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**ENDORSED
 FILED**
 San Francisco County Superior Court

JUN 22 2011

CLERK OF THE COURT
 BY: PARAM NATT
 Deputy Clerk

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 Council of San Francisco, the Peninsula, Marin, Sonoma,
 7 Alameda and Contra Costa Counties; Anti-Defamation League;
 Jeremy Benjamin; Jenny Benjamin; Leo Fuchs; Jonathan Jaffe;
 8 Yael Frenkel-Jaffe; Brian McBeth and Eric Tabas

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 and Kashif Abdullah

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN FRANCISCO

16 JEWISH COMMUNITY RELATIONS COUNCIL
 17 OF SAN FRANCISCO, THE PENINSULA,
 MARIN, SONOMA, ALAMEDA AND CONTRA
 18 COSTA COUNTIES; ANTI-DEFAMATION
 LEAGUE; JEREMY BENJAMIN; JENNY
 19 BENJAMIN; LEO FUCHS; JONATHAN JAFFE;
 Yael FRENKEL-JAFFE; SHEILA BARI;
 20 LETICIA PREZA; KASHIF ABDULLAH; BRIAN
 MCBETH; and ERIC TABAS,

21 Petitioner/Plaintiff,

22 v.

23 JOHN ARNTZ, in his official capacity as Director of
 24 Elections of the City and County of San Francisco,
 and CITY AND COUNTY OF SAN FRANCISCO,

25 Respondents/Defendants.

26
 27 LLOYD SCHOFIELD,

28 Real Party in Interest.

Case No
CPF-11-511370

VERIFIED PETITION FOR WRIT
 OF MANDATE AND COMPLAINT
 FOR INJUNCTIVE RELIEF

[ELECTION MATTER - Priority
 matter pursuant to Elec. Code §
 13314(a)(3)]

Action Filed: June 22, 2011
 Hearing Requested: July 15, 2011

1 organizations on issues impacting the rights and protection of Jewish people as individuals and as
2 a community. Members of the JCRC and members of its member organizations will be injured
3 by the initiative, as it criminalizes male circumcisions, a recognized ritual of the Jewish faith.

4 JCRC's membership includes the following:

5 • Petitioner/plaintiff JEREMY and JENNY BENJAMIN are residents and
6 registered voters of San Francisco. They are congregants at Congregation Sherith
7 Israel in San Francisco, a member of the JCRC. The BENJAMINS will be injured
8 by the initiative because if they were to have a son, they would not be able to
9 circumcise their son in San Francisco.

10 • Petitioner/plaintiff LEO FUCHS is a resident and registered voter of San
11 Francisco. He is a congregant at Congregation Emanu-El in San Francisco, a
12 member of the JCRC. Mr. FUCHS will be injured by the initiative because if he
13 were to have a son, he would not be able to circumcise his son in San Francisco.

14 • Petitioner/plaintiff Rabbi JONATHAN JAFFE and YAEL FRENKEL-
15 JAFFE are residents and registered voters of San Francisco. Rabbi JAFFE serves
16 Congregation Emanu-El in San Francisco, a member of the JCRC. The JAFFES
17 will be injured by the initiative because if they were to have a son, they would not
18 be able to circumcise their son in San Francisco.

19 2. Petitioner/plaintiff ANTI-DEFAMATION LEAGUE ("ADL") is a non-profit
20 organization whose purposes include the protection of the rights of the Jewish community and
21 fighting against anti-Semitism by countering hatred, prejudice, and bigotry. The Board of the
22 Central Pacific region of the ADL, headquartered in San Francisco, includes members who will
23 be injured by the initiative, as it criminalizes male circumcisions, a recognized ritual of the Jewish
24 faith.

25 3. Petitioner/Plaintiff SHEILA BARI is a San Francisco resident and is in the process
26 of registering to vote in San Francisco. Ms. BARI will be injured by the initiative because if she
27 were to have a son, she would not be able to circumcise her son in San Francisco.

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1 4. Petitioners/Plaintiffs LETICIA PREZA and KASHIF ABDULLAH are residents
2 and registered voters of San Francisco. Ms. PREZA and Mr. ABDULLAH will be injured by the
3 initiative because if they were to have a son, they would not be able to circumcise their son in San
4 Francisco.

5 5. Petitioner/Plaintiff Dr. BRIAN MCBETH is an Assistant Clinical Professor of
6 Emergency Medicine at the University of California, San Francisco and a board certified
7 emergency physician practicing in San Francisco. Dr. MCBETH is also a certified *mohel*. He
8 performs circumcisions in San Francisco as part of his practice and as a *mohel*. Dr. MCBETH
9 will be injured by the initiative because he will not be able to perform circumcisions in San
10 Francisco.

11 6. Petitioner/Plaintiff Dr. ERIC TABAS is a resident and registered voter of San
12 Francisco. He is an Associate Clinical Professor at the University of California, San Francisco
13 and a board certified obstetrician and gynecologist practicing in San Francisco. Dr. TABAS is
14 also a certified *mohel*, and he performs circumcisions in San Francisco as a *mohel*. Dr. TABAS
15 will be injured by the initiative because he will not be able to perform circumcisions in San
16 Francisco.

17 7. Respondent/defendant JOHN ARNTZ is the Director of Elections of the City and
18 County of San Francisco and is sued in his official capacity only. Under the San Francisco City
19 and County Charter, Municipal Elections Code and State Elections Code, respondent is charged
20 with certifying the qualification of proposed initiatives and placing the qualified initiatives on the
21 election ballot. If respondent is not restrained from doing so, he will place an invalid initiative on
22 the City's November 8, 2011 election ballot.

23 8. Respondent/defendant THE CITY AND COUNTY OF SAN FRANCISCO is a
24 municipal government that operates under the authority of the San Francisco City and County
25 Charter. Under the Charter, Municipal Elections Code and Elections Code, the City is
26 responsible for its municipal elections. If respondent (and its officers and employees) is not
27 restrained from doing so, it will place an invalid initiative on the City's November 8, 2011
28 election ballot.

1 15. On or about October 28, 2010, the City Attorney of the City and County of San
2 Francisco prepared a title and summary of the proposed initiative measure, pursuant to Elections
3 Code, § 9203(b). A true and correct copy of the title and summary is attached to the Ho Decl. as
4 Exhibit C.

5 16. On or about November 8, 2010, Mr. SCHOFIELD filed a declaration that he
6 published the Notice of Intent to Circulate Petition. A true and correct copy of the declaration is
7 attached to the Ho Decl. as Exhibit D.

8 17. On information and belief, after publishing the Notice of Intent, Mr. SCHOFIELD
9 circulated the initiative for signatures. Under S.F. Charter, § 14.101, to qualify an initiative for
10 the election ballot, an initiative proponent must gather at least 7,168 valid signatures of registered
11 San Francisco voters (*i.e.*, 5% of the number of votes cast for mayoral candidates at the preceding
12 regular municipal election).

13 18. On information and belief, on April 26, 2011, Mr. SCHOFIELD submitted the
14 petition, with 12,271 signatures, to the San Francisco Department of Elections.

15 19. On May 17, 2011, respondent Mr. ARNTZ determined that there were 7,743 valid
16 signatures on the petition and certified that the initiative qualified for the November 8, 2011
17 ballot. A true and correct copy of respondent Mr. ARNTZ's letter certifying the initiative is
18 attached to the Ho Decl. as Exhibit E.

19 20. Pursuant to the San Francisco Department of Elections Calendar for the November
20 8, 2011 Municipal Election, the procedure for placing the initiative on the election ballot
21 includes:

- 22 • By August 8, 2011, the Department of Elections must designate a letter for
23 the measure.
- 24 • By August 15, 2011, the Ballot Simplification Committee must prepare a
25 digest of the measure to be submitted to the voters to be published in the local
26 voter information pamphlet. Also by this date, Controller must submit a financial
27 analysis of the measure to be submitted to the voters, including an estimate of the
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1 increase or decrease in the cost of government. The City Attorney may submit
2 ballot statements and questions for local measures.

3 • There is a public inspection period from August 16-26, 2011, when the
4 public can review the digests, financial analysis, and the City Attorney's ballot
5 statements or questions.

6 • By August 18, 2011, proponents and opponents of the measure can submit
7 ballot arguments to the Department of Elections. If more than one proposed
8 proponent or opponent argument is submitted, the Department of Elections selects
9 one of each.

10 • There is a public inspection period from August 19-29, 2011, when the
11 public can review the proponent and opponent arguments.

12 • By August 22, 2011, proponents and opponents of the measure can submit
13 ballot arguments to the Department of Elections. Also, this is the last date to
14 submit paid ballot arguments for or against the measure.

15 • There is a public inspection period from August 23, 2011 - September 2,
16 2011, when the public can review the rebuttal arguments and paid arguments.

17 • On October 11, early voting begins.

18 A true and correct copy of the San Francisco Department of Elections Calendar for the November
19 8, 2011 Municipal Election is attached to the Ho Decl. as Exhibit F.

20 21. If the initiative passes on the November 8, 2011 election, petitioners will not be
21 able to either perform circumcisions or have their sons circumcised in San Francisco.

22 **FIRST CAUSE OF ACTION**

23 (Writ of Mandate – Elec. Code, § 13314, Code Civ. Proc., §§ 1085, 1086;
24 Injunction - Code Civ. Proc., §§ 526, 526a)

25 **PREEMPTION**

26 22. On or about July 9, 2009, California enacted Business and Professions Code
27 § 460(b), which prohibits local governments from restricting “healing arts professionals” in
28 performing medical procedures. Section 460(b) states:

1 No city, county, or city and county shall prohibit a healing arts professional
2 licensed with the state under Division 2 (commencing with Section 500) from
3 engaging in any act or performing any procedure that falls within the
4 professionally recognized scope of practice of that licensee.

5 23. Under § 460(b), “healing arts professionals” include physicians and surgeons
6 licensed by the Medical Board of California, the state agency charged with the licensing and
7 regulation of the medical profession. (See Bus. & Prof. Code, § 2041.) Physicians and surgeons
8 regularly perform circumcisions as part of their practice. Circumcision is a “procedure that falls
9 within the professionally recognized scope of practice” of “healing arts professionals.”

10 24. Section 460(b) explicitly preempts and prohibits the ordinance proposed in the
11 initiative at issue. The city and county of San Francisco and the voters of San Francisco have no
12 power to pass a law criminalizing medical procedures.

13 25. Moreover, San Francisco, as a charter city, only has power to legislate “municipal
14 affairs” so long as the local law is not related to a statewide concern. (*Fiscal v. City and County*
15 *of San Francisco* (2008) 158 Cal. App. 4th 895, 918.) If the subject of the local law is one of
16 statewide concern, the local law is preempted and state law controls. (Id.)

17 26. “The Legislature has recognized that matters of health and medicine . . . are of
18 statewide concern.” (See *N. Cal. Psychiatric Soc’y v. City of Berkeley* (1986) 178 Cal. App. 3d
19 90, 108.) Section 460(b) signals the state’s intent to prevent a “patchwork quilt of medical
20 standards from city to city or county to county.” (*Professions and Vocations: Healing Arts,*
21 *Hearing on S.B. 762 Before the Assem. Comm. on Bus. and Professions, 2009-10 Sess. (Cal.*
22 *2009).*)

23 27. Thus, as the ordinance concerns a medical procedure, the ordinance is directed to
24 a statewide concern and is expressly preempted by § 460(b).
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1 32. Here, the initiative is preempted and invalid. Preelection review of the initiative is
2 necessary to prevent the City from wasting resources being spent on the initiative.

3 33. Respondents' actions of placing the initiative on the November 8, 2011 ballot will
4 subject the City to the expense and disruption of an invalid election.

5 WHEREFORE, petitioner prays for judgment as follows:

6 1. That this Court issue a writ of mandate pursuant to Elections Code, § 13314 or, in
7 the alternative, Code of Civil Procedure, §§ 1085 and 1086, prohibiting respondents and all
8 persons acting pursuant to their direction and control from taking any steps to place real party's
9 initiative on the ballot or submitting the initiative to the voters for approval, or spending any
10 public funds doing so.

11 2. That this Court issue injunctive relief pursuant to Code of Civil Procedure, §§ 526
12 and 526a restraining respondents and all persons acting pursuant to their direction and control
13 from taking any steps to place real party's initiative on the ballot or submitting the initiative to the
14 voters for approval, or spending any public funds doing so.

15 3. That this Court order an award of costs and attorneys' fees under Code of Civil
16 Procedure, § 1021.5.

17 4. That this Court grant such further equitable or legal relief as the Court may deem
18 just and proper.
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Dated: June 22, 2011

MICHAEL A. JACOBS
MORRISON & FOERSTER LLP

By: 
MICHAEL A. JACOBS

Attorneys for Petitioners/Plaintiffs Jewish
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Attorneys for Petitioners/Plaintiffs Sheila
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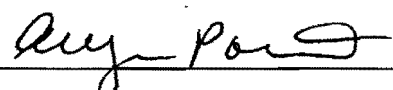
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VERIFICATION

I, Abby Porth, am the Associate Director of the JEWISH COMMUNITY RELATIONS COUNCIL OF SAN FRANCISCO, THE PENINSULA, MARIN, SONOMA, ALAMEDA AND CONTRA COSTA COUNTIES, a Plaintiff/Petitioner in the above-entitled matter and am authorized to make this verification on its behalf.

I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF and know the contents thereof. All facts alleged in the petition are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 22, 2011, in San Francisco, California.



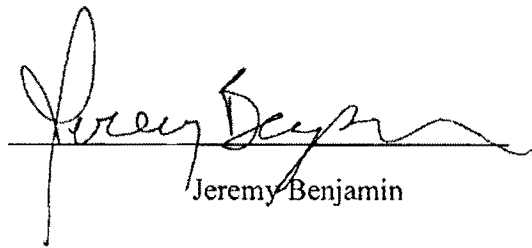
Abby Porth

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VERIFICATION

I, Jeremy Benjamin, a Plaintiff/Petitioner in the above-entitled matter, have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF and know the contents thereof. All facts alleged in the petition are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 21, 2010, in San Francisco, California.


Jeremy Benjamin

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VERIFICATION

I, Sheila Bari, a Plaintiff/Petitioner in the above-entitled matter, have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF and know the contents thereof. All facts alleged in the petition are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 21, 2011, in San Francisco, California.



Sheila Bari