

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION \_\_\_\_\_

JOHN ARNTZ, DENNIS J. HERRERA  
and CITY AND COUNTY OF SAN  
FRANCISCO,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA  
FOR THE CITY AND COUNTY OF  
SAN FRANCISCO,

Respondent.

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MICHELA ALIOTO-PIER,

Real Party in Interest.

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Case No.

San Francisco County Superior  
Court Case No. CGC-10-  
500796

**EMERGENCY RELIEF  
REQUESTED**

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**PETITION FOR PEREMPTORY WRIT OF  
MANDATE AND/OR PROHIBITION**

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The Honorable Peter J. Busch

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

- There are no interested entities or persons to list in this Certificate per California Rules of Court, Rule 8.208.
- Interested entities or persons are listed below:

Name of Interested Entity or Person	Nature of Interest
1.	
2.	
3.	
4.	

Please attach additional sheets with person or entity information if necessary.

Dated: July 28, 2010

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City Attorney  
JONATHAN GIVNER  
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By: \_\_\_\_\_  
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Party Represented: Petitioners John Arntz, Dennis J. Herrera, and City and County Of San Francisco

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## INTRODUCTION

In holding that Supervisor Michela Alioto-Pier (“Alioto-Pier”) is entitled to seek a third term on the San Francisco Board of Supervisors (the “Board”) this November, the Superior Court imposed a major change on San Francisco’s voter-adopted electoral system. The court’s ruling vitiates San Francisco’s term limits law for anyone appointed to fill a vacancy on the Board, and in so doing strengthens the power of incumbency in direct contravention of the will of the voters. If allowed to stand, the ruling will affect San Francisco government for years to come.

In 1990, the voters inserted strict term limits into the San Francisco Charter, ensuring that: (1) no elected member of the Board could serve longer than two four-year terms, for a total of eight years; and (2) no *appointed* member of the Board could, under any circumstances, serve longer than ten consecutive years. The voters accomplished this second goal through a “rounding up” rule that provided that the service of mid-term appointees who serve more than two years will be rounded up and treated as a full term. In relevant part, the term limits provision states:

No person elected or appointed as a Supervisor may serve as such for more than two successive four-year terms. Any person appointed to the office of Supervisor to complete in excess of two years of a four-year term shall be deemed, for the purpose of this section, to have served one full term.

(S.F. Charter § 2.101.) The voters have not changed the term limit law since they adopted it twenty years ago.

Alioto-Pier served three years of former Supervisor Gavin Newsom’s four-year term, after Newsom vacated his Board seat to become Mayor and appointed her as his successor on the Board. Then, Alioto-Pier

was elected to serve an additional four-year term. Under the term limits provision, Alioto-Pier cannot serve another term.

The Superior Court, however, decided that Alioto-Pier should be allowed to serve for eleven years. It relied on a novel reading of two subsequent amendments that the voters adopted in 1995 and 2001 to Charter sections that are entirely distinct from the terms limits law. The court held that these separate Charter amendments should be read to have implicitly scaled back San Francisco's term limits law so that appointed Board members, instead of being strictly limited to ten years, may serve almost twelve years, or nearly three terms.

The 1995 and 2001 measures provided that persons appointed to fill vacant Board seats must stand for election before completing the remainder of the existing term. In the wake of these amendments, a person appointed with more than 16 months remaining in the term must subsequently be elected to serve the remainder of the term to which he or she was appointed. These provisions make no reference to term limits, and nothing in their legislative history suggests they were intended to soften the unambiguously firm "eight year/ten year" rule the voters adopted in 1990.

But the Superior Court ruled that these amendments, despite their purpose to *further* limit the power of entrenched political officials, should be read to *implicitly eliminate* the "rounding up" rule, thereby allowing appointed Board members to serve longer than ten years. In other words, the Superior Court ruled that the voters implicitly intended to weaken their terms limits law.

The Superior Court's ruling repeals a substantive provision of the Charter, rendering meaningless the very "rounding up" language that the court sought to construe. The voters decided in 1995 and 2001 to give

themselves a voice in filling vacancies on the Board, but that did not alter their initial determination to limit the number of years that any Board member, including one appointed and later elected, could serve in office. The Superior Court's assumptions about voter intent conflict with the Charter's language, lack any support in the legislative record and in fact turn the voters' intent on its head.

If the Superior Court's decision is allowed to stand, its reach will extend well beyond Alioto-Pier. The "rounding up" provision will no longer have any effect for any person appointed to fill a vacancy on the Board. No term on the Board that begins with an appointment will ever be treated as a four-year term, even if the appointed Supervisor serves three years and 11 months following the appointment. And because appointees reap the advantages of incumbency from the very start, the ruling will only entrench the power of incumbency that the voters in 1990 unequivocally sought to constrain. Such consequences cannot be achieved through repeal by implication. This Court should issue a writ to restore San Francisco's electoral system to the state in which the voters intended to leave it.

Because of the imminent need to print and distribute ballots and other voter materials for the November 2010 election, and in order to allow either party the opportunity to request review in the Supreme Court, **Petitioner requests that the Court issue a decision by no later than August 16.**

## **PETITION FOR PEREMPTORY WRIT OF MANDATE AND/OR PROHIBITION**

### **A. Relief Requested**

1. By this verified petition, the City and County of San Francisco, San Francisco Director of Elections John Arntz, and San

Francisco City Attorney Dennis Herrera, in their official capacities (referred to collectively as “the City”), defendants/respondents in *Alioto-Pier v. Arntz et al.*, San Francisco Superior Court Case No. CGC-10-500796 (“the Action”), seek a peremptory writ of prohibition and/or mandate or other extraordinary writ compelling the Superior Court of San Francisco County (Honorable Peter Busch) to set aside its ruling issued from the bench on July 22, 2010 granting a writ of mandate in favor of Real Party In Interest Michela Alioto-Pier, and instead to deny Alioto-Pier’s writ petition and other requested relief.

**B. Jurisdiction And Timeliness**

2. This Court has jurisdiction over this matter under California Rule of Court 8.486. The City has a beneficial interest in the outcome of this case, which challenges the Superior Court’s issuance of a writ of mandate against the City. On July 22, 2010 the Superior Court indicated from the bench that it was granting the petition. The Superior Court instructed Alioto-Pier’s counsel to prepare and submit a proposed order for signature after meeting and conferring with the City’s counsel. Alioto-Pier’s counsel provided the City’s counsel with a draft proposed order on July 27, 2010, but it has not yet been submitted to the Superior Court. The City anticipates that the Superior Court will issue an order imminently, and that the order will reflect the conclusions of the decision issued from the bench on July 22, 2010. The City filed the instant petition six days after the Superior Court announced its ruling from the bench, and the petition is therefore timely. (*See People v. Superior Court* (2005) 125 Cal. App. 4th 1558, 1562 [noting that timeliness of a non-statutory writ petition is judged by either laches or a 60-day limit].)

**C. Authenticity Of Exhibits**

3. All exhibits that accompany this petition are true copies of original documents on file with Respondent Superior Court and the oral transcript of the hearing on Alioto-Pier's motion. The exhibits are incorporated herein by reference as though fully set forth in this petition. The City is also filing a Request for Judicial Notice in connection with this petition, and the documents attached thereto are incorporated herein by reference as though fully set forth in this petition.

**D. The Parties**

4. Petitioners are the City and County of San Francisco, San Francisco Director of Elections John Arntz in his official capacity, and San Francisco City Attorney Dennis Herrera in his official capacity. Petitioners were the named defendants/respondents in the Action.

5. Respondent is the Superior Court of the State of California for the County of San Francisco.

6. Real Party In Interest is Michela Alioto-Pier ("Alioto-Pier"), plaintiff/petitioner in the Action.

**E. The Proceedings Below And Supporting Documents Filed Herewith**

7. On June 17, 2010, Alioto-Pier filed a complaint for declaratory relief and petition for writ of mandate ("Complaint"). A true and correct copy of the Complaint is attached as Exhibit A to the City's Exhibits. As set forth in the Complaint, on January 26, 2004, Mayor Gavin Newsom appointed Alioto-Pier to fill a vacant seat on the Board. (*See* Exhibits in Support of Petition ["Exh.,"] at 4-5.) At the time of her appointment, just under three years remained in the term for that seat. (*See id.* at 4.) The San Francisco Charter required Alioto-Pier to stand for election in November 2004 to serve the remainder of the appointed term.

(*See id.* at 5.) She won that election and completed the remaining two years of the term to which she had been appointed. (*See id.*) In November 2006, Alioto-Pier won reelection to a new four-year term, which commenced on January 8, 2007 and will expire on January 8, 2011. (*See id.*)

8. On February 6, 2008, after meeting with Alioto-Pier's counsel, the City Attorney's Office provided Alioto-Pier a written memorandum explaining that she was ineligible for election to a third term beginning in January 2011. (*See id.* at 55-60, 125.) The opinion provided that the Charter's "rounding up provision refers to appointees who serve more than two years of the term to which they were initially appointed, whether they stand for election during that period. Any other interpretation would render the rounding up provision meaningless because, under a separate provision of the Charter, no appointee can serve for two years without standing for an intervening election." (*See id.* at 55.)

9. On June 3, 2010, Alioto-Pier filed with the San Francisco Department of Elections a Declaration of Intent to become a candidate for reelection at the November 2, 2010 election as the Supervisor representing District Two on the Board. (*See id.* at 6.) The same day, Director of Elections John Arntz provided a letter to Alioto-Pier informing her that because she was not eligible for another term, the City would not list her as a candidate for that office on the November 2, 2010 ballot or any other official election materials for that election. (*See id.* at 62.)

10. On June 22, 2010, following the filing of the Complaint, Alioto-Pier filed a Notice of Motion and Motion to Grant Declaratory Relief and Writ of Mandate, a true and correct copy of which is attached as Exhibit B to the City's Exhibits. On the same day, in support of the motion, Alioto-Pier filed a Memorandum of Points and Authorities, a true

and correct copy of which is attached as Exhibit C to the City's Exhibits; a Request for Judicial Notice, a true and correct copy of which is attached as Exhibit D to the City's Exhibits; and the Declaration of Linda Chan, a true and correct copy of which is attached as Exhibit E to the City's Exhibits.

11. On July 1, 2010, the City responded to Alioto-Pier's motion by filing an Opposition to Motion to Grant Declaratory Relief, and Opposition to Writ of Mandate, a true and correct copy of which is attached as Exhibit F to the City's Exhibits. On the same day, in support of the opposition, the City filed a Request for Judicial Notice, a true and correct copy of which is attached as Exhibit G to the City's Exhibits; the Declaration of Jonathan Givner, a true and correct copy of which is attached as Exhibit H to the City's Exhibits; and a Proof of Service, a true and correct copy of which is attached as Exhibit I to the City's Exhibits.

12. On July 8, 2010, Alioto-Pier filed a Reply In Support Of Plaintiff/Petitioner's Motion To Grant Declaratory Relief And Writ Of Mandate. A true and correct copy of the Reply is attached as Exhibit J to the City's Exhibits.

13. In a tentative ruling posted on the Superior Court's website on July 22, 2010, the court indicated that a hearing would be required and issued an interrogatory to the parties. (*See* Exh. at 144.) The Superior Court's tentative ruling, along with the other tentative rulings issued by the same judicial department the same day, is attached as Exhibit K to the City's Exhibits.

14. The matter came on for hearing before the Superior Court on July 22, 2010. The transcript of that hearing is attached as Exhibit L to the City's Exhibits. At the hearing, the Superior Court explained that it was granting Alioto-Pier's petition because the Charter's term limits provision

“does not compel the rounding up of her prior term of appointment and then election.” (*See* Exh. at 179 [Transcript at 35:17-18].) The court stated that its ruling was “consistent with the plain language of the Charter,” which “carefully distinguishes between ‘appointment’ and ‘election.’” (*See id.* [Transcript at 35:19-24].) The court acknowledged that at the time the term limit law was adopted, mid-term appointees to the Board were not required to stand for election, so the “rounding up” provision covered all appointees who served more than two years. (*See id.* [Transcript at 35:25-27].) But the court stated that the voters later changed the vacancy appointment rule in the Charter in 1995, and when they did so they were “presumptively aware” of the existing term limit law and “had [the] opportunity” to change the language to state explicitly that the “rounding up” rule would continue to apply to all mid-term appointees. (*See id.* at 179-80 [Transcript at 35:25-36:4].) Without reference to any evidence of voter intent, the court concluded that elimination of the “rounding up” rule for mid-term appointees “reflects certainly a potential reasonable conclusion that where the voters have made their own choice, they are less concerned about the rounding up issue.” (*See id.* at 180 [Transcript at 36:19-22].) And when the voters further amended the vacancy appointment rule in 2001 to require all appointees to stand for election within 16 months, the court ascribed to the voters a “preexisting intent” to exempt from the existing term limits provision all appointees who retained their seat through election. (*See id.* at 180-81 [Transcript at 36:23-37:3].) Acknowledging that its conclusion “may not leave any scope for application of the rounding up provision in [section] 2.101,” the court still declined to hold that the voters had implicitly repealed the rule. (*See id.* at 181 [Transcript at 37:4-19].) Finally, the court noted that “if there is potential ambiguity, the Court

should err on the side of permitting an office holder to run.” (*See id.* [Transcript at 37:20-24].)

15. The Superior Court instructed counsel for Alioto-Pier to prepare a proposed order after conferring with counsel for the City. (*See id.* [Transcript at 37:27-28].) Counsel for Alioto-Pier prepared the draft order on July 27, 2010, but counsel have not conferred and the proposed order has not yet been submitted to the court. Because time is of the essence, the City filed this petition before the final entry of the court’s order.

**F. Basis For Relief By Writ**

16. The Superior Court’s ruling essentially invalidates a provision in the San Francisco Charter and effects a partial repeal of a voter-enacted term limit law. Section 2.101 of the San Francisco Charter provides that any person “appointed to the office of Supervisor to complete in excess of two years of a four-year term shall be deemed, for the purpose of [the term limits] section, to have served one full term.” The Superior Court’s ruling conflicts with the language of the Charter and the voters’ intent in adopting the Charter’s term limits provision. If the decision is allowed to stand, then the City’s term limit law will no longer apply at all to the initial terms of appointed Board members, no matter how long they serve. Vacancies often occur on the Board, so the Superior Court’s ruling will have a lasting impact on San Francisco government.

**G. Absence Of Other Remedies**

17. An appeal would not provide adequate relief to the City because of the closeness of the upcoming election. The dispute in this matter focuses on whether Alioto-Pier can be a candidate for Supervisor in the election on November 2, 2010. The City’s Department of Elections must know whether Alioto-Pier is an eligible candidate before sending

ballots to the printer for the election. The last date that the City can send formatted ballots to the printer is **September 1, 2010**. (See *Hayward Area Planning Assn. v. Superior Court* (1990) 218 Cal. App. 3d 53, 56 [“Since an appeal could not be determined prior to the election, the remedy by appeal is inadequate.”]; *Goodenough v. Superior Court of San Diego Cty.* (1971) 18 Cal. App. 3d 692 [appeal from denial of writ in trial court was “neither adequate nor speedy” in light of Elections Code deadlines].)

18. “[P]reparing for elections is a complex and ‘sequential’ process, requiring various tasks be performed before others may begin,” and “[e]arly delays in one function can impact all other functions.” (*Wilson v. Eu* (1991) 54 Cal.3d 546, 548.) The Department of Elections must adhere to a strict schedule to complete essential tasks, many of which depend on timely printing of ballot materials – including mailing overseas and other vote-by-mail (absentee) ballots; printing and distributing information to voters; and testing the accuracy of the several hundred machines used to record and tally the votes.

19. Although the City informed Alioto-Pier over two years ago that she was not eligible to seek another term, the midnight-hour filing of her lawsuit leaves little time for the City to seek review. Unless this Court grants the City’s petition, Alioto-Pier will appear on the ballot in the November 2010 election, and the term limit law will have no practical effect for Supervisors appointed to fill vacancies on the Board.

20. To allow both parties adequate opportunity to seek relief from the Supreme Court if appropriate, the City requests a decision from this Court by no later than **August 16, 2010**.

**H. Prayer**

21. The City prays that this Court issue a peremptory writ of mandate and/or prohibition or other extraordinary writ directing the Superior Court to:

(1) set aside and vacate its order granting a writ of mandate, and to enter a new order denying Alioto-Pier's petition for a writ of mandate and her motion for declaratory relief;

(2) order that the City recover its costs incurred; and

(3) grant other such relief as may be just and proper.

Dated: July 28, 2010

DENNIS J. HERRERA  
City Attorney  
JONATHAN GIVNER  
ANDREW SHEN  
MOLLIE LEE  
Deputy City Attorneys

By: \_\_\_\_\_  
JONATHAN GIVNER

Attorneys for CITY AND  
COUNTY OF SAN FRANCISCO

## VERIFICATION

I, Jonathan Givner, declare as follows:

I am an attorney duly admitted to practice law in the State of California and before this Court. I am a Deputy City Attorney in the office of the City Attorney for the City and County of San Francisco, and an attorney for the petitioners herein.

I have read the foregoing Petition for Peremptory Writ of Mandate and/or Prohibition, and know its contents. The facts alleged in the petition are within my own knowledge, and I know these facts to be true.

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

Executed this 28th day of July, in San Francisco, California.

By: \_\_\_\_\_  
Jonathan Givner

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. BACKGROUND

#### A. Amendments To The San Francisco Charter

The San Francisco Charter is the “the city’s constitution,” and can be amended only with voter approval. (*See Woo v. Superior Court* (2000) 83 Cal. App. 4th 967, 974; Cal. Const. Art XI, § 3.) The voters have approved three Charter amendments relevant to this dispute.

*1990 – Voters Adopt Term Limits.* In 1990, the voters amended the Charter to impose term limits on members of the Board. That term limit law, Proposition N, provided that no Supervisor could serve more than two successive elected four-year terms, plus up to two years as an appointee. (*See* Exh. at 112.) The overriding purpose of Proposition N, as reflected in the ballot materials distributed to the voters, was to restrain the advantages of incumbency by limiting the service of Board members to a ceiling of eight or, at the very most, ten years. (*See* Request for Judicial Notice in Support of Petition [“RFJN”], Ex. A.) The measure provided that whenever a person served more than half a term – either by resigning halfway through the term or by taking office as an appointee to complete more than half a term – the Supervisor would be treated as having served a full four-year term. (*See* Exh. at 112.) Thus, the voters plainly expressed their intent to treat any service of more than two years as a full term.

Other than technical changes that had no effect on its meaning or application, the term limit law adopted in 1990 has not changed. The voters never amended or repealed the “rounding up” rule.

*1995 – Voters Require Some Mid-Term Elections.* When the voters adopted the term limit law in 1990, a Supervisor appointed to fill a vacancy was not required to stand for election at any point during the term. In 1995,

the City substantially revised its Charter, cutting it nearly in half and restructuring several City agencies. (*See* RFJN, Ex. B.) The 1995 Charter revision addressed many aspects of the City’s governance and operations. (*See id.*) As one relatively minor part of that Charter overhaul, the voters required for the first time that the City hold an election to fill Board vacancies in some circumstances. (*See* Exh. at 67 [proposed Charter § 2.102].) Under the new rule, the City would hold an election whenever a vacancy occurred with more than 29 months remaining in the term. (*See id.*) Thus, when the Charter revision became effective in 1996, appointees filling vacancies for more than 29 months were required to stand for election to keep their seats. Those filling vacancies with fewer than 29 months remaining in the term were not.

Though the 1995 Charter amendments changed the vacancy appointment rule, they did not change the term limit law in any substantive way.<sup>1</sup> The voter materials accompanying the measure included seven pages describing many different aspects of the proposal and an additional 14 pages of arguments. (*See* RFJN, Ex. B.) None of the lengthy commentary regarding the Charter amendments intimated that the term limit law would change in any respect. (*See id.*) The vacancy appointment rule was intended to limit the effect of appointments, by requiring the appointee to stand for election – a purpose entirely separate from the term limit law enacted in 1990.

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<sup>1</sup> As part of the general tightening of the Charter language in many sections, the Charter revision deleted the outdated introductory words of section 2.101: “Notwithstanding any provisions of this section or any other section of the charter to the contrary, from and after the effective date of this section as amended. . .” The revision also capitalized the word “Supervisor” and deleted the unnecessary words at the end of the second sentence of the term limit provision: “upon expiration of that term.”

*2001 – Voters Require More Mid-Term Elections.* In 2001, the voters again amended the Charter’s vacancy appointment rule – but left the term limit provision unchanged. Proposition C required the City to hold an election within a year (or in rare circumstances, up to 16 months) of a Board vacancy. (*See* Exh. at 100-05.) The provision adopted by Proposition C appears in Article XIII of the Charter, in section 13.101.5, while the term limit provision remains in Article II at section 2.101. (*See id.* at 97-98 [Charter § 13.101.5]; *id.* at 94-95 [Charter § 2.101].) The purpose of Proposition C was to increase accountability on the Board by giving the voters a chance to weigh in shortly after the Mayor appoints a Supervisor to fill a vacancy. (*See id.* at 101-03.) The measure did not change the existing term limit law in any way, and nothing in the voter materials suggested that it would.

Because of Proposition C, no person appointed to the Board today can possibly serve more than two years without an intervening election. To keep the seat, every appointee must stand for election within 16 months of the vacancy.

**B. Michela Alioto-Pier’s Appointment And Subsequent Election**

In November 2002, then-Supervisor Gavin Newsom won reelection to the Board, for a four-year term beginning on January 8, 2003. On January 8, 2004, Supervisor Newsom took office as Mayor, leaving his seat on the Board temporarily vacant. On January 26, 2004, Mayor Newsom appointed Alioto-Pier to fill the vacant Board seat. (*See* Exh. at 5.) At the time of her appointment, just under three years remained in the term for that seat. (*See id.* at 4-5.)

Under its vacancy appointment rule, the Charter required Alioto-Pier to stand for election to the seat in November 2004 in order to serve the remainder of the appointed term. Alioto-Pier won that election and completed the remaining two years of the term to which Mayor Newsom originally had been elected. (*See id.* at 5.) In November 2006, Alioto-Pier won reelection to a new four-year term, which commenced on January 8, 2007 and will expire on January 8, 2011. (*See id.*)

In February 2006, the City Attorney's Office provided Alioto-Pier a written opinion indicating that she was not eligible to run for a third term. (*See id.* at 125.) Nearly two and a half years later, on June 17, 2010, Alioto-Pier filed a complaint and petition for writ of mandate challenging the City's determination. (*See id.* at 1.) On July 22, 2010, the Superior Court issued a ruling from the bench, granting Alioto-Pier's petition and ordering that she be placed on the ballot for the November 2010 election. (*See id.* at 179-81.) In so doing, the Superior Court held that the "rounding up" rule adopted by the voters in 1990 no longer has application to Alioto-Pier, or, for that matter, to any other appointed Supervisor.

## **II. ARGUMENT**

### **A. The Only Possible Interpretation Of The "Rounding Up" Rule Prohibits Alioto-Pier From Serving Another Four-Year Term.**

Although the Superior Court concluded that allowing Alioto-Pier to run for another term as Supervisor is "consistent with the plain language of the Charter" (*see* Exh. at 179), the court effectively erased the language it sought to interpret. Noting that section 2.101 applies to Supervisors "appointed . . . to complete" more than two years, the Superior Court ignored the surrounding Charter provisions and concluded that the "rounding up" rule does not apply to appointees who must stand for

election to keep the seat. But it is impossible to serve more than two years without an intervening election, so under the Superior Court’s holding, the “rounding up” rule has no meaning at all. All relevant principles of statutory construction counsel against such an interpretation. When viewed in the context of the entire Charter, the “rounding up” rule in section 2.101 must apply to mid-term appointees who serve more than two years – even though they must stand for election to keep the seat.

The “fundamental task” of statutory construction of a voter initiative “is to ascertain the intent of the electorate so as to effectuate the purpose of the law.” (*People v. Martinez* (2004) 116 Cal. App. 4th 753, 760.) In construing term limits laws, the Supreme Court has instructed that voter intent “*is the paramount consideration.*” (*Legislature v. Eu* (1991) 54 Cal.3d 492, 505 [emphasis in original] [quoting *In re Lance W.* (1985) 37 Cal.3d 873, 889].) In light of that purpose, courts cannot simply interpret a single phrase in a vacuum. Rather, the Court must consider “whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute.” (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) The Court must harmonize the provisions of the Charter if possible, giving full effect to each. (*Lungren*, 45 Cal.3d at 735.) Accordingly, “each sentence must be read not in isolation but in the light of the statutory scheme” (*id.*), and “significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.” (*DuBois v. Workers’ Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388.) The Superior Court’s interpretation violated these basic principles.

**1. The Superior Court's Interpretation Of The Charter's "Rounding Up" Rule Rendered The Rule Meaningless.**

Consistent with the principles discussed above, courts must strive to avoid interpretations that render any statutory language meaningless. (*See Donovan v. Poway Unified School Dist.* (2008) 167 Cal. App. 4th 567, 593.) To that end, courts "read every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276 [quotations and citations omitted].)

To give any practical effect to the "rounding up" rule, there is only one reasonable interpretation of Charter section 2.101. In relevant part, that section provides,

No person elected or appointed as a Supervisor may serve as such for more than two successive four-year terms. *Any person appointed to the office of Supervisor to complete in excess of two years of a four-year term shall be deemed, for the purpose of this section, to have served one full term.*

(Exh. at 94-95, S.F. Charter § 2.101 [emphasis added].) If it means anything, the term "appointed to the office of Supervisor to complete in excess of two years" *must* refer to Supervisors who were appointed to a seat with more than two years remaining in the term and retained the seat through an intervening election. This is so because when a seat on the Board becomes vacant, the Charter empowers the Mayor to appoint a new Supervisor to the office, but the appointee must run by a deadline set in the Charter to keep the seat. (*See* Exh. at 97-98, Charter § 13.101.5.) The exact timing of the election depends on whether the vacancy occurs within 120 days of a scheduled election or within a year of an election for seats on the Board. (*See id.*) In any event, most appointees must stand for election within a year of appointment, and no appointee on the Board can serve

more than 16 months before running for election. (*See id.* [setting deadlines for election in event of a vacancy in City elective office]; Exh. at 97, Charter § 13.101 [requiring City elections every year].) Thus, as Alioto-Pier acknowledges, “it is impossible” for an appointed Board member to complete more than two years of a term without standing for election. (*See* Exh. at 17.)

This impossibility is dispositive in determining the meaning of section 2.101. It is “well-settled” that an “interpretation that renders related provisions nugatory must be avoided.” (*See People v. Shabazz* (2006) 38 Cal.4th 55, 67; *see also People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 302 [“Statutes, whether enacted by the people or the Legislature, will be construed so as to eliminate surplusage.”].) For the “rounding up” provision to have any real meaning, it must apply to appointees who retain their seat through election.

In this respect, the holding of *Pope v. Superior Court* (2006) 136 Cal. App. 4th 871, on which Alioto-Pier relied extensively in the trial court, is inapposite. In *Pope*, the Court of Appeal interpreted a Malibu ordinance that prohibited anyone from being “elected a member of the City Council for more than two (2) four-year terms.” (*Id.* at 874.) The plaintiff had been appointed for five months and then elected in a special election to serve the remaining 17 months of the term, serving a total of 22 months. (*Id.*) The court concluded that there was “nothing ambiguous about” the term limit law because a “law referring to an *election* to a *four-year* term does not mean appointment or election to *less* than a four-year term.” (*Id.* at 873, 876 [emphasis original in part, added in part].) *Pope* does not support the Superior Court’s ruling here because the Malibu municipal code did not include any “rounding up” requirement for mid-term appointments. It

applied only to officials who had been elected to “two four-year terms,” and because the plaintiff was elected for only 17 months and served a total of only 22 months, she had not served a “four-year term.” Allowing the plaintiff in *Pope* to run for another term did not require the court to nullify a “rounding up” rule, as it would here. So in *Pope*, the term limit law allowed for only one possible construction. Here, too, there is only one plausible interpretation of section 2.101 – because if it has any application at all, it must apply to appointees like Alioto-Pier who keep their seats through election.

**2. The Superior Court’s Interpretation Violated The Strong Presumption Against Repeals By Implication.**

The Superior Court’s conclusion also violated the basic tenet that courts should not assume repeals by implication. “[T]he law shuns repeals by implication” (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 249), and “all presumptions are against” them. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476 [internal quotations and citations omitted].) In the absence of an express declaration of intent, courts “will find an implied repeal only when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.” (*Id.* at 477.) “Indeed, so strong is the presumption against implied repeals that when a new enactment conflicts with an existing provision, in order for the second law to repeal or supersede the first, the former must constitute a revision of the entire subject, so that the court may say that it was intended to be a substitute for the first.” (*Kennedy Wholesale*, 53 Cal.3d at 249 [quotations and citations omitted].)

In holding that the “rounding up” rule no longer has any application in San Francisco – even though the voters never expressly repealed or even amended its substantive text – the Superior Court effectively found an implied repeal. That ruling was erroneous because the court easily could have harmonized the 1995 and 2001 measures with section 2.101’s “rounding up” rule to avoid a repeal. And under the well-established rule against implied repeal, it was required to do so.

**B. The Superior Court Fundamentally Misinterpreted The Voters’ Intent In Adopting Term Limits.**

In addition to misapplying settled principles of statutory construction, the Superior Court fundamentally ignored the intent of the San Francisco voters in adopting term limits. The unequivocal intent motivating the 1990 term limit measure was to limit the advantages of incumbency, in part by rounding up partial terms exceeding two years. The Superior Court negated that intent through an unsupported and unpersuasive reconstruction of what the voters could have meant when they enacted later reforms in 1995 and 2001 that had nothing to do with term limits. The Superior Court’s theory presumes that the voters consciously decided in 1995 that appointees who serve a relatively *shorter* first term should be subject to the term limit while appointees who serve for a *longer* period should be rewarded with the right to run for an extra term because they were required to stand for election. But the very purpose of term limits is to limit the service of officials who have repeatedly won elections. To give an appointee a free pass from term limits because he or she has won an election to keep the seat – as an appointed incumbent – is contrary to the voters’ intent when they adopted term limits. Far from advancing the voters’ purpose, the Superior Court’s decision reverses it.

**1. Courts Must Construe Term Limit Laws In A Manner That Advances The Voters' Purposes.**

California courts interpreting term limit laws follow the lodestar of voter intent, particularly if there is any doubt about the meaning of the statutory language. As the Supreme Court demonstrated in its only decision interpreting a voter-approved term limit, courts must construe such laws in a manner that advances their underlying purposes. In *Eu*, the California Supreme Court considered a challenge to Proposition 140, the 1990 voter-approved state term limit law. (54 Cal.3d at 499.) The measure applied to the Governor, members of the Legislature, and several other State officers but was ambiguous as to whether it imposed a limit only on successive terms or a far more restrictive lifetime limit. (*Id.* at 504.) The Court acknowledged that the text of the measure was “ambiguous as to its intent to impose a lifetime ban,” and noted that interpretation of the measure must be consistent with voter intent. (*Id.* at 504, 505.) According to the ballot materials, the measure was “directed at eliminating ‘career politicians’ or ‘career legislators’” and “limiting ‘the powers of incumbency.’” (*Id.* at 505, 526.) Faced with this history, the Court concluded that the voters intended Proposition 140 as a lifetime term limit. (*Id.* at 505-06.)

And the Court noted that the voters’ purposes in imposing such term limits were “substantial,” “legitimate and compelling considerations.” (*Id.* at 521, 522.) As the Court explained,

the state’s strong interests in protecting against an entrenched, dynastic legislative bureaucracy, and in thereby encouraging new candidates to seek public office, are both legitimate and compelling ones that support a lifetime ban from the office and outweigh any interest the incumbent legislators, or the voting public, may have in perpetuating the incumbents’ positions of control.

(*Id.* at 520.) (*See also Bates v. Jones* (1997) 131 F.3d 843, 847 [“California voters apparently perceived lifetime term limits for elected state officials as a means to promote democracy by opening up the political process and restoring competitive elections. This was their choice to make.”].)

The Court of Appeal reached a similar conclusion when interpreting another provision in Proposition 140. (*See Schweisinger v. Jones* (1998) 68 Cal. App. 4th 1320.) *Schweisinger* construed Proposition 140’s prohibition on Assembly members serving more than three terms. The plaintiff had served two full terms in the Assembly, and the voters recalled her less than halfway through her third term. The court prohibited her from running again, holding that “*any* part of a term ‘counts’ as service of a full term, with a single exception,” so her partial third term counted as a full term under the term limit law. (*Id.* at 1323 [emphasis added].) As in *Eu*, the court interpreted the voter-approved language in light of its purpose “to limit the advantages of incumbency and eliminate ‘a class of career politicians.’” (*Id.* at 1324.) Noting that Proposition 140 was a “comprehensive remedial scheme to oust career politicians,” the court interpreted the measure in a way that “more fully advances” the measure’s purpose. (*Id.* at 1327-28; *see also People v. Glasper* (2003) 113 Cal. App. 4th 1104, 1114 [voter initiatives “should not be interpreted to frustrate the intent of the electorate”].) Together, *Eu* and *Schweisinger* stand for the proposition that term limit laws must be interpreted in a way that advances their purpose, even if their language does not unambiguously do so.

**2. San Francisco Voters’ Intent In Adopting Term Limits In 1990 Was To Round Up Partial Terms Of Mid-Term Appointees.**

To determine voter intent, the Court may consider ballot arguments and other official materials provided to the voters. (*See Lungren*, 45 Cal.3d

at 740 n.14.) Those materials make clear that the voters enacted San Francisco's Proposition N to restrain the power of incumbent officeholders by limiting their terms in office. (*See* RFJN, Ex. A, Official Argument in Favor of Proposition N at 114 ["The current system favors incumbent politicians and denies experienced **newcomers** a fair chance to serve."] [emphasis in original], Rebuttal to Official Argument Against Proposition N at 115 [expressing concern about "professional, career politicians"].) The ballot arguments published in favor of Proposition N are replete with references to "professional, career politicians," "entrenched incumbents," incumbents "continu[ing] to win re-elections year after year" and "the powers of incumbency [that] virtually preclude incumbents from being defeated at the polls." (*See id.*, Paid Arguments In Favor of Proposition N at 116-19.) To blunt these advantages of incumbency, the voters sought to limit each Supervisor's term of service to roughly eight consecutive years, and, in the case of mid-term appointees, no more than ten years. The ballot arguments in support of Proposition N mentioned an "eight year" limit five times. (*See id.*)

And the mechanism chosen by the voters to implement their policy goal achieved it perfectly. Proposition N prohibited any Board member from serving more than two successive four-year terms and with respect to appointed Board members, it provided for the rounding up of all tenures exceeding two years. In short, the voters unequivocally limited to eight years the service of Supervisors who were initially elected, and unequivocally limited to ten years the service of Supervisors who were initially appointed and later elected.<sup>2</sup>

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<sup>2</sup> The voters adopted an explicit one-time-only exception to the term limit law in 1996 when they approved a new system of electing Supervisors by district rather than citywide. During the transition, some Board

The Superior Court ascribed significance to the voters' choice of words in 1990, noting that Proposition N used both "appointed" and "elected" while the "rounding up" sentence only applied to those who were "appointed." (See Exh. at 179 [Transcript at 35:19-24].) But that does not support the court's conclusion about voter intent. In 1990, Board members appointed to fill a vacancy were not required to stand for election, so there simply was no reason to use the term "elected" in describing the "rounding up" rule. The words used by the voters achieved their goal, consistent with the indicia in the voter guide: any service of more than two years would be treated as a full term, so that no appointed Board member could serve more than ten consecutive years under any circumstances.

**3. The Voters In 1995 And 2001 Did Not Intend To Scale Back The Application Of Term Limits.**

The lynchpin of the Superior Court's ruling was its holding that the voters intended to roll back their term limits law when they later amended the Charter to require appointed Board members to stand for election to keep their seats. But the 1995 and 2001 Charter amendments did not even

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members had to serve two-year terms from 1998 to 2000 or from 2000 to 2002. When approving this one-time transition, the voters explicitly instructed that the truncated two-year terms would not be rounded up. (See Exh. at 121-23, S.F. Charter § 13.110(f) [Supervisors serving two-year terms in the transition "shall not be deemed to have served a full term for purposes of the term limit established in section 2.101"].) As a result of the transition, Supervisor Tom Ammiano served a four-year term and a truncated two-year term before serving two successive full terms. Supervisor Ammiano's two-year term, which the voters had explicitly instructed would not count as a term, broke up his service of successive four-year terms, so Charter section 2.101 allowed him to run for another term. (Cf. *Conde v. City of San Diego* (2005) 134 Cal. App. 4th 346 [where local law prohibited service of "more than two consecutive four-year terms," former city council member could run again after two-year hiatus].) But that explicit, one-time rule for transitional terms did not alter the voters' intent to apply the strict "eight year/ten year" limit in all other circumstances.

address term limits, and the voters never indicated any intent to revisit – let alone soften – them.

The Superior Court’s theory turns largely on the 1995 Charter revision, in which the voters for the first time gave themselves the power to weigh in on appointments to vacancies. Under the 1995 law, Supervisors appointed to fill vacancies that occurred with more than 29 months remaining in the term were required to stand for election, while those appointed to fill vacancies with fewer than 29 months remaining were not. (*See* Exh. at 67.) Thus, after 1995, there were two different groups of mid-term appointees who could serve more than two years of a term: (1) those filling vacancies with 24 to 29 months remaining, and (2) those filling vacancies with 29 to 48 months remaining. Under the Superior Court’s recasting of the legislative intent, the voters made a *conscious choice* to apply the “rounding up” rule only to the former group – because they were “appointed to complete” more than two years – but not to the latter – because they were required to win an election before completing the term. (*See* Exh. at 179-80 [Transcript at 35:25-36:22].) And the Superior Court further assumed that in 2001, when the voters amended the Charter to require an election within 16 months of any vacancy, the voters again consciously chose to eliminate all applications of the “rounding up” rule, giving *all* appointees a free pass from the term limit law. (*See id.* at 180-81 [Transcript at 36:23-37:3].)

The court’s theory about voter intent conflicts with the legislative history of the 1995 and 2001 Charter amendments and presumes an illogical and inconceivable voter intent directly at odds with the policy judgment expressed in 1990.

First, nothing in the materials the voters considered in 1995 or 2001 supports the Superior Court’s conclusion. At the time they enacted the two measures, they would have had no reason to believe that they were voting on amendments to the City’s term limit law. The 1995 measure – entitled “New City Charter” – revised the entire San Francisco Charter, and the voter guide dedicated seven pages merely to describing the measure. The City Attorney’s summary of the measure explained how the Charter would change in more than 40 specific, enumerated ways, including the change in the vacancy appointment rule. (*See* RFJN, Ex. B.) But the guide did not indicate that the term limit law was changing in any way. (*See id.*) Nor did any of the 41 arguments for or against the measure so much as mention term limits. (*See id.*) The same was true when the voters further amended the vacancy appointment rule in 2001, in a measure titled “Elective Office Vacancies.” (*See id.* at 100-05.) The published arguments in the voter guide focused only on the Mayor’s appointment powers and the importance of voter input. (*See id.*) The voter guide did not mention term limits. (*See id.*) And that is no surprise, because the 2001 measure did not amend the text of the term limit law at all. The court’s conclusion that the voters had any actual intent to scale back term limits in 1995 or 2001 is implausible. (*Cf. Woo v. Superior Court*, 83 Cal. App. 4th at 975-78 [where literal interpretation of term limit law would have led to absurd results after charter revision, statement in voter guide that the revision would not change term limit law was strong indication of voter intent].)

Second, the Superior Court’s reasoning about the voters’ intent turns logic on its head and leads to absurd results that the voters would not have intended. “In construing legislative intent, it is fundamental that a statute should not be interpreted in a manner that would lead to absurd results.”

(*Central Pathology Service Medical Clinic v. Superior Court* (1992) 3 Cal.4th 181, 191 [quoting *People v. Morris* (1988) 46 Cal.3d 1, 15].) Here, the Superior Court presumed that voters in 1995 intended to create two classes of appointees subject to two different rounding up rules. Those who were appointed for a relatively *shorter* period (24 to 29 months) – would have their terms rounded up and could only run for one more full term. They could serve a maximum of six years and five months. But those fortunate enough to be appointed for a *longer* period (29 to 48 months) would be exempt from the term limit law and could serve two additional terms. Those appointees, by virtue of their *longer* first terms, could serve a maximum of eleven years plus 364 days, nearly twice as long as the other appointees. This result would have been absurd. The basic purpose of term limits, expressed by the voters the only time they expressly considered the matter, is to limit the number of years incumbents can serve on the Board. To allow some appointees to serve a third term because those appointees served a longer first term advances exactly the opposite aim.

The Superior Court concluded that this system not only was rational but was intended by the voters because voters “are less concerned” about applying term limits to those they have elected. (*See* Exh. at 180 [Transcript at 36:21-22].) But the voters’ preference to have elected representatives does not in any way impede their intent to impose term limits. Indeed, the very purpose of term limits is to place a cap on the tenures of *elected* officials because the powers of incumbency distort the democratic process. Appointees required to stand for election to keep their seats are incumbents *from the outset* by virtue of their appointment. When they stand for election, they already enjoy the very benefits of entrenched incumbency that the voters sought to minimize in 1990. To reward such an

appointee with an extra term – precisely because she has already won an election as an appointed incumbent – is inimical to what the voters intended when they adopted term limits. “An interpretation which is repugnant to the purpose of the initiative would permit the very ‘mischief’ the initiative was designed to prevent. Such a view conflicts with the basic principle of statutory interpretation, that provisions of statutes are to be interpreted to effectuate the purpose of the law.” (*Santa Barbara County Taxpayers Assn. v. County of Santa Barbara* (1987) 194 Cal. App. 3d 674, 681 [citation omitted].)

Also, even if there were any basis for the Superior Court to conclude that voters chose in 1995 and 2001 to allow officials who had been elected to serve longer in office, the court’s ruling achieves the opposite result. Under the court’s order nullifying the Charter’s “rounding up” rule, all Board members who take office initially by election are limited to eight consecutive years in office, while those who take office initially by appointment can serve up to twelve. Even under the Superior Court’s novel and arcane construction of presumed voter intent, such a result would be contrary to the will of the voters.

If anything, the 1995 and 2001 measures should be construed as being designed to *build on* the term limits provision by *further* diminishing the power of entrenched politicians by limiting their ability to decide who will serve on the Board for long periods of time. The Charter provision that now limits the amount of time appointees can serve before standing for election was designed to constrain the Mayor’s appointment power and thereby make the Board more accountable to the voters. (*See* Exh. at 101, 103.) But the Superior Court’s interpretation actually enhances the appointment power by giving the Mayor the ability to hand pick appointees

who could stay in office for nearly three full terms. In this way, the Superior Court’s decision not only undermines the voters’ 1990 intent in adopting term limits, but by reifying the Mayor’s appointment power, it also counteracts the very purpose of the 2001 measure.

Finally, the Superior Court’s theory of voter intent, which ascribes to the voters a complete awareness of all existing provisions of the Charter, does not explain why the voters decided to keep the “rounding up” rule in 1995 and 2001. In its decision, the Superior Court emphasized that the voters, presumably aware of the words in section 2.101, could have amended that section in 1995 or 2001 to apply more explicitly to mid-term appointees who keep their seats by election. (*See* Exh. at 179-80 [Transcript at 35:25-36:4].) As the court noted, “[t]hey had that opportunity,” and they “did not choose to change the language of [section] 2.101.” (*See id.* at 180 [Transcript at 36:1-4].) But the voters also had the opportunity to erase the “rounding up” rule in section 2.101, and they chose not to do that either. The Superior Court’s theory about voter intent fails to account for the continued existence of the rule. Even if the voters were considering the application of the term limit law in 1995 and 2001 – which they were not – their decision to *keep* the “rounding up” rule in those elections is significant. (*See Mission Valley East, Inc. v. County of Kern* (1981) 120 Cal. App. 3d 89, 95 [rejecting statutory construction because the Legislature, upon amending the statute in question, did not delete certain language already in the statute]; *Summerfield v. Windsor Unified School Dist.* (2002) 95 Cal.App.4th 1026, 1032 [“If . . . the Legislature truly intended the result Summerfield urges, it would have simultaneously amended section 44911 to delete the now-superfluous second paragraph.”].) Contrary to the Superior Court’s holding, the voters never meant to

eliminate the rule. If they wanted to erase the sentence from the Charter, they could have – but they did not.

**C. The Superior Court Improperly Held That It Should Construe Ambiguities In Favor Of The Incumbent Officeholder.**

The Superior Court also erred in concluding that if the Charter’s term limit law is ambiguous, “the Court should err on the side of permitting an office holder to run.” (*See* Exh. at 181 [Transcript 37:21-22].) In its only decision interpreting an ambiguous term limit law, the Supreme Court did not even apply that maxim. (*See Eu*, 54 Cal.3d at 503-06.) There, noting that Proposition 140 was ambiguous as to whether it imposed a limit on consecutive terms or a more restrictive lifetime limit, the Court resolved the ambiguity in favor of the *stricter* term limit. (*Id.*) Regardless of the impact of term limits on the officeholder, the Court stated that its interpretation must be consistent with voter intent. (*Id.* at 505.)

And in *Schweisinger*, the Court of Appeal rejected the reasoning adopted by the Superior Court here, noting that *Eu* had resolved the question. Like Alioto-Pier, the candidate in *Schweisinger* argued that Proposition 140 “must be narrowly construed” despite the voters’ intent, but the court concluded otherwise:

[The candidate’s] claim that limitations on the voter rights to choose candidates must be narrowly construed is, in effect, largely a quarrel with the California Supreme Court’s decision in *Legislature v. Eu*, *supra*. . . . The canon of construction calling for narrow restrictions on the rights of voters does not allow rewriting of language and does not compel allowing an interpretation which is absurd or contrary to the will of the People. This is especially true where the purpose of the initiative itself was to limit voter choices.

(*Id.* at 1329.)

*Eu* and *Schweisinger* belie the Superior Court’s apparent assumption that any ambiguity in a term limit law should be resolved in favor of the

officeholder. If section 2.101 is ambiguous, it must be interpreted consistent with its voter-approved purposes, not to advance incumbents' ability to remain in office. (*See Woo*, 83 Cal. App. 4th at 975 [when interpreting term limits, "[t]he voters' intent in approving the measure is our paramount concern"].)

**D. The Superior Court's Interpretation Of Section 2.101 Will Have Effects Far Beyond This Litigation.**

The effects of the Superior Court's erroneous ruling will not be limited to Alioto-Pier, which is why this is such a significant matter on appeal. Vacancies are common on the Board. In the past 16 years alone, nine Board members have taken office through Mayoral appointment before winning an election. Three current Supervisors and the City's Mayor all initially joined the Board as appointees. In addition to Alioto-Pier, one other current Supervisor to whom the "rounding up" rule should have applied will, under the Superior Court's ruling, be eligible to serve nearly eleven years. Based on the frequency of past appointments, it is likely that there will soon be other appointed Supervisors to whom the "rounding up" rule should apply.

Indeed, some appointed Supervisors in the future will have the chance to serve even longer than the eleven years that the Superior Court's decision would allow Alioto-Pier. For example, five Board members will begin new terms in January 2011. If one of them is immediately appointed to replace, say, Mayor Newsom or District Attorney Kamala Harris, both of whom are running for Statewide office this year, that appointment would create a vacancy on the Board. The person appointed to fill that Board vacancy would be allowed to serve *more than eleven years and eleven months* if the Superior Court's ruling is permitted to stand. Even if that

possibility does not come to pass this year, a similar sequence could occur in the future. In any event, the impact of the Superior Court's ruling is clear: the strict ten-year limit the voters placed on appointed Supervisors in 1990 no longer applies in San Francisco.

### **III. CONCLUSION**

Twenty years ago, the City's voters decided that elected Board members should serve no more than two consecutive four-year terms, and that no appointee can serve more than ten consecutive years. Respondent's decision to allow Alioto-Pier to serve almost three full terms violates the only reasonable interpretation of the Charter that gives meaning to the voters' intent. For the foregoing reasons, the City respectfully asks this Court to issue a peremptory writ of mandate and/or prohibition or other extraordinary writ directing the Superior Court to set aside and vacate its ruling permitting Alioto-Pier to serve another elected term on the Board, and to enter a new order denying Alioto-Pier's requested relief. The City also requests costs in connection with this petition, and any other relief as may be just and proper.

Dated: July 28, 2010

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the “Word Count” feature in my Microsoft Word for Windows software, this brief contains 9,605 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on July 28, 2010.

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**PROOF OF SERVICE**

I, Pamela Cheeseborough, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

On July 28, 2010, I served the following document(s):

**PETITION FOR PEREMPTORY WRIT OF MANDATE AND/OR PROHIBITION**

on the following persons at the locations specified:

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The Honorable Peter J. Busch  
San Francisco County Superior Court  
400 McAllister Street  
Department 301  
San Francisco, CA 94102

in the manner indicated below:

**BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. **A declaration from the messenger who made the delivery**  **is attached** or  **will be filed separately with the court.**

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

Executed July 28, 2010, at San Francisco, California.

\_\_\_\_\_  
Pamela Cheeseborough