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NEWPORT BEACH STEWARDSHIP
ASSOCIATION and MARSHALL DUFFIELD

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

CITY OF NEWPORT BEACH, AARON HARP, an individual, in his official capacity as City Attorney for the City of Newport Beach,

Plaintiffs,

v.

NEWPORT BEACH STEWARDSHIP ASSOCIATION, an unincorporated association; MARSHALL "DUFFY" DUFFIELD, an individual; and DOES 1 through 50, inclusive,

Defendants.

NEWPORT BEACH STEWARDSHIP ASSOCIATION and MARSHALL DUFFIELD,

Cross-Petitioners,

v.

LENA SHUMWAY, in her official capacity as Newport Beach City Clerk, and AARON C. HARP, in his official capacity as City Attorney,

Cross-Respondents.

CITY OF NEWPORT BEACH and NEWPORT BEACH CITY COUNCIL,

Real Parties in Interest.

Case No.: 30-2026-01559183-CU-JR-NJC

Assigned for all Purposes to:
Hon. Julianne Bancroft, Department: N14

NEWPORT BEACH STEWARDSHIP ASSOCIATION AND MARSHALL DUFFIELD REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDATE

Date: April 29, 2026
Time: 9:00 a.m.
Dept: N14
Judge: Hon. Julianne Bancroft

Case Filed: March 26, 2026

In support of the pending Petition for Writ of Mandate, Newport Beach Stewardship Association and Marshall Duffield (together, NBSA) respectfully submit this reply brief.

On April 13, 2026, the Court rejected the City's request that the Court address both the ministerial duty to issue a title and summary (the focus of NBSA's writ petition), and the City's purported challenge to the validity of the Sunshine Initiative itself (i.e., the claimed single-subject challenge in the City's separate complaint). The Court effectively bifurcated the issues, ordering that the Court would first address the narrow issue as to whether the City is required to prepare a title and summary. The title and summary issue is time-sensitive, and all counsel readily agreed to the same on the record during the April 13 status conference. In contrast, the single-subject issue can be addressed at a later date, if necessary (e.g., if the requisite signatures are gathered), in July or early August.

Against that background, NBSA limits its reply to the narrow issue before the Court: Should a writ of mandate issue directing the City to promptly deliver a title and summary for the Sunshine Initiative? The answer is yes. (Code Civ. Proc. ("CCP") §§ 1085-1086; *Schmitz v. Younger* (1978) 21 Cal.3d 90, 92-93 [mandate will lie to compel a title and summary].)

On the issue of timing, the City has already agreed that it would provide the title and summary within 24 hours of this Court's ruling or as soon as April 30. (Notice Re: Status Conference and Writ Hearing (filed April 17, 2026) at 2:19-22.)

REPLY

The City cannot hijack a local election by refusing to comply with a ministerial duty. And the City's opposition only confirms that it had no reasonable justification for withholding the title and summary. Indeed, by our count, the City devoted less than 5% of its briefing (which exceeds more than 150 pages, including declarations) on the title and summary issue. That is a tell if there ever was one.

The core legal and factual issues here are narrow.

On the law, the City does not dispute that the Elections Code creates a ministerial duty to prepare a title and summary. (Elec. Code § 9203, subd. (a); *Widders v. Furchtenicht* (2008) 167 Cal.App.4th 769, 777 [the duty to prepare a title and summary "is a ministerial one"].)

The key facts are also undisputed: (1) NBSA submitted a complete initiative package; (2) the City did not provide a title and summary by the March 30, 2026, deadline.[1]

Unable to overcome any of the above, the City boldly claims *Widders* excuses compliance with its ministerial duty. (City's Opposition to Petition for Writ of Mandate (filed April 22, 2026) [Oppn.] at 12:21-14:6.) The City is mistaken.

First, the circumstances of *Widders* bear no resemblance to those presented here. In *Widders*, the City of Ojai was asked to prepare a title and summary for purported "initiatives," which "direct[ed] the city council to exercise its 'informed judgment' to craft and adopt laws," but notably the claimed initiatives were not "proposing actual legislation." (167 Cal.App.4th at 772.) Of course, the object of the initiative power is to propose legislation. (*Id*. at 782 ["The statutory and constitutional right to petition contemplates the direct enactment of laws. . . . 'an initiative which seeks to do something other than enact a statute. . . is not within the initiative power'" (quoting *Am. Fed'n of Labor v. Eu* (1984) 36 Cal.3d 687, 714)].) In that unusual context, the appellate court in *Widders* understandably found Ojai did not have an obligation to propose a title and summary for non-legislation. And procedurally, *Widders* dealt with an order sustaining a demurrer on purported statute of limitation grounds. Neither of those issues are relevant here. The City concedes NBSA has submitted actual legislation, and the Court has already set a schedule to resolve the merits. In short, *Widders* offers no aid to the City.

Second, the City has no substantive response to the Supreme Court's decision in *Schmitz v. Younger* (1978) 21 Cal.3d 90, which is directly on point. For that reason, NBSA quotes the relevant passages of *Schmitz* in full:

> The Attorney General refused to issue the title on the ground that the proposed measure concerns more than one subject thereby violating article II, section 8, subdivision (d), of the California Constitution. The subdivision provides: "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

[1] "For obvious reasons, the obligation to perform a ministerial duty under the Elections Code remains '… even where performance is beyond the statutory time frame….'" (*Widders*, 167 Cal.App.4th 769, 779 [quoting *MHC Financing Ltd. Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, 1383-84].)

> The right of the initiative is "precious to the people and is one which the courts are zealous to preserve to the fullest tenable measure of spirit as well as letter." (*McFadden v. Jordan* (1948) 32 Cal.2d 330, 332 [196 P.2d 787].) "To preserve the full spirit of the initiative the submission of issues to the voters should not become bogged down by lengthy litigation in the courts." (*Perry* v. *Jordan* (1949) 34 Cal.2d 87, 91 [207 P.2d 47].)
>
> In furtherance of the people's power we have narrowly circumscribed the rights of ministerial officials to impede or delay the initiative process. Speaking of an acting registrar in *Farley v. Healey*, 67 Cal.2d 325, 327 [62 Cal.Rptr. 26, 431 P.2d 650], this court stated: "It is not his function to determine whether a proposed initiative will be valid if enacted or whether a proposed declaration of policy is one to which the initiative may apply. *These questions may involve difficult legal issues that only a court can determine. The right to propose initiative measures cannot properly be impeded by a decision of a ministerial office, even if supported by the advice of the city attorney, that the subject is not appropriate for submission to the voters*." (Italics added.)
>
> The duty of the Attorney General to prepare title and summary for a proposed initiative measure is a ministerial one and mandate will lie to compel him to act when the proposal is in proper form and complies with statutory and constitutional procedural requirements. (*Warner v. Kenny* (1946) 27 Cal.2d 627, 630-631 [165 P.2d 889].)
>
> The single subject requirement of article II, section 8, subdivision (d), involves difficult legal questions that only a court may resolve. (Cf. *Perry v. Jordan*, 34 Cal.2d 87, 92-93 [207 P.2d 47].) We are satisfied that a claim of violation of subdivision (d) is not merely a formal one, but is based on the effects of the contents of the proposed measure. Absent judicial authorization, the Attorney General may not urge violation of the single subject requirement to justify refusal to title and prepare summary of a proposed measure.
>
> This does not mean that the Attorney General may not challenge the validity of the proposed measure by timely and appropriate legal action. We hold only that without prior judicial authorization he may not delay or impede the initiative process while claims of the measure's invalidity are determined. (1b) Petitioner is entitled to have his proposal titled and summarized so that he may commence seeking signatures to qualify it for the ballot.

(*Id.* at 92-93 [emphasis and alterations in original].) *Schmitz* is fatal to the City's position. The Supreme Court is clear: a public officer may not "delay or impede the initiative process" by withholding a title and summary due to alleged violations of the single subject rule, and mandamus will lie to compel preparation of a title and summary in such situations. (*Schmitz*, 21 Cal.3d at 92.) What the City seeks to do is "bog down" NBSA in litigation, before circulation even has a chance

to begin. The initiative right is "precious" and the Court can easily reject the City's extreme position.

Third, the City suggests that "pre-circulation, pre-election" review in single-subject disputes is commonplace. (See Oppn. at 16:26-27.) Not so. The general rule is that legal challenges to proposed initiatives should be resolved *after* an election. (See *Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4.) Indeed, in *Schmitz*, the Supreme Court expressly allowed circulation of a petition, despite a single-subject challenge. As NBSA observed when the City last tried to make this argument, the *only* "pre-circulation" cases the City can point to—*Widders* and *Jahr v. Casebeer* (1990) 70 Cal.App.4th 1250—are both easily distinguishable. (See NBSA Opposition to Ex Parte Application at 10-11.) Indeed, the City failed to cite any single-subject challenges that were resolved at the pre-circulation stage. This is sensible since, unlike situations where an initiative contains no valid ordinance (as in *Widders*) or is plainly contrary to on-point authority (as in *Jahr*), a single subject challenge can involve "difficult legal questions" whose resolution could improperly delay or impede the constitutional right to initiative. (*Schmitz*, 21 Cal.3d at 92.) The City's extreme position not only ignores the general preference for *post-election* constitutional challenges, but it seeks to accelerate review to the *pre-circulation* stage, preventing the initiative from even getting out of the gate. The Court should firmly reject the City's attempt to frustrate the initiative process, especially since the Court has already agreed to resolve its single subject concerns well before any election could occur.

Finally, the City's stated concerns of "voter confusion" are a pretext. There is nothing confusing about transparency. And the voters in San Francisco had no difficulty understanding the law, and voting in favor of it. Further, the point of a title and summary is to simply the proposed law for lay voters. And the City has conceded it can do so in less than a day. (Notice Re: Status Conference and Writ Hearing [filed April 17, 2026] at 2:19-22.)

While the current City government may prefer less transparency, ultimately this issue is properly left to the voters.

CONCLUSION

Time is of the essence,[2] and NBSA asks that it be allowed to circulate the Sunshine Initiative for signature gathering. If ripe for resolution, the City can have its claimed legal challenges at a later date, but those are matters for another day. For that reason, NBSA declines to respond in full to the City's efforts to undo this Court's phasing of these proceedings.

A proposed writ has been submitted for Court's consideration.

Respectfully submitted,

DATED: April 27, 2026

PAUL HASTINGS LLP

By: _____
NAVI SINGH DHILLON

Attorneys for Cross-Petitioners
NEWPORT BEACH STEWARDSHIP ASSOCIATION and
MARSHALL DUFFIELD

[2] In its opposition to the City's ex parte application, NBSA briefly summarized the complex process for qualifying an initiative for a local election. (NBSA's Opposition to Ex Parte Application [filed April 8, 2026] at 6:2-7:15.) NBSA does not repeat that discussion here to avoid unnecessary duplication, but notes that under no circumstances can the Sunshine Initiative be presented to voters before November 2026.