eligible registered voters within the City of San José. Based on that registration, the initiative requires 69,024 valid signatures to qualify. Per Elections Code section 9208, the proponents of the initiative had 180 days from the receipt of the title and summary prepared by the City Attorney to gather the required signatures and file the petition with the City Clerk. The deadline for submission was February 12, 2020.

On February 12, 2020, at 4:59 p.m., the proponents of the initiative measure submitted the signatures in sealed boxes, which, because of the late hour, were moved by the Office of the City Clerk into a locked office on the 14th Floor of City Hall for safekeeping. On February 13, 2020, from 7:30 a.m. to 8:00 p.m., the Office of the City Clerk conducted a raw count and *prima facie* review of the signatures on the petition as required under Elections Code section 9210. The Office of the City Clerk determined that there appeared to be a sufficient number of signatures to accept the petition for filing and to deliver to the Santa Clara County Registrar of Voters (ROV)

HONORABLE MAYOR AND CITY COUNCIL

Subject: Actions Related to the Fair Elections Initiative

March 11, 2020

Page 2

for signature verification. City Clerk staff sealed all signatures in boxes, labeled each box and locked them in an office on the 14th Floor of City Hall for safekeeping.

On February 14, 2020, the petition was delivered to the ROV by the City Clerk and Assistant City Clerk. In accordance with Elections Code Section 9115, the City Clerk requested that the ROV conduct a random sample to verify the signatures. When a random sampling technique is used, the ROV must complete the examination of the sample of signatures within 30 days, excluding Saturdays, Sundays, and holidays of the filing of the petition. Under this process, the random sample should include at least 500 or 3% of the signatures, whichever is greater, and the random sample is to be drawn so that every signature filed has an equal opportunity to be included in the sample.

If the random sampling shows that the number of valid signatures is within 95% to 110% of the number of signatures needed, the ROV must examine and verify each signature filed, and has an additional 30 days from the date of the filing of the petition, excluding Saturdays, Sunday, and holidays, to do this full count. If the random sampling shows that the number of valid signatures is over 110% of the number of signatures needed, the petition is considered qualified without further verification. And, if the number of valid signatures is less than 95% of the number of signatures needed, the petition is considered insufficient and, per Elections Code section 9115(e), "no action shall be taken on the petition. However, the failure to secure sufficient signatures shall not preclude the filing later of an entirely new petition to the same effect."

On March 11, 2020, the ROV provided the Clerk's Certificate to Initiative (attached) which stated the "statistical sampling shows that the estimated number of valid signatures is 64,390 which is under the 95% of the number of signatures of qualified voters needed to declare the petition sufficient, 95% of the 69,024 valid signatures needs is 65,573. Therefore, pursuant to California Elections Code Section 9115(e), no further action will be taken on the petition."



CLERK'S CERTIFICATE TO INITIATIVE

I, SHANNON BUSHEY, Registrar of Voters of the County of Santa Clara, State of California, hereby certify:

That the initiative "An Initiative Measure to: (1) Amend the City Charter to Hold Mayoral Elections at the Same Time as Presidential Elections Starting in 2024 and to Create A Two-Year Term for the Mayor Elected in 2022 to Accomplish This Transition from the Current Mayoral Election Cycle; and (2) Amend the San Jose Municipal Code to Prohibit Certain "Special Interests," as Defined by the Measure, from Making Campaign Contributions to Candidates for City Office and Fundraising at the Behest of an Elected City Official" was submitted for signature verification on February 14, 2020.

That said petition consists of 14,651 sections;

That each section contains signatures purporting to be the signatures of qualified electors of the City of San Jose;

That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her knowledge and belief each signature to that section was the genuine signature of the person whose name it purports to be;

Pursuant to California Elections Code Section 9115(a), the Registrar of Voters conducted a random sampling technique to verify the signatures. A random sampling shall include an examination of at least 500, or 3% of the signatures, whichever is greater.

That after the proponent filed this petition, I verified the required number of signatures by examining the records of registration in this county, current and in effect at the respective purported dates of such signing to determine what number of qualified electors signed the petition, and from that examination I have determined the following facts regarding this petition:

1.	Number of unverified signatures filed by proponent	<u>94,202</u>
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1.	NOT SUFFICIENT because DUPLICATE	<u>4</u>

In accordance with California Administrative Code Section 20530, the Registrar of Voters computed the percent of valid signatures by dividing the total number of signatures found valid, 2,061 by the total number of signatures found in the sample, 2,826. The Registrar of Voters then multiplied the raw count of 94,202 by the same sample validity rate to determine the number of total valid signatures. A duplicate signature factor of 1,078 was subtracted for each duplicate.

Per California Elections Code Section 9115(b), the statistical sampling shows that the estimated number of valid signatures is 64,390, which is under 95% of the number of signatures of qualified voters needed to declare the petition sufficient, 95% of the 69,024 valid signatures needed is 65,573. Therefore, pursuant to California Elections Code Section 9115(e), no further action will be taken on the petition.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 11th day of March 2020.

Shannon Bushey
Registrar of Voters

By: _____
Deputy