

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

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|--|------------------------------|--|------------|
| <b>DATE/TIME</b>   | JANUARY 13, 2023             | <b>DEPT. NO</b>  | 21         |
| <b>JUDGE</b>   | HON. SHELLEYANNE W. L. CHANG | <b>CLERK</b>   | D. LASHLEY |
| <p><b>SAVE LOCAL RESTAURANTS; STEVEN MCDERMED; AND AMBER EVANS,</b></p> <p style="text-align: center;"><b>Petitioners,</b></p> <p>v.</p> <p><b>KATIE HAGEN, in her official capacity as Director of the California Department of Industrial Relations; ROB BONTA, in his official capacity as Attorney General of the State of California; and DOES 1-100,</b></p> <p style="text-align: center;"><b>Respondents.</b></p> <p><b>SHIRLEY N. WEBER, in her official capacity as Secretary of State of the State of California,</b></p> <p style="text-align: center;"><b>Real Party in Interest.</b></p> |                              | <p><b>Case No.: 34-2022-80004062</b></p>                             |            |
| <b>Nature of Proceedings:</b>  |                              | <b>RULING ON SUBMITTED MATTER RE: OSC RE: PRELIMINARY INJUNCTION</b> |            |

This matter came on for a hearing on the Order to Show Cause re: Preliminary Injunction on January 13, 2023. After hearing oral argument, the Court took the matter under submission. The Court now issues its ruling on submitted matter.

"The initiative and referendum are not rights 'granted the people, but . . . power[s] reserved by them. Declaring it "the duty of the courts to jealously guard this right of the people", the courts have described the initiative and referendum as articulating "one of the most precious rights of our democratic process". "[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." (*Rossi v. Brown* (1995) 9 Cal.4th 688, 695.)

The question presented by this proceeding is whether a preliminary injunction should issue to prevent the State of California from moving forward with the implementation of AB 257 during the time period in which county elections officials are completing the signature verification process on a timely petition for a referendum of AB 257. This is *not* a hearing on the merits of the writ petition.

The people's referendum power is found in sections 9 and 10 of Article II of the California Constitution. Section 9, subdivision (a) provides "the referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statute providing for tax levies or appropriations for usual current expenses of the State." Subdivision (b) provides for the number of signatures needed on a referendum petition, and subdivision (c) provides that a valid referendum petition "shall" be submitted at the next general election. As our Supreme Court has summarized, the referendum power:

allows voters to weigh in on laws that have already been passed by their elected representatives. Any voter or group of voters that gathers enough signatures can place a legislative enactment on the ballot for an up or down vote. A referendum suspends operation of the law until it is approved by a majority of voters. (*Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105, 1111.)

In the absence of authority to the contrary, the Court *must* protect the people's referendum power to "suspend operation of the law until it is approved by a majority of voters." (*Wilde*, at p. 1111.)

"As its name suggests, a preliminary injunction is an order that is sought by a plaintiff prior to a full adjudication of the merits of its claim[s]. [Citation.]" (*White v. Davis* (2003) 30 Cal.4th 528, 554.) "The purpose of such an order 'is to preserve the status quo . . . . It 'does not constitute a final adjudication of the controversy.' [Citation.]" (*Costa Mesa City Employees Assn v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 305.)

"To obtain a preliminary injunction, a plaintiff ordinarily is required to present evidence of the irreparable injury or interim harm that it will suffer if an injunction is not issued pending an adjudication of the merits. [Citation.]" (*White v. Davis* (2003) 30 Cal.4th 528, 554 [emphasis added]; see generally Code Civ. Proc. § 526, subd. (a)(2) [a preliminary injunction "may be granted . . . [w]hen it appears . . . that the commission or continuance of some act during the litigation would produce . . . great or irreparable injury . . . to a party to the action].) "[T]he extraordinary remedy of injunction' cannot be invoked without showing the likelihood of irreparable harm. [Citation.]" (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1352.)

Further, "[i]n deciding whether to issue a preliminary injunction, a court must weigh two 'interrelated' factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction.... The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction." (*Butt v. California* (1992) 4 Cal.4th 668, 677-678.) The party seeking injunctive relief bears the burden of showing all elements necessary to support issuance of a preliminary injunction. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.)

When a party seeks to enjoin a state agency in the performance of its duties, the party must make a significant showing of irreparable injury, as there is a general rule against enjoining agencies in the performance of their duties. (*Tahoe Keys Property Owners Association v. State Water Resources Control Board* (1994) 23 Cal.App.4th 1459, 1471.) Because a preliminary

injunction restrains the defendant's actions prior to a trial on the merits, it is considered an extraordinary and drastic remedy, and will not be granted lightly. (*Tahoe Keys*, (1994) 23 Cal.App.4th at 1471; *Fleishman v. Superior Court* (2002) 102 Cal.App.4th 350, 356.)

The gravamen of AB 257 is the creation of a Fast Food Council within the Department of Industrial Relations, which shall consist of members appointed by the Governor, the Speaker of the Assembly and the Senate Rules Committee. (Lab. Code § 1471.) The Council's purposes are to "establish sectorwide minimum standards on wages, working hours, and other working conditions adequate to ensure and maintain the health, safety, and welfare of, and to supply the necessary cost of proper living to, fast food restaurant workers and to ensure and effect interagency coordination and prompt agency responses regarding issues affecting the health, safety, and employment of fast food restaurant workers." However, the Council may not "promulgate, petition for, issue, amend, or repeal, any standards, rules, or regulations pursuant to subdivision (d) or (e) until after the Director of Industrial Relations receives a petition approving the creation of the council signed by at least 10,000 California fast food restaurant employees." (*Id.*, at subd. (c)(2).) The Director of Industrial Relations must verify the signatures on the petition, and the Council shall convene its first meeting within the 90 days of the date of verification. (*Id.* at, subd. (c)(2)(C), (c)(2)(C).

Case law is clear that a qualified referendum pending vote by the people in a general election suspends the effectiveness of a law *before* it takes effect. (See *Santa Clara County Local Transp. Authority v. Guardino* (1995) 11 Cal.4th 220, 242; *Carlson v. Cory* (1983) 139 Cal.App.3d 724, 730; *Sylva v. Bd. of Supervisors* (1989) 208 Cal.App.3d 648, 654.) There is no authority to support Respondents' position that if elections officials are still working to verify referendum petition signatures, the subject law goes into effect until the signature verification process is complete; rather a common sense reading of the Elections Code and Article II, section 10, of the California Constitution appears to support Petitioners' position.

Respondents argue that a "certified" petition as described in Article II, section 9 of the Constitution refers to a referendum petition after county elections officials "certify" the Petition to the Secretary of State and that the referendum only operates as a stay after the certification process is complete.

In addressing the process for circulating the referendum petition, Elections Code section 9022 states,

"(b) The *circulator shall certify* to the content of the declaration as to its truth and correctness, under penalty of perjury under the laws of the State of California, with the signature of his or her name."

Subdivision (d) of Elections Code section 9022 provides that a "petition so verified shall be prima facie evidence that the signatures are genuine and that the persons signing are qualified voters. Unless and until otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of qualified voters." At this time, the referendum petition at issue is presumed to have genuine signatures of qualified voters sufficient to qualify for the next election.

Article II, section 10(a) of the Constitution provides that upon the filing of a referendum petition against a part of a statute, the remainder of the statute shall not be delayed from going into effect. This language supports petitioners' position that the referendum becomes effective and the provisions of the law are stayed upon the *filing* of a referendum petition, not upon "certification" by county elections officials (whom, the Court notes, *verify* signatures).

As our Supreme Court noted in *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, Article II, section 10(a) provides, "a statute challenged in its entirety by a duly qualified referendum is stayed from taking effect until it has been approved by the voters at the required election." (Id., at p. 656.) While there is indeed a process by which the counties verify the signatures come from qualified voters, pursuant to Elections Code section 9022, a petition certified by the circulator is presumed to contain the signatures of qualified voters.<sup>1</sup>

Considering all of these factors, Petitioners have demonstrated a very high likelihood of success on the merits.

Petitioners have sued in their capacity as electors, not restaurant owners as Respondents seem to imply. A violation of their constitutional right to referendum can constitute irreparable injury. (*Zepeda v. United States Immigration & Naturalization Service* (9th Cir. 1982) 753 F.2d 719, 727 [plaintiffs demonstrate a possibility of irreparable injury by showing "violations of their constitutional rights which if proven at trial, could not be compensated adequately by money damages..."]) Further, Labor Code section 1472, a statute enacted pursuant to AB 257, provides for a private right of action to enforce employment discrimination standards on restaurant operators. The Court finds issuance of an injunction is necessary to prevent irreparable harm that would follow enforcement of this statutory provision during the short window between January 1, 2023 and the time the signature verification process is completed.

With regard to the relative balance of harms, the Court finds there is very little harm to Respondents and/or the public in staying implementation and enforcement of AB 257 until the signature verification process is completed, which the parties estimate will likely occur by January 27, 2023, and at most could take until March 13, 2023. The harm to the California citizens and electors, in contrast, is great given the Court's duty to "jealously guard" the people's right to referendum and the confusion that would occur if AB 257 were temporarily implemented while signatures are verified, and the confusion and uncertainty that could occur if the provisions of Labor Code section 1472 were to go into temporary effect.

In so ruling on this request for injunctive relief, the Court is merely making the requisite findings to warrant such relief and, as the merits of the Petition for Writ of Mandate are not before it, the Court does not opine as to whether *any other* law would go into effect while a referendum petition is pending signature verification. The Court limits its findings to the specific factual circumstances presented by the petition before it, which establish that while elections

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<sup>1</sup> Respondent urges the Court to find *Boggs v. Jordan* (1928) 204 Cal. 207 prevents a finding that a section 9022 certification is prima facie evidence of a qualified petition. The Court has reviewed *Boggs* and does not find it stands for this proposition. "Cases are not authority for propositions not considered." (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 127.)

officials are undertaking the signature verification process of the referendum petition concerning AB 257, AB 257 shall not take effect.

Moreover, the Court takes no position on the merits of the underlying legislation or on the outcome of the referendum. Those decisions rest with the People of the State of California .

The request for a preliminary injunction is **GRANTED**, prohibiting Respondents from implementing or enforcing AB 257. Said injunction shall remain in effect unless and until either: (1) it is determined by county elections officials and the Secretary of State that the referendum petition failed to contain sufficient valid signatures to qualify for the ballot; or (2) if the referendum petition qualifies for the ballot, AB 257 is approved by a majority of California voters at an election.

As required by Code of Civil Procedure section 529, subdivision (a), Petitioners must provide an undertaking, which the Court sets in the amount of \$1,000.

The preliminary injunction is only directed to Respondents. The Court does not and need not opine at this time as to whether the Secretary of State has been properly named to this litigation as a real party in interest, as the preliminary injunction does not impact any real party in interest.

Counsel for Petitioners is directed to prepare an order granting the motion, incorporating this ruling as an exhibit to the order; submit them to counsel for Respondents for approval as to form in accordance with California Rules of Court, rule ("CRC") 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b).