11/14/23

No. 23-527

In the

Supreme Court of the United States

Raji Rab,

Petitioner,

v.

Shirley N. Weber, as Secretary of State, etc., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

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Petitioner, in Pro Per

QUESTIONS PRESENTED

Courts should construe laws in harmony with the legislative intent and seek to carry our legislative purpose. [*Foster v. United States,* 303 U.S. 118, 120 (1938)]

Election Code § 15101(b) is perfectly worded by the legislature to protect against any manipulation. Election Code § 15101(b) has a prohibition term stating, "under no circumstances may a vote count be accessed or released before 8 pm on the day of the election". The statute defines processing, and it does not state processing to include scanning. Processing and machine reading are two different functions. Respondents define machine reading to include scanning. Scan counting function was not available when this safe statute was constructed. The legislature crafted the law and design safe construction of the words "under no circumstances" which is even more protective today and serves in best public interest. The lower court's opinion thus raises an imperative question of law that has not been,

but should be, settled by this Court. For this reason, courts have a solemn duty to "preserv[e] the integrity of the election process." (*Fair v. Hernandez* (1981) 116 Cal.App.3d 868,881.)

The questions presented are:

1. Whether the lower courts failed to address the important question of law to prevent the violation of constitutional rights and the greatest miscarriage of justice.
2. Whether the lower courts erred in its analysis of the law or in its application, and interpretation of the law.
3. Whether the lower courts can explicitly rewrite and inject matters into the statute which are not in the legislature's language.
4. Whether the Appeal Court failed to address the question of severe bias, prejudice, and the violation of constitutional rights, raised in the appeal to prevent the greatest miscarriage of justice.

PARTIES TO THE PROCEEDINGS

Petitioner is Raji Rab,

Respondents are Shirley N. Weber, as Secretary of State, Dean C. Logan, County Registrar-Recorder/County Clerk, County of Los Angeles: Supervisor Hilda L. Solia, Supervisor Holly Mitchell (formerly Supervisor Mark Ridley-Thomas), Supervisor Sheila Kuehl, Supervisor Janice Kahn, and Supervisor Kathryn Barger.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases: ***Page Number***

Other Authorities:

California Elections Code ***Page Number***

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Raji Rab respectfully petitions for a writ of certiorari to review the judgment and opinion of the Third Appellate District Court of Appeal for the State of California entered and filed in the above proceedings on May 26, 2023.

OPINIONS BELOW

The opinion of the Third Appellate District Court of Appeal for the State of California appears at Appendix 2a to the petition.

JURISDICTION

The opinion of the California Court of Appeal was filed on May 26, 2023. The California Supreme Court

denied Petitioner's timely Petition for Review of the Court of Appeal's judgment on August 16, 2023.

A copy of the order appears in Appendix 1a. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254(1), 1254(2), and 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, 14th Amendment, Section 1
(See App. 1b for full text)

California Constitution, Art. VI, Section 13
(See App. 2b for full text)

California Elections Code §15101 (b)
(See App. 3b for full text)

California Elections Code §16100
(See App. 4b for full text)

INTRODUCTION

Petitioner duly filed this petition for constitutional rights, laws, and justice, under the U.S. Supreme Court Rule 10 Section (c). Petitioner has exhausted all prescribed avenues all the way to State Supreme Court and has no other plain, speedy, and adequate remedy in the ordinary course of law. Petitioner respectfully submits this petition of national significance to this honorable Court seeking relief following the contested decision and judgment of Supreme Court of California. The State has failed to provide equal protection and application of laws for Federal candidates *(Bush v. Gore 531 U.S. 98).* Petitioner filed this Petition of Certiorari in U.S. Supreme Court as soon as Petitioner became aware of the California Supreme Court's judgment and concurrently prepared to have petition filed and heard as expediently as possible. Petitioner meets all the federal election factors for this court, to review the underlying fundamental rights of national importance for protected class of Federal Candidates.

This case presents an important Question of Law, including the proper interpretation and enforcement of Election Code § 15101 (b) that places the sanctity of our future elections in danger. This Court may need to review such interpretations to determine if the trial court changed the statute and appeal court incorrectly agreed.

The court of appeal's Opinion upholding the lower courts' judgment to permit the scan counting of ballots 10 days prior to 8pm Election Day broadens the scope, changes, and departs significantly from the statute's legislative intent, with adverse repercussions in preserving the sanctity of our elections.

Petitioner is a federal candidate in 2024 federal election for the United States Senate and finds the changing of statute change to dangerously change the law." A court may not insert qualifying provisions into a statute not intended by the Legislature and may not rewrite a statute to conform to an assumed legislative intent not apparent." *Bruce v. Gregory*, 65 Cal.2d 666, 680 (Cal. 1967).

Petitioner duly and properly filed election contest under Election Code § 16100 (a) and (g). Petitioner presented proof with scientific evidence that Respondents violated California Election Code § 15101(b), accessed vote count (CVRs) using Smartmatic Tally (VSAP) 10 days before 8 pm on Election Day. This accessing and tampering CVRs is malconduct under Election Code §16100(a) that changed the summation of vote count under Election Code §16100 (g), causing results to be illegal. Petitioner has come injured to this supreme venue of justice and will suffer irreparable harm if the disastrous and erroneous lower court ruling adversely our national significance is not reversed. The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. (*Marbury v. Madison*, 5 U.S. 137 (1803)). Federal actions can eliminate discriminatory practices that treat federal and state candidates differently *(Williams v. Rhodes, 393 U.S. 23; U.S. Term Limits v. Thortan, 514 U.S. 779/115 S. Ct. 1842;*

Kramer v. Union Free School 514 US 77).

Petitioner seeks an urgent grant to the petition and any other relief as deemed fit and proper by the Honorable Supreme Court in the interest of justice. Through Supremacy Clause and the 14th Amendment, Supreme Court has the jurisdiction to nullify arbitrary state laws, codes and procedures *(Frontiero v. Richardson 411 U.S. 677) (1973).*"It is a general and indisputable rule that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded." (*Marbury v. Madison*, 5 U.S. 137 (1803)).

STATEMENT OF THE CASE

A. FACTUAL & PROCEDURAL BACKGROUND

This case arises from an election contest on March 3, 2020. Petitioner contested March 3, 2020, primary election results as illegal and duly filed election contest on April 8, 2020, through Writ of Mandate under Election Codes

§§16100 (a), and (g) for injunctive relief. Petitioner alleges that Respondents violated Election Code§15101(b) illegally scancounted Vote-By-Mail ballots and accessed vote count ten days before 8 pm on election day using Smartmatic Tally system. Petitioner alleges this act of tampering, accessing vote count before 8pm election day is in violation of Election Code § 15101(b), invokes malconduct under Election Code § 16100(a)invoking Election Code §16100(g).

On June 05, 2020, Petitioner filed verified Amended Petition with Verification, Declaration, supporting Exhibits A through Z3.

Petitioner propounded Discovery, upon County Respondent. Respondents obstructed evidence, made misrepresentations. On July 7, 2020, Petitioner propounded First Set of Request for Inspection of Premises and Things and requested inspection of Tally system on August 13, 2020. Inspection request was denied by trial court.

On July 9, 2020, Respondents filed demurrer to Petitioner's Writ heard on August 28, 2020, with ruling

issued against the Petitioner. On July 20, 2020, Petitioner filed his Motion to Compel County demanding an inspection Petitioner discovered evidence in Smartmatic Tally System operation manual that upon scanning ballots, while original paper ballots are taken away, ballot images are decoded into cast vote record and ballot images are instantly scan counted, as shown in the Exhibits. This scan counting ballots before 8 pm on the day of election constitute violation of Election Code § 15101(b), invokes malconduct under Election Code §§ 16100(a) and (g)

On August 07, 2020, County Respondent filed ex parte application for temporary stay of discovery, heard on August 17, 2020. Trial court partially granted Petitioner's motion to compel for production of documents, Petitioner's discovery demand. Court ordered County to produce privilege logs, but Respondents never complied.

Record shows Trial court denied County respondent's motion for discovery stay, finding no basis for ex parte relief. Respondent did not file a protective order.

In the hearing on August 28, 2020, Petitioner argued with references. Petitioner begged the court for justice and requested (1) either order a physical inspection to inspect Tally system logs to prove malconduct within 3 days or (2) order a manual recount of votes, to show evidence of malconduct, in the interest of justice. Trial court denied both request, did not order Inspection nor a manual recount.

On September 23, 2020, Petitioner filed his verified second amended writ. Petitioner alleged that County Respondent misrepresented that Smartmatic Tally System vote count system was only a scanner and does not perform scan and count function. However, Tally System operation manual, Petitioner proved that it performs both scan and count function in view of this evidence, Respondents admitted that upon scanning ballots, voter selection is instantly decoded, votes scan counted as cast vote record and instantly accessed by Tally System. Respondent admitted that Tally system accessed vote count, but the

Respondents did not access it (Decl. Logan,¶ 12, Opps to Writ). This is admission that scanned vote count accessed by Tally system 10 days before Election Day, violating Election Code§ 15101(b). Petitioner filed an ex parte application for order shortening time for the hearing on the merits of his petition but denied.

On November 6, 2020, Petitioner filed an Ex Parte Application for Order Shortening Time for Hearing on Demurrer but denied on November 13, 2020.

On November 6, 2020, Petitioner filed his Opposition to County Respondents Demurrer to First Cause of Action as legally flawed and baseless.

On November 20, 2020, Petitioner filed Notice of Hearing on the Merits of his Petition for SAW.

Although on August 17, 2020, Respondents were denied motion for discovery stay proceedings. On December 11, 2020, the County filed untimely, late motion for a protective order against discovery request, Petitioner filed motion to compel.

On December 17, 2020, Petitioner filed Opposition to Respondent's Protective Order, stating that motion for protective order was late, untimely, and meritless.

Respondents did not file for protective order months ago when Petitioner first requested inspection in his July 7 demand, and not even on August 7, 2020, when Respondents filed Ex parte for stay of discovery which was denied.

The timing limitations and a basic rule for filing a protective order under Section 2016.040 were also violated.

Under the Code of Civil Procedure sections 2017.020, 2019.030, 2030.090, 2031.060, 2033.080, motion for protective order was untimely. This request should have been made after the discovery was first served and before the responses were due. To file this motion 6 months later is not moving promptly and is not in compliance with the statutory scheme, especially when discovery is considered to be both material and relevant.

Record will show that in the hearing on January 6,

2021. Petitioner contested tentative ruling on the following grounds: (1) County Respondent motion seeking a protective order was untimely. (2) Motion for protective order failed to meet California Code of Civil Procedure § 2031.060 (a) and California Code of Civil Procedure § 2016.040 by not submitting a meet and confer declaration for Respondents Motion for Protective Order. Petitioner argued that timeliness and meet and confer requirement of protective order were not met. Petitioner was prejudiced when the court ignored legal requirements, unfairly granted Respondents motion for protective order.

Record shows that Petitioner was prejudiced, that court ignored the clear rule of law.

Petitioner was prejudiced when Trial Court ruled petitioners July 7 inspection demand an old demand, denied Petitioner's motion to compel inspection, but at the same time unfairly ruled the same July 7 demand a new demand, ignored Respondents late, untimely, meritless motion and unfairly granted Respondents motion for a Protective Order

in violation of *Code of Civil Procedure* § 2031.060, 2016.040, 2031.060(a) required for filing a protective order.

Petitioner was prejudiced because despite Petitioner's compelling legal grounds, on January 8, 2021, that on one hand Trial Court itself stated, "If the motion for a protective order related to the July 7, 2020, demand, the Court would agree it was not promptly filed" but trial court did the exact opposite and treated July 7, 2020, demand for inspection as promptly filed, unfairly granted Respondents motion for protective order.

Trial court also told Petitioner that Respondents do not have to communicate, (meet and confer) with Petitioner about Protective Order, rejected Civil Discovery Act, (Code Civ. Proc. § 2031.060, subd. (a).) Section 2016.040. Trial court stated that Court need not consider arguments that are not raised in the papers and that are raised for the first time at the hearing. (*Neighbors v. Buzz Oates Enterprises* (1990) 217 Cal. App. 3d 325, 335, fn. 8; see also *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.)

Record shows that Petitioner also strongly argued the unfair sanctions that Petitioner is fighting for good cause and put in substantive efforts. Petitioner argued that he acted under Civil Discovery Act (*Code of Civil. Procedure* § 2031.310, subd. (h), emphasis added. The sanctions are also unjust and should be overturned in the interest of justice because (1) Petitioner acted with substantial justification when filing his motion, or (2) that other circumstances make the imposition of the sanction unjust. Substantial justification means "a justification [that] is clearly reasonable because it is well grounded in both law and fact." (*Doe V. United States Swimming, Inc.*(2011) 200 Cal.App.4"' 1424, 1434.). Petitioner met the burden of proof that he acted with substantial justification or that other circumstances make the imposition of sanctions unjust. Trial court erred stating that Petitioner never mentioned sanctions at the hearing,

Record will show that in the hearing on merits on January 22, 2021, Petitioner made undisputed arguments to

each, and every opposition filed by Respondents with clear and convincing evidence supported by verified declarations, case laws, elections codes, and admissions, but Petitioner's arguments in the hearing remained uncontested by Respondents. Petitioner argued with references. Court asked Respondents to reply but no proper reply was made by Respondents.

Record shows that Petitioner argued that the case law used by Respondents, *C.R., v. Tenet Healthcare Corporation* (2009) 169 Cal. App. 4th 1094. Petitioner alleged that Respondents violated *Election Code* §15101(b) committed malconduct under *Election Code* § 16100(a). Petitioner pointed to the language in the *Election Code* §15101(b) which in its prohibiting part states "under no circumstances may a vote count be accessed or released until 8:00 p.m. on the day of the election. Also, Court order dated September 3, 2020, stated that neither Petitioner nor this Court may add words to Section 16100 that the legislature has not seen fit to include. Petitioner stated that according to case law cited

by Respondents, In *re Cryer* states that erroneous conduct is malconduct. County employee Aman Bhullar's declaration admits that scanner and tally system work in conjunction with each other. This confirms Petitioners stand that Tally system is two in one scan count system and therefore Petitioner pleaded that in this case, therefore, the court-ordered manual recount was justified, necessary to prove the specificity of malicious access in summation of vote count under EC §16100(g).

Petitioner also argued that part of the tentative ruling, page 15, para 1, line 3, is unclear. The fact that a computer system may have access to CVRs which reflect the voter's selection prior to the eve of the election does not violate EC Section §15101(b). Petitioner contested, but trial court refused to answer. Petitioner informed court that he will be filing an appeal.

Record shows that after the final hearing on January 22, 2021, the Trial Court made an Order in favor of Respondents on January 26, 2021.

B. TRIAL COURT JUDGMENT

Trial court unjustly denied Petitioner's Second Amended Petition for Writ of Mandate on February 16, 2021 and entered the flawed judgment in favor of Respondents. Trial court judgment misinterpreted, Election Code §15101(b), added words to the statute and dangerously changed it for future elections.

C. PETITION FILED TO COURT OF APPEAL, THIRD APPELLATE DISTRICT

On April 08, 2021, Petitioner Raji Rab filed his petition to the Court of Appeal, Third Appellate District seeking relief contesting the trial court judgment. The core issue on this appeal is question of law and whether trial court erred in its analysis of the law or in its application, interpretation of the law to the facts.

Petitioner pleaded that Trial court misinterpreted, Election Code §15101(b), added words to the statute and dangerously changed it for future elections. Petitioner pleaded that he was severely prejudiced, and that Trial

court's error is a colossal mistake about the interpretation of the law or court procedures that caused substantial harm to the petitioner and to Justice.

Petitioner has come injured and aggrieved, pleads to protect the Petitioner's constitutional rights, national significance, public interest, and the sanctity of future elections to prevent the greatest miscarriage of justice.

Petitioner submitted his Opening Brief to Court of Appeal on December 27, 2021, but this case was in court for months, due to lengthy extensions given to Respondents. Petitioner suffered harm due to delay.

Despite Petitioner's objections, Appeal Court provided both Respondents with more than sufficient time to file their brief. On March 03, 2022, Respondent Secretary of State was granted additional 60-day extension, to file their respondent's brief, and Appellant suffered. But despite repeated extensions Respondent Secretary of State filed their Respondent's Brief late on May 26, 2022, which was due on May 23, 2022; (*Dkt Entry 22).*

Petitioner's repeated request for speedy justice were denied, while harm to Petitioner's constitutional rights, interest of national significance, public interest and rule of law continues to accrue, and Court's ability to provide meaningful relief is significantly lessened.

D. ORAL ARGUMENT

1) In the hearing, the Petitioner argued the main issue being the Question of Law, made undisputed arguments supported by case laws and references on record. Petitioner's arguments remained uncontested by Respondents.[1]

Petitioner argued and pleaded to court of appeal on the question of law to prevent the greatest miscarriage of justice and to look at the entire cause under California Constitution Article 6, Section 13 and that the resolution of this appeal is purely a question of law, interpretation of law, constitution, public interest, and issues of national significance. Subject to this court's de novo review.

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[1] Referencing the Audio file transcript of Oral Argument, Rab v. Weber (C093196) (02:20 – 02:47) Retrieved from https://emft.tc1.courts.ca.gov/download_public.html

Petitioner argued that the issue on this appeal is whether the trial courts made a mistake in its analysis of law or on its application, interpretation of the law, added words to the statute, and further, dangerously, change it for future elections.

Petitioner stated facing severe prejudice throughout the trial court proceeding and Respondents remained clueless did not argue or contest on the question of law but relied on trial courts mistaken conclusion and void judgment.

Petitioner argued that Trial court's judgment is erroneously based on its own interpretation, especially where, as here, it involves matter of highly sensitive interpretation of law. Petitioner referred to opening brief, pp. 34, 35 of case law, about trial court ruling "to leave no room for confusion in the future, the court reiterates Election Code 15101B allow the county to start scanning ballots on the 10th business day before the election." Here the trial court erroneously changed the statute.

Petitioner also argued that Respondent Secretary of

State was late, did not file brief by its due date of May 23, 2022, invoking California rules of court 8.220 (d). Petitioner argued that Respondents failure to timely file response brief after being granted repeated extensions negate any claim they may have made in their brief.[2]

Petitioner stated that trial court's ruling on August 17, 2020, 5CT1345, pg. 4, para 1 and 2 state "the ballot scanners in the county's VSAP tally system that is IBM scanners do not tabulate ballots and therefore this request misstates the fact. Moreover, there is no tabulation machine." This statement by the Respondents was proven false by evidence provided by County Tally system manual.

Respondents misrepresented that there is no vote count machine, there is no tabulation machine, only a scanner, whereas the evidence in the Smartmatic Scan Tally system manual proved that it is a two in one scan tally system.

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[2]Referencing the Audio file transcript of Oral Argument, Rab v. Weber (C093196) (02:47 – 03:10), (03:33 – 04:18), (04:19-04:54), (05:12-05:09). Retrieved from https://emft.tc1.courts.ca.gov/download_public.html

In the order dated September 3, 5CT1366, fn.7, p. 13 para 1 and 2, trial court made a disastrous statement that even if the county's machines do tabulate ballots as soon as they are scanned, the court is not convinced this would violate section 15101B as long as the results were not accessed. But the fact is that Scan Tally system tabulates ballots after accessing ballots and thus ballot access is confirmed as well as the violation of 15101(b).

The ballot access under section 15101(b) is prohibited until 8pm on the day of election and in part states "but under no circumstances may a vote be accessed or released until 8 p.m. on the day of the election.[3]"

In the construction of the Election Code §15101 (b) the intent protects voters with the prohibition using the words, **"under no circumstances"**. Under no circumstances signifies by no means whatsoever, not by hand, not by computer, not by any means whatsoever.

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[3]Referencing the Audio file transcript of Oral Argument, Rab v. Weber (C093196) (05:31- 05:50), (05:51-07:05), (07:36-08:23), (08:23-08:53) Retrieved fromhttps://emft.tc1.courts.ca.gov/download_public.html

Because as soon as the ballots are scanned using scan tally system, they're are instantly decoded, and scan counted.[4]

2) County Respondents' counsel, Mr. Pohle, failed to address the main issue of "Question of Law" and failed to answer the significant question raised by Hon. Justice Hull.[5]

Justice Hull asked Mr. Pohle "As I understand that the trial court was of the opinion, that machine reading them included scanning them. And I take it that's the Respondent's position on the statute.". Mr. Pohle replied that "It is your honor. We agree with Judge Earl's interpretation. Machine reading would include scanning." On that statement Justice Hull asked Mr. Pohle "My question then is why didn't the legislature say so?". Mr. Pohle replied "We looked into the legislative history. I could not "decipher" why exactly the phrase theology machine reading was used my take based on the_research in the_case

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[4]Referencing the Audio file transcript of Oral Argument, Rab v. Weber (C093196) (09:33- 10:03), (10:29-10:42), (10:42-11:26), (11:27-12:13) Retrieved fromhttps://emft.tc1.courts.ca.gov/download_public.html

[5] Referencing the Audio file transcript of Oral Argument, Rab v. Weber (C093196) (15:45-16:59) Retrieved fromhttps://emft.tc1.courts.ca.gov/download_public.html

law is that the legislature intended that that were going to be broad enough to include any type of machine interpreting reading the language on a ballot. So that's my understanding."

Record shows that Respondents failed to address question raised by Justice Hull and Petitioner's main question of law throughout the appeal and during the oral arguments.

Respondents also failed to address the question raised by the Honorable Justice. County Respondent's response made a vague interpretation and does not constitute a warranty. County Respondent's response was false, arbitrary, contrary to reason, and merely according to his own whim.

Statutory interpretation involves a three-step analysis. "First, a court should examine the actual language of the statute. [Citations.] Judges, lawyers, and laypeople all have far readier access to the actual laws enacted by the Legislature than the various and sometimes

fragmentary documents shedding light on legislative intent.

More significantly, it is the language of the statute itself that has successfully braved the legislative gauntlet. It is that language which has been lobbied for, lobbied against, studied, proposed, drafted, restudied, redrafted, voted on in committee, amended, reamended, analyzed, reanalyzed, voted on by two houses of the Legislature, sent to a conference committee, and, after perhaps more lobbying, debate and analysis, finally signed 'into law' by the Governor. The same care and scrutiny does not befall the committee reports, caucus analyses, authors' statements, legislative counsel digests and other documents which make up a statute's 'legislative history."(*Jurcoane v. Superior Court*. Nov. 7, 2001. 93 Cal. App. 4th 886).

3) Respondent Secretary of State's Counsel, failed to answer the Main "Question of Law" on the Appeal and question raised by Honorable Justice Robie and Justice Hull.[6]

Justice Robie asked Mr. Woods " I think the question

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[6]Referencing the Audio file transcript of Oral Argument, Rab v. Weber (C093196) (8:37-23:56) Retrieved fromhttps://emft.tc1.courts.ca.gov/download_public.html

before us is, do you understand the process, the way I described it as a scanned ballot can then be read mechanically, electronically, but a paper ballot can't be. Is that why they scan them first?"

Justice Hull also asked Mr. Woods " Is it the respondent's position that this scanning nearly prepared the system to access and release a vote count, but that no vote count was, no vote count itself was released prior to that 8PM to which Mr. Woods replied that there's no evidence whatsoever that any vote count was either accessed or released prior to 8PM.

Here again the issue was diverted away from main question of law. The Respondents avoided the question of law and argued having counted ballots after 8 pm election night. Whereas the scan tally system counts ballots instantly upon being scan tallied. Respondents claim that they didn't personally access it. (Decl. Logan,¶ 12, Opps to Writ). Trial courts flawed judgement dangerously changed the statute by rewriting the statute that even if County

Tally system counts ballots upon scanning ballots 10 days before election it doesn't violate 15101(b).

The main issue on Appeal is question of law about the statute. Respondents evaded the question of law, also failed to address question of law by Honorable Justices.

About late filing, Mr. Woods said that he filed his reply brief well within the 15-day window. Whereas despite getting repeated extensions by Court, the filing was late.

4) Petitioner presented rebuttal, strong arguments with references.

In rebuttal to Respondents vague responses, Petitioner argued that the question of law was completely evaded by Respondents. Petitioner also argued that the moment ballots are scanned, they are decoded, voter selection is immediately exposed, vote instantly counted by scan tally system. That's why it's called Scan Tally system. Trial court changed the statute allowing to start scan counting ballots 10 days before Day of Election. Trial courts flawed judgment states that if the computer gets the results, it's okay. If the computer does the tabulation 10

days before election, it's okay. Petitioner argued that when we use computers, human interaction is there, passwords are there, and this provides Respondents access to vote count that is already accessed by the Tally System 10 days before 8pm on election day. This lethal ruling must be reversed in the most significant national and public interest to prevent the greatest miscarriage of justice.

The question presented to the Court of Appeal is "Question of law" and whether the trial court erred by failing to make findings of fact and by taking it upon itself to rewrite the statute, "but where the language is clear and explicit, the courts cannot rewrite the statute and inject matters into the statute which are not in the legislature's language." (*United States v. Shirah*, C.C.A. 4, 253 F.2d 798, 800.)The trial court judgment is inaccurate and misleading.

5) Petitioner argued and presented undisputed evidence and that he was prejudiced.[7]

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[7]Referencing the Audio file transcript of Oral Argument, Rab v. Weber (C093196) (26:30-28:44), (28:45-29:50). Retrieved fromhttps://emft.tc1.courts.ca.gov/download_public.html

In the oral arguments Petitioner submitted about facing prejudice and his constitutional rights were violated. Petitioner explained that trial court ruled his July 7 demand for inspection an old demand, denied Petitioner's motion for inspection but same time ruled the July 7 demand as new demand to grant the Respondents' protective order. Petitioner was severely prejudiced.

Moreover, requirement of meet and confer for the protective order was not met. Petitioner sent meet and confer email to Respondent related to the July 7 demand for inspection, but Petitioner never did any meet and confer about protective order required under section 2016.040. Petitioner also argued about sanctions that Petitioner had put in substantial justification in public interest and was punished with the thirteen hundred dollars, but trial court incorrectly stated that petitioner did not raise that issue.

Petitioner was prejudiced when on May 18, 2023, late afternoon, a day before the hearing when Petitioner had purchased nonrefundable airline tickets, Petitioner

received a phone call from Mr. Brian Reece, Senior Deputy Clerk, Court of Appeal, informing Petitioner that to accommodate Mr. Woods there will be no in-person oral argument and oral argument will only be by video conference. Petitioner replied that he had paid $750.00 for nonrefundable Airline tickets to Sacramento on May 19, 2023, for Oral Argument hearing. Petitioner requested to allow him in-person while Respondent Secretary of State Counsel may be on phone or to simply reschedule the hearing. Petitioner's request was denied. On the day of hearing, videoconference link for the hearing sent to petitioner was defective. Petitioner was put in the hearing via phone, whereas opposing counsels and Honorable Justices of Court of Appeal proceeded via videoconference.

E. COURT OF APPEAL PUBLISHED ITS OPINION AFFIRMING THE TRIAL COURT.

Trial Court ruling and affirmation by Court of Appeal relied on misconstrued ruling by the trial court; it

needs this honorable Court to decide on this matter about question of law, constitutional rights, national significance, and utmost public interest.

The Court of Appeal upheld trial court's decision, that early scan counting of vote by mail ballots 10 days before 8pm election day does not violate Election Code § 15101(b). The contested opinion entirely omitted Petitioner's argument in the hearing on oral argument. The opinions overrule the plain text and the consequences of the law, relied, and agreed with trial court judgment where the erroneous ruling added words, changed the statute, allowed to scan-count ballot before 8 pm election day. (Opinion at pp.3, 13-15.) Trial court harmfully, erroneously changed statute. But opinion unfairly agreed (Opinion at p.3.)

Legislature strenuously constructed the wording of the Statute to protect public interest and did not intend to scan-count ballots before 8pm on Election Day. This tampering, accessing vote count using Tally system 10 days before election is violation of Section 15101(b), malconduct

under Election Code § 16100(a) and (g).

Petitioner faced severe prejudice. Petitioner referred to his opening brief that Petitioner was prejudiced when Trial Court denied his motion to compel on the grounds that his July 7 demand for inspection was an old demand but at the same time called the same July 7 demand for inspection a new and prompt demand to unfairly grant Respondents motion for protective order which was contested in violation of CCP § 2031.060. Trial Court unjustly found Respondents motion sufficiently prompt. Petitioner argued facing prejudice throughout trial court proceedings.

F. SUPREME COURT OF CALIFORNIA DENIED PETITIONER'S PETITION FOR REVIEW

Record shows that Petitioner filed his petition to California Supreme Court to grant review of the decision of the Appeal Court, filed on May 26, 2023. Petitioner raised and presented the following issues: Whether the Court of Appeal fails to address the important question of law to

prevent the violation of constitutional rights and the greatest miscarriage of justice, Whether the Court's Opinion fails to sufficiently conclude the outcome of the appeal by omitting the key issues and contentions argued and raised in the Oral argument, Whether the Court's Opinion fails to address the question of severe bias and prejudice, raised in the appeal to prevent the greatest miscarriage of justice, and whether the Court's Opinion fails to consider and discuss the Oral Argument in stating their Opinion.

Petitioner requested Supreme Court to grant his Petition and "settle an important question of law", and for the reversal of the Trial courts flawed Judgment incorrectly affirmed by the Court of Appeal. Petitioner pleaded to protect his constitutional rights, interests of national significance, public interest to prevent the greatest miscarriage of justice. On August 16, 2023, Petitioner's Petition for Review En Banc was denied.

REASONS FOR GRANTING CERTIORARI

Petitioner comes aggrieved, exhausting all venues to this Honorable U.S. Supreme Court. Petitioner is seeking justice with questions of National Importance, Democracy and Federal elections at stake. Petitioner seeks further review in this Court and offers the following reasons why a writ of certiorari is warranted.

I. Certiorari should be granted to settle an important Question of Law.

The primary matter in this litigation presents questions of law, constitutional rights, national significance, utmost public interest and one which is likely to dangerously recur. Consequently, the issues presented can be decided in this court. (*Green v. Layton*, 14 Cal. 3d 922, 925 [123 Cal. Rptr. 97, 538 P.2d 225]; *Knoll v. Davidson*, 12 Cal. 3d 335, 344 [116 Cal. Rptr. 97, 525 P.2d 1273].) Lower court harmfully misinterprets and reconstructs Election Code §15101(b), added words and dangerously allowed "scan counting" of ballots 10 days before 8 pm on the day of the election under self-derived

colossally wrong conclusion.

The resolution of this petition is purely a question of law, subject to this Court's review. "The interpretation of a statute . . . is a question of law . . . ." (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal. 3d 692, 699.) "'Interpretation and applicability of a statute or ordinance is clearly a question of law.' (*Jurcoane v. Superior Court.* Nov. 7, 2001. 93 Cal. App. 4th 886).

Election Code §15101(b) protects national, public interest and future elections which cannot be put in danger merely upon trusting County Respondents or any party in control of the Tally system. It would be insane to allow trust to control our elections by biased, dangerous controllers. Election Code § 15101(b) is strictly worded to eliminate malconduct in our elections. "If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." (*People v. Knowles, supra*, 35 Cal.2d, at p. 183; *Rich v. State*

Board of Optometry, supra, 235 Cal.App.2d, at p. 604.)

"Where the Legislature makes express statutory distinctions, we must presume it did so deliberately, giving effect to the distinctions, unless the whole scheme reveals the distinction is unintended. This concept merely restates another statutory construction canon: we presume the Legislature intended everything in a statutory scheme, and we should not read statutes to omit expressed language or include omitted language. As our Supreme Court stated, "we are aware of no authority that supports the notion of legislation by accident." (In re Christian S. (1994) 7 Cal. 4th 768, 776.) (*Jurcoane v. Superior Court*. Nov. 7, 2001. 93 Cal. App. 4th 886). Furthermore, the Court of Appeal's opinion omitted oral arguments in its entirety, failed to address core issue argued in the hearing and gave improper opinion; relied on Trial Court's flawed judgment. Courts of Appeal Opinion Failed to Include Oral Argument Presented by Petitioner to Address "Question of Law" on Appeal.

II. Certiorari should be granted because flawed

interpretations and violations of law in federal elections in California are at stake with Election Code § 15101 (b).

Certiorari should be granted because the Lower Court erred, in its analysis of the law, in its application, and interpretation of the law to the fact. Lower court misinterpreted, Election Code § 15101(b), added words to the statute and dangerously changed it for future elections. Protection against violations of this election law, code and procedures is at stake, opening doors to malconduct and injuries. All laws are to be interpreted consistent with the legislative intent for which they were originally enacted. Courts should construe laws in harmony with the legislative intent and seek to carry our legislative purpose. [*Foster v. United States*, 303 U.S. 118, 120 (1938)].

Construction of Election Code§ 15101(b) is perfectly worded by the legislature to protect against any manipulation. Election Code§ 15101(b) has a controlling prohibition term stating" **under no circumstances may a vote count be accessed or released before 8 pm on**

the day of the election". The statute clearly defines processing and DOES NOT state "Processing" to include scanning. The trial court took it upon itself to define scanning, processing and machine reading as the same thing. Processing and machine reading are two different functions as stated by Aman Bhullar "scanning occurs after processing."

Appeal court's Opinion relied on the incorrect ruling of the trial court that "machine reading to include scanning." The legislature protected elections with the controlling prohibition by the words "**under no circumstances** may a vote count be accessed or released until 8 pm on the day of the election." Because by Smartmatic Tally System, vote is instantly decoded, scan counted, and accessed by the Tally system, in the hands of County Respondents, 10 days before 8 pm on the day of the election. This is a violation of Election code 15101(b) and malconduct under Election Code §§ 16100(a), and (g). The lower court changed the statute, allowing scan count of

ballots 10 days before 8pm on the day of the election with dangerous consequences, endangering national and public interest.

The legislature constructed a safe statute consistent with its expressed purpose, not absurd consequences. [Citations.] "'[W]here the language of a statutory provision is susceptible of two constructions, one of which, in application, will render it reasonable, fair and harmonious with its manifest purpose, and another which would be productive of absurd consequences, the former construction will be adopted.'" [Citation.]" (*Harris v. Capital Growth Investors* XIV (1991) 52 Cal. 3d 1142, 1165-1166, emphasis added.) The text of Election Code § 15101 (b) does not authorize the County Respondents to scan count vote by mail ballots 10 days before election. The question presented in this case is whether the lower court has authority to inject or add words to the statute, to depart from the existing provisions of Election Code § 15101 (b) and to transform the law with itself derive connotation as

follows:

> *"Trial court interprets "machine reading" to include, and thus to permit, scanning ballots. To leave no room for confusion in the future, the Court reiterates: Elections Code§ 15101(b) allows the County to start scanning ballots on the 10th business day before the election.*[15](Fn. 15 Now the 15th business day before the election.)(9 CT 2519)

We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted... [*Mattox v. United States*, 156 U.S. 237, 244, 15 S. Ct. 337, 39 L. Ed. 409 (1895)]. It is, of course, true that statutory construction "is a holistic endeavor" and that the meaning of a provision is "clarified by the remainder of the statutory scheme . . . [when] only one of the permissible meanings produces a substantive [532 US 218] effect that is compatible with the rest of the law." *United Say. Assn. of Tex. v Timbers of Inwood Forest Associates, Ltd.*, 484 US 365, 371, 98 L Ed 2d 740, 1085 Ct 626 (1988). *[U.S. v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 220 (2001)].

When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. *Meese v Keene*, 481 US 465, 484-485, 95 L Ed 2d 415, 107 S Ct 1862 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); *Colautti v Franklin*, 439 US at 392-393, n 10, 58 L Ed 2d 596, 99 5 Ct 675' ("As a rule, 'a definition which declares what a term "means". . . excludes any meaning that is not stated' "); *Western Union Telegraph Co. v Lenroot*, 294 US 87, 95-96, 79 L Ed 780, 55 5 Ct 333 (1935) (Cardozo, J.); see also 2A N. *Singer Sutherland* on Statutes and Statutory Construction 47.07, p 152, and n 10 (5th ed. 1992).

III. Certiorari should be granted because the Appeal Court's Opinion is Not Adequate, Falls Short of Meeting the Four Corners of the Law. It Lacks Facts Discussed by Parties in the Oral Argument to Aid Their Decision-Making Process.

The Court of Appeal entirely omitted the oral argument from its Opinion, did not correctly conclude the Petitioner's appeal. Excluding the key issues that were

raised during the oral argument hearing in its entirety raises additional concern to Petitioner. "Oral argument—the chance to make a difference in result—is extremely valuable to litigants"]; Cal. Const., Art. VI, §§ 2–3; Cal. R. Ct.,8.524, 8.256. After oral argument, the appellate court's opinion must "be in writing with the reasons stated." Cal. Const., Art. VI, § 14; *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1241. The opinion usually summarizes the facts, discusses the parties' contentions, and explains the court's acceptance or rejection of those contentions with reference to supporting decisional and statutory law. *People v. Kelly* (2006) 40 Cal.4th 106, 121; see also Lewis, supra, 19 Cal.4th at 1262 [opinion is sufficient if it "sets forth the grounds or principles upon which the justices concur in the judgment"]; the Petitioner's constitutional rights of due process were not met in making their opinion. California allows oral argument as a matter of right in all direct appeals. (Cal. Rules of Court, rule 8.256; *Moles v. Regents of University of California* (1982) 32 Cal.3d 867, 871-872;

People v. Brigham (1979) 25 Cal.3d 283, 285-289.)

Extremely important arguments about interpretation of statute were raised by the Hon. Justices and argued by Petitioner during the Oral Argument hearing but not included or addressed in the Opinion. Respondents failed to address "Question of Law" on appeal. The petitioner contends that the resolution of this case is purely a Question of Law to prevent the greatest miscarriage of Justice. The main contention of the Petitioner on his appeal is the question of law. It is the duty of an appellate court to make the final determination from the undisputed facts and the applicable principles of law. The Court of Appeal's decision creates an inevitable risk of our future elections. The Opinion relies too heavily on trial court's ruling when interpreting a statute, which causes them to stray too far from the statute's legislative intent.

IV. Certiorari Should be Granted because Petitioner Raised the Fact that the Trial Court was Biased or Prejudiced.

The lower court's actions and comments reveal actual bias and constitute structural error that affected Petitioner's substantial rights violated Petitioner's constitutional 14th amendment rights. The Appeal Court's Opinion omitted oral argument failed to address that the Petitioner in his brief and in the oral argument, clearly proved with reference on the record by a citation that the Ruling of the Trial Court was biased and prejudiced. "Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power." (U.S. Const. Amend. XIV § 1). The trial court's actions and comments reveal actual bias and constitute structural error that affected Petitioner's substantial rights. (See *Chapman v. California* (1967) 386 U.S. 18, 23, fn. 8. [evidence of a partial judge is structural error].) In such a case, the reviewing court may address the error despite the absence of an objection in the trial court. (*People v. Abbaszadeh* (2003) 106 Cal.App.4th 642, 649-650 [where an error affects

the substantial rights of the defendant, the integrity of the judiciary, and the structural integrity of the trial are implicated, such that it would be a miscarriage of justice to allow the conviction to stand].) Petitioner referred to opening brief in oral argument that Petitioner was prejudiced, his motion to compel inspection was denied calling July 7 AN OLD DEMAND for inspection, But same time unfairly granted Respondents motion for a Protective order on the grounds that July 7 demand was A NEW DEMAND for inspection. Although fairness "requires an absence of actual bias in the trial of cases," it is "endeavored to prevent even the probability of unfairness."(*Murchison, supra*, 349 U.S. at p. 136; see also *Greenway v. Schriro* (9th Cir. 2011) 653 F.3d 790, 806 ["[a] showing of judicial bias requires facts sufficient to create actual impropriety or an appearance of impropriety"].)

The inquiry into judicial bias is an objective one that does not require proof of actual bias. "[D]ue to the sensitivity of the question and inherent difficulties of proof

as well as the importance of public confidence in the judicial system," it is not required that actual bias be proved. (*Catchpole v. Brannon*, supra, 36 Cal.App.4th at p. 246.) "A judge's impartiality is evaluated by an objective, rather than subjective, standard." (*Hall v. Harker* (1999) 69 Cal.App.4th 836, 841, disapproved on another ground in *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336.) Establishing a due process violation requires a "heightened showing of a probability, rather than the mere appearance, of actual bias to prevail." (*Freeman, supra*, 47 Cal.4th at p. 1006; see also *Caperton, supra*, 556 U.S. at p. 872 [a "probability of actual bias on the part of the judge or decisionmaker [that] is too high to be constitutionally tolerable"].) Such a case requires "extreme facts," because "[l]ess extreme cases—including those that involve the mere appearance, but not the probability, of bias—should be resolved under more expansive disqualification statutes and codes of judicial conduct." (*Freeman*, supra, 47 Cal.4th at p. 1006.) "The judge should not only be honest and

impartial, but his acts and conduct should be such that there can be no foundation for questioning his motives" *Evans v. Superior Court,* 107 Cal.App. 372, 382 (Cal. Ct. App. 1930)

V. Certiorari should be granted because the Appeal Court Erred in its Opinion about Respondent's undisputed violations of laws in the hearing, meeting the burden of proof. Petitioner argued all oppositions filed by Respondents without any objections.

Certiorari should be granted because the Appeal court ignored violation of mandatory duties as a clear bias against Petitioner despite his verified evidential declarations. The lower court presented a preset mind from the very beginning of the hearing. The petitioner did not get a fair trial in the Lower courts and his 14th Amendment rights were violated. In the hearing, Respondents failed to address the Petitioners core issue about question of law and evaded response about Statute raised by the Court Appeal Justices to the Respondents.

VI. Certiorari should be granted because Petitioner has struggled, comes injured to this Honorable U.S. Supreme Court, bringing this

unique case as an excellent vehicle to protect the integrity of present and future elections and prevent the biggest Miscarriage of Justice.

This petition raises very important questions of law that impact public interest. And it carries the additional urgency of protecting the sanctity of free and fair elections under Federal and California law is at stake. The Court should grant certiorari to examine the issue—and resolve it—here. Certiorari should be granted because this case directly involves the public interest. This case involves the free and fair election matter, which is a constitutional and statutory right with a check on government, which the courts have the duty to "jealously guard this right of the people and to prevent any action which would improperly annul that right. "Certiorari should be granted because Petitioner has come with clean hands and unless this Election Contest is properly remedied, this issue of national importance will suffer with irreparable National loss and integrity of present and future Federal elections. This petition is in public interest and in interest of our

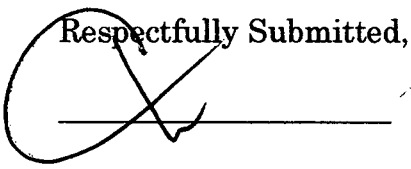
democracy and should also be viewed to preserve the constitutional rights of the Petitioner. Certiorari should be granted because this case is a blatant violation of free and fair federal election. The Lower court judgment is adversely impacting federal candidates, our values of truth, fairness, and democracy. Petitioner has come deprived of equal protection clause in his 14th Amendment. This is a cause of national importance, and the judgment of Lower courts must be reversed in the interest of justice. Certiorari should be granted because not mentioned by the court of the competing importance, however, is the principle that, preservation of the integrity of the election process is far more important in the long run than the resolution of any one particular election. In all of the Petitioner's citation, the U.S. Supreme court has a right and a duty to order remedies best suited to protect the public, to ensure free and fair elections. *(Williams v. Rhodes 393 U. S. 23; U.S. Term Limits v. Thortan; Bush v. Gore) Id.*

CONCLUSION

The Petitioner comes aggrieved, exhausting all venues and presents himself to Honorable U.S Supreme Court with this unique case on Question of law, the proper interpretation and enforcement of Election Code § 15101 (b) to protect future elections from danger. This Court may review such interpretations to determine if Trial court changed the statute and appeal court incorrectly agreed. In view of the foregoing, and in the interest of justice, Petitioner pleads that ruling by Lower courts be reversed to prevent the greatest mis carriage of justice.

Dated: November 14, 2023

Respectfully Submitted,



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No. _____

In the

Supreme Court of the United States

Raji Rab,

Petitioner,

v.

Shirley N. Weber, as Secretary of State, etc., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

CERTIFICATE OF WORD COUNT

Pursuant to Rule 33.1 (h), I hereby certify that the petition for a writ of certiorari contains 7,760 words as counted by Microsoft Word, and therefore complies with the word count limits set out in Rule 33. This brief was prepared in 12-point Century Schoolbook font.

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

Date: November 14, 2023

Respectfully Submitted,

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No. _____

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Raji Rab,

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Respondents.

PROOF OF SERVICE

I, Laura Sta Maria, do swear or declare that on this date, November 14, 2023 as required by the Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI and APPENDIX on each party to the above proceedings an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, and by delivery to a third-party commercial carrier for delivery with 3 calendar days.

See attached Service List for names and addresses of those served.

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

Name: Laura Sta Maria Date: November 14, 2023

Signature: [signature]

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Case Name: Raji Rab v. Shirley N. Weber Secretary of State of California, et al.
Superior Court Case Number: 34-2020-80003363-CU-WM-GDS
Court of Appeal Third Appellate District Case Number: C093916
Supreme Court of California Case Number: S280770
Supreme Court of the United States No._____

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