

In the  
**Supreme Court of the United States**

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Raji Rab,

*Petitioner,*

v.

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

*Respondents.*

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

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**PETITION FOR REHEARING**

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## PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, Petitioner Raji Rab, a Democratic candidate for the 2024 U.S. Senate Federal election respectfully petitions for rehearing of this Court's January 16, 2024, order denying the writ of certiorari in this case.

Here, substantial ground and controlling effect not previously presented warrants a rehearing. The lower court's ruling is not and cannot be correct. The lower court altered *Election Code* §15101 (b) by flawed interpretation astronomically endangers federal elections, issues of national significance, and greatest public interest.

Petitioner raises dire consequences that if not addressed, lower court's ruling will jeopardize issues of national significance and security. The County's Tally system is operated by people having political affiliations and leaving this issue unattended here offers lethal access to vote count 10 days before Election Day, guarantees

irreparable national loss. This court's just and proper interpretation is required to prevent catastrophic harm induced by the lower court's fatal ruling.

The pivotal issue not previously presented is that Appeal Court's opinion failed to look into the entire cause, stopped short of looking deeper into the statute and **only** partly decided that "machine reading" includes "scanning" (Opinion at p.2, 2). The Opinion left the main issue **unattended** about statute's prohibition which in its controlling part states, "But under no circumstances may a vote count be accessed or released until 8pm on the day of the election". The Opinion omitted crucial oral arguments in its decision, relied on lower court's misconstrued ruling, upheld lower court's erroneous ruling. Just and proper interpretation by this highest court shall address the catastrophic error in the Opinion to prevent colossal anarchy in the federal elections.

Appeal Court's opinion permits Tally system to scan count ballot 10 days before election day, which at the same

time without due consideration erroneously legalizes Tally system's instant illegal access to vote count 10 days before the election. Statute prohibits "Access" and "Release" of vote count until 8pm on the day of the election. Appeal Court's opinion relies too heavily on lower court's ruling when interpreting the statute, which causes them to stray too far from the statute's legislative intent. The Opinion states "We hold the trial court interpreted Elections Code section 15101, subdivision (b), correctly: machine reading includes scanning " (Opinion at p.3, ¶3). Appeal court's Opinion demonstrates misunderstanding of the statute's prohibition, and its misunderstanding played an important fraction on this case. The Opinion mainly focuses on the "scanning" or "machine reading" – extreme facts on this case give rise to a broader question. The Opinion failed to correctly grasp Petitioner's main contention, that upon scanning, ballot images are scan counted, and vote count is instantly accessed by Tally system. The Opinion failed to determine lower court's error in interpreting the

prohibition in the statute. "We must read statutes as a whole, giving effect to all their provisions, neither reading one section to contradict others or its overall purpose nor reading the whole scheme to nullify one section. The rules governing statutory construction are well established. Our objective is to ascertain and effectuate legislative intent. [Citations.] . . . In this regard, all parts of a statute should be read together and construed in a manner that gives effect to each, yet does not lead to disharmony with the others. [Citations.]" (*City of Huntington Beach v. Board of Administration* (1992) 4 Cal. 4th 462, 468.) "[L]egislation must be construed as a whole while avoiding an interpretation which renders any of its language surplusage. [Citation.]" (Ibid.)

Rehearing should be granted in this case of paramount national significance to examine, and address lower court's erroneous ruling. This case has unprecedented issues of national and constitutional public interest and is too important to leave unsettled. Denial of certiorari should



not be prejudicially treated as a definitive determination, subject to all circumstances of such an interpretation, actually the absolute opposite status exists under such conditions and especially, even though no response of any nature was filed in opposition by the Respondents. Petitioner meets all federal election factors for this court, to review the underlying fundamental rights of national importance for the protected class of Federal Candidates. Substantial matters are presented for rehearing and at least the formality of appropriate opportunity should be given for doing so. "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)).

This Court's just and proper interpretation of Statute is vital to look at the Statute as a whole including its controlling part that states "But under no circumstances may a vote count be accessed or released until 8 pm on the day of the election". 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)).

Rehearing should be granted because lower court made a fatal ruling, Appeal Court's opinion agreed. The Opinion gravely allows the Tally system to scan count ballots 10 days prior to 8 pm on Election Day, which also lethally permits instant illegal access to vote count by Tally system 10 days before the election. This dangerously broadens the scope, alters, and departs significantly from the statute's legislative intent, endangering the purity of our federal elections. "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). This highest Court is the proper venue to review such interpretations to determine if lower court's interpretation violates the statute and appeal court incorrectly agreed. "The State has failed to provide equal protection and application of laws for Federal candidates (*Bush v. Gore* 531 U.S. 98).

### **PROCEDURAL BACKGROUND**

On April 8, 2020, Petitioner filed election contest under Election Codes §§16100 (a), and (g) stating that Respondents accessed vote count, using Smartmatic Tally System (VSAP) ten days before 8 pm on election day in violation of Election Code § 15101(b). Petitioner filed Amended Petition and on July 7, 2020, Petitioner propounded First Set of Request for Inspection of Tally system. Court denied Petitioner's request for inspection. Respondents filed demurrer and Petitioner filed its opposition. On August 07, 2020, County Respondent filed for a temporary stay of discovery. The Court denied the

Respondent's motion for a discovery stay. In the hearing on August 28, 2020, Petitioner requested (1) either order a physical inspection to inspect Tally system logs or (2) order a manual recount of votes, due to violation of Election codes. The lower court denied both requests and ruled to amend the writ.

On September 23, 2020, Petitioner filed Second Amended Writ, Respondents filed Demurrer and Petitioner filed his Opposition to Demurrer. On November 20, 2020, Petitioner filed Notice of Hearing on Merits for Second Amended Writ of Mandate. On Dec. 8, 2020, Facing repeated delays for inspection, Petitioner informed Respondent through meet and confer letter that he was seeking Courts intervention to compel inspection. Upon this letter, Respondent overtook Appellant rushed and filed meritless Protective Order. On December 11, 2020. Petitioner filed Opposition to Respondent's Motion for Protective Order, that this motion should have been filed when discovery was first served in the July 7 demand.

Respondent's filing this motion 6 months later was late, untimely, and meritless under the *Code of Civil Procedure* §§ 2017.020, 2019.030, 2030.090, 2031.060, 2033.080.

Notably, on January 8, 2021, Court order stated that "If the motion for a protective order related to the July 7, 2020, demand, the Court would agree it was not promptly filed". However, trial court adopted double standards, one for the Petitioner and the other for Respondents by ruling that Petitioner's July 7 inspection demand was an old demand and not a prompt demand, denied Petitioner's motion to compel inspection but at the same time for the Respondents, the Court ruled that the July 7 demand was not an old demand and was a prompt demand, granted Respondents motion for a Protective Order. Trial court also ignored Petitioner's arguments that imposition of court's sanctions were unjust and should be overturned as Petitioner acted under Civil Discovery Act CCP § 2031.310, subd. (h), emphasis added. Petitioner pleaded to have acted with substantial justification when filing his motion, and

other circumstances make the imposition of the sanction unjust, "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<sup>th</sup> 1424, 1434.).

In the hearing on merits on January 22, 2021, Petitioner argued that upon scan counting ballots, Tally system instantly accesses vote count and violates Election code §15101(b) which in its controlling part states "under no circumstances may a vote count be accessed or released until 8:00 p.m. on the day of the election". Petitioner repeatedly requested court to clarify a very controversial part of court's tentative ruling, p.15, ¶1, because Tally system's scan counting ballots and storing vote count 10 days before election is accessing early vote count, violating 15101(b). Counting and storing vote count is only possible upon accessing vote count. Court refused to answer. On January 26, 2021, court denied Petitioner's Second Amended Petition for Writ of Mandate and on February 16, 2021, entered its flawed judgment in favor of Respondents.

Another noteworthy aspect of grave consequence is that Petitioner pointing out Respondent's deceptive misrepresentations under verified statement to trial court. But on August 17, 2020, p.4, ¶2. Court relied heavily on Respondent's misrepresentations under verified statement that "the ballot scanners in the county's VSAP tally system, (i.e., the IBML Scanners) do not tabulate ballots and therefore this Request misstates the facts; **"moreover, there is no 'tabulation machine.'"** From the very start, County Respondent played with words, made misrepresentations of facts. Finally, Tally system manual proved that it performs both scan and count functions and upon scan counting ballots, the vote count is instantly accessed. Eventually, on September 3, 2020, trial court accepted Tally system as a tabulation machine, but ruled that "even if County's machines 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 or released before the close of polls on Election

Day.” (Order after Hearing on Demurrers p.13, fn.7). Tally system upon scan counting ballots instantly accesses vote count in violation of EC §15101(b) that prohibits access to vote count until 8pm on the day of the election.

On April 08, 2021, Petitioner filed petition to Court of Appeal, Third Appellate District. Petitioner stated that lower court made a colossal error in the interpretation of the law, court procedures causing substantial harm endangering federal elections, public interest, and constitutional rights. On May 19, 2023, during oral arguments, Petitioner argued whether the trial court made a mistake in its analysis of law or on its application, interpretation of the law. Petitioner argued with facts and case laws about trial court’s misinterpretation of statute. The Appeal Court’s Opinion failed to determine lower court’s misinterpretation on the prohibition in the statute and incorrectly agreed with lower court’s erroneous ruling. “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.).

On May 26, 2023, Petitioner filed his petition to the California Supreme Court. Petitioner requested to grant his Petition, "settle an important question of law" and reverse the Trial court's flawed judgment incorrectly affirmed by the Court of Appeal. On August 16, 2023, Petitioner's Petition for Review En Banc was denied.

### **REASONS FOR GRANTING REHEARING**

Petitioner humbly requests the Honorable U.S. Supreme Court to rehear this petition for two significant reasons, presented among other good reasons in this petition.

*First*, rehearing is warranted because intervening circumstances exist, and catastrophic loss implicating national significance is involved. The Appellate Court's opinion has direct harm on the federal elections, and public interest. Federal courts interfere with State prerogative

when they misinterpret State laws. Rehearing should be granted to save the nation from disarray, protect the constitution and federal elections as this is no time to leave this dire inflammatory controversy by lower court's misinterpretation unattended. This Court must intervene and address this issue. "This case calls into question the role of a federal court in our system of justice. And it concerns the responsibility of a federal court to ensure that parties who are properly before the court are heard and afforded a just and coherent answer to their claims." (*Zivotofsky v. Secretary of State*, 610 F.3d 84, 85 (D.C. Cir. 2010)).

Rehearing should be granted to protect issues of monumental public interest because it carries additional urgency of protecting the sanctity of Federal elections. Petitioner comes with clean hands. Unless this case is properly remedied, this issue of national importance will suffer irreparable national loss, quashing the integrity of present and future Federal elections. Lower court's ruling

causes injury to due process, and equal protection under Petitioner's 14th Amendment. "A federal court has the duty to review the constitutionality of congressional enactments... "Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict that such an adjudication may cause, cannot justify the courts' avoiding their constitutional responsibility." *Powell v. McCormack*, 395 U.S. 486, 549, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969).

Rehearing should be granted to examine the complex issue—and resolve it—here. Illegal vote count in federal election is at stake. This petition involves 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. "Deciding whether a matter has in any measure been

committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution." (*United States v. Nixon*, 418 U.S. 683 (1974))

Rehearing should be granted in good cause to protect the constitution and utmost public interest. 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. Thorton*; *Bush v. Gore*) Id.

*Second*, this case involves an exceptional significance on "Question of law" regarding the application or interpretation of Statute harming the Federal election, the Constitution, including petitioner's due process and equal opportunity rights. Appeal Court's opinion failed to look into the entire cause, stopped short of looking deeper into the statute and only partly decided "machine reading"

includes “scanning” (Opinion at p.2, 2). The Opinion left the main issue about the statute’s prohibition **unattended** which in its controlling part states, “But under no circumstances may a vote count be accessed or released until 8pm on the day of the election”. Petitioner emphasizes dire consequences out of lower court’s erroneous ruling. Just and proper interpretation by this highest court is needed to address the catastrophic error in the Opinion to prevent colossal anarchy in the federal elections. “The interpretation of a statute is a question of law for the Court. See *Kaufmann v. Siemens Med. Solutions USA, Inc.*, 638 F.3d 840, 846 (8th Cir.2011).” *EMC National Life Co. v. Employee Benefits Systems, Inc.*, 827 F. Supp. 2d 979, (S.D. Iowa 2011).

Rehearing on this case is appropriate where the opinion of Appeal Court has “overlooked or misapprehended” a point of law or fact. Lower court dangerously altered the interpretation of the statute harming paramount issue of national significance,

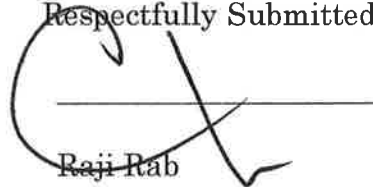
constitution, and public interest “When a statute becomes the subject of a dispute in court, judges usually must interpret the law, ambiguous or not. “It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule.” (*Marbury v. Madison*, 5 U.S. 137, 177 (1803). To recognize the lower court’s judgment, to concur with the lower courts’ altering the legislation’s language, changed the interpretation of the established statute Election Code § 15101 (b) to take effect, it will become a law and precedents by the other states, and would deny fundamental constitutional right, “The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us.” (*Cohens v. Virginia*, 19 U.S. 264 (1821)).

## CONCLUSION

The Honorable United States Supreme Court is the competent and appropriate venue to settle the just and proper interpretation of the statute governing federal elections. Petitioner begs that this Court not to withdraw from this matter but instead grant the rehearing for the petition for certiorari, to protect issues of utmost national significance, public interest, and justice.

Dated: February 8, 2024

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Raji Rab', is written over a horizontal line.

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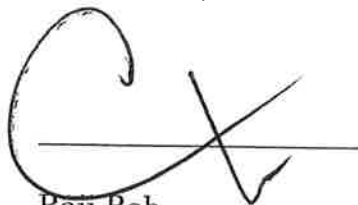
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### CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing from denial of certiorari is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 44.2.

Dated: February 8, 2024

Respectfully Submitted,

A handwritten signature in black ink, consisting of a large, stylized 'C' shape followed by a diagonal stroke and a checkmark-like flourish.

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