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 ALAMEDA COUNTY

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 WILLIAM G. CROSIER, SUSAN da SILVA,
 PETER FRANCK, SHERRY GENDELMAN,
 DONALD GOLDMACHER, MANSOOR SABBAGH,
 CAROL SPOONER, AKIO TANAKA,
 and CAROLE TRAVIS, in their capacities
 as Members of the Pacifica Foundation, Inc.

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

WILLIAM G. CROSIER, SUSAN da SILVA,
 PETER FRANCK, SHERRY GENDELMAN,
 DONALD GOLDMACHER, MANSOOR
 SABBAGH, CAROL SPOONER, AKIO
 TANAKA, and CAROLE TRAVIS, in their
 capacities as Members of the Pacifica
 Foundation, Inc.

CASE NO.: RG19038247

**VERIFIED PETITION FOR
 ALTERNATIVE WRIT OF MANDATE
 AND/OR OTHER APPROPRIATE
 RELIEF; POINTS AND AUTHORITIES;
 and EXHIBITS (separately bound)**

Petitioners,

[CCP §§ 1085, 1086; Corp.Code § 5515]

v.
 PACIFICA FOUNDATION, INC., a
 California nonprofit public benefit corporation,
 GRACE AARON, GARRY BOAST, ROBIN
 COLLIER, WILLIAM G. CROSIER,
 DONALD GOLDMACHER, JAN
 GOODMAN, SABRINA JACOBS, WALLY
 JAMES, DEWAYNE LARK, ADRIENNE
 LAVIOLETTE, MARTHA PETERSON, RON
 PINCHBACK, RALPH POYNTER,
 LAWRENCE REYES, SHAWN RHODES,
 EILEEN ROSEN, MANSOOR SABBAGH,
 JAMES SAGURTON, NANCY SORDEN,
 ALEX STEINBERG, TOM VORHEES in

*Crosier, et al., v. Pacifica Foundation, Inc.,
 Petition for Alternative Writ of Mandate and/or Other Appropriate Relief*

1 their capacities as Directors of Pacifica
2 Foundation, Inc., and JOHN VERNILE in his
3 capacity as President/Executive Director of
4 Pacifica Foundation, Inc.,

5 *Respondents.*

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INTRODUCTION

Petitioners William G. Crosier, Susan da Silva, Peter Franck, Sherry Gendelman, Donald Goldmacher, Mansoor Sabbagh, Carol Spooner, Akio Tanaka, and Carole Travis (hereinafter "Petitioners") are Members in good standing of the Pacifica Foundation (hereinafter "Pacifica"). Petitioners Crosier, Goldmacher, and Sabbagh are current members of Pacifica's Board of Directors, and Petitioner Crosier currently holds the office of Secretary of the Pacifica Foundation; Petitioners Gendelman, Spooner, Tanaka, and Travis are former members of Pacifica's Board of Directors; Petitioner da Silva is the current Vice-Chair and former Chair of Pacifica's KPFA radio station Local Station Board; and Petitioner Franck is a former President of the Pacifica Foundation.

Petitioners have prepared proposed Amended and Restated Bylaws for the Pacifica Foundation ("**Exhibit F**") which they wish to submit to a vote of approval by the Pacifica Members, as is their right under Pacifica's current Bylaws ("**Exhibit A**", Art. Seventeen, section 1.B.)

Pacifica's Board of Directors has thwarted Petitioners' right to do so by dilatory actions, refusing to set a "Notice Date" for submission of proposed bylaws amendments, thereby intentionally "stopping the timeline" for putting proposed Bylaws amendments to a vote of the Members. ("**Exhibit J.**") Pacifica's current Bylaws require that voting on Bylaws amendments proposed by Members be completed by December 31st of the year in which they are proposed. In addition, the complex and time consuming provisions of the current Bylaws for Members to propose bylaws amendments and bring them to a vote of the members are ambiguous and unduly burdensome, making it impractical or impossible for them to do so, especially with a hostile Board of Directors able to drag their feet at every step along the way. ("**Exhibit A**", Art. Seventeen, sections 1.B(1) and 1.B(2).)

THEREFORE, PETITIONERS' REQUEST THIS COURT TO ISSUE AN ALTERNATIVE WRIT OF MANDATE AND/OR PROHIBITION COMMANDING RESPONDENT PACIFICA TO DO THE FOLLOWING OR TO APPEAR AND SHOW CAUSE WHY THE WRIT SHOULD NOT BE ISSUED:

- 1 (1) On _____, 2019, which date shall be the "Notice Date" (the day after the
2 issuance of the Writ) post on Pacifica's web page at www.pacifica.org Petitioners'
3 proposed Amended and Restated Bylaws for the Pacifica Foundation, together with the
4 biographies of the "Transition At-Large Directors" who will be appointed and take their
5 seats in January 2020 if the proposed Bylaws are approved by the Members, and with a
6 link to Petitioners' web page at <https://form.jotform.com/42244096312953> where voters
7 can read arguments in favor of the proposed Bylaws, and a link to such web page as the
8 Board may determine, if any, where voters can read arguments opposed to the proposed
9 Bylaws; and
- 10 (2) Beginning on _____, 2019 (the day after the issuance of the Writ), and
11 until the voting is completed, broadcast notice on all five (5) Pacifica radio stations that
12 the proposed Bylaws to be voted on by the Members are posted at www.pacifica.org; and
- 13 (3) On _____, 2019 (15 days after the issuance of the Writ), mail and/or
14 make electronically available ballots to all eligible Pacifica Members with links to the
15 same web pages as in paragraph (1) above; and
- 16 (4) Set a 30-day balloting period for the Members with ballots to be returned no later than
17 _____, 2019, and counted and the results reported no later than 5
18 days thereafter, on _____, 2019; and
- 19 (5) Reduce the quorum for both classes of Members to the number of ballots cast;
- 20 (6) Appoint Pacifica's interim Executive Director, John Vernile, or his designated agent, as
21 the supervisor of the voting (aka "election inspector,") or, if he becomes unavailable for
22 any reason, then an independent neutral to be agreed upon by the parties; and
- 23 (7) Prohibit the election of any Directors of the Pacifica Foundation for terms commencing
24 in January 2020 under the current Bylaws until after the ballots have been counted and
25 the results announced, and further providing that if Petitioners' proposed Bylaws are
26 approved by the Members then the Directors of Pacifica for terms commencing in
27 January 2020 shall be those "Transition At-Large Directors" appointed by approval of the
28 Members along with their approval of Petitioners' proposed Bylaws, and that if
Petitioners' proposed Bylaws are not approved by the Members, then the elections of
Directors under the current Bylaws shall proceed; and

1 (8) Extend the deadline for completion of voting beyond December 31st if necessary, until
2 such date as voting and counting can be completed.

3 The exceptional temporal urgency of this request is due to the following facts:

4 (1) Pacifica's current Bylaws require that all voting on bylaws amendments proposed
5 by the members be completed by December 31st of the year in which they are proposed, but
6 Pacifica's Board of Directors has refused to set the "Notice Date" that initiates the process of
7 bringing proposed bylaws amendments to a vote of the Members. ("Exhibit A", Article
8 Seventeen, Section 2.B.(2)(ii).)

9 (2) Pacifica's Board of Directors has been severely polarized and unable to agree on
10 critical matters resulting in lack of proper executive management, financial oversight, and
11 financial planning, among other problems for a number of years. The Board has been incapable
12 of addressing these issues without such destructive polarization that management cannot make
13 and carry out plans of action without the board countermanding those plans or stifling them or
14 micromanaging them to the point of complete breakdown and inefficacy.

15 (3) Respondent Pacifica Foundation is in critical financial condition and on the verge
16 of financial collapse. Unless a new capable Board of Directors replaces the factional and
17 dysfunctional Board of Directors as quickly as possible, the continuance of Pacifica as a "going
18 concern" is in grave danger. ("Exhibit D, p.2".) That is not possible under the current Bylaws
19 because the same factional interests that have elected the Boards of Directors since 2003 will in
20 January 2020 elect most of the same people from the same factions again, as they have done for
21 many years in the past.

22 (4) The following procedural facts add to the urgency:

23 (a) Under Pacifica's current Bylaws two (2) of its twenty-two (22) directors are
24 elected by the Board in December each year (the "Affiliates Representative Directors")
25 and twenty (20) of its directors (the "Station Representative Directors") are elected by the
26 Delegates in "early January" of each year and – all for 1-year terms commencing at a
27 board meeting to be held in "late January" each year.

28 (b) Under Petitioners' proposed new Bylaws six (6) new "Transition At-Large
Directors" are to be appointed with terms commencing at a board meeting to be held
within the last 2 weeks of January 2020.

(c) Pacifica cannot have two Boards of Directors at the same time.

1 (d) Corp.Code § 5222(c) provides that any bylaws amendment reducing the
2 number of directors does not remove a director prior to the expiration of his term.

3 Therefore,

4 (f) unless Petitioners' proposed new Bylaws are approved by the Members prior
5 to commencement of the terms of the twenty-two (22) of the Directors in "late January"
6 2020 under the current Bylaws, then the new Bylaws cannot become effective until those
7 Directors' terms expire in January of 2021, thus frustrating the purpose of the proposed
8 new Bylaws.

9
10 **VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE**
11 **AND/OR OTHER APPROPRIATE RELIEF**
12

13 **A. Capacities of Petitioners and Respondent.**

14 1. Petitioners William G. Crosier, Susan da Silva, Peter Franck, Sherry Gendelman,
15 Donald Goldmacher, Mansoor Sabbagh, Carol Spooner, Akio Tanaka, and Carole Travis are all
16 Members in good standing of the Pacifica Foundation. (Hereinafter "Petitioners.") Petitioners
17 Crosier, Goldmacher, and Sabbagh are Directors currently seated on Respondent Pacifica's
18 Board of Directors. Petitioner Crosier holds the office of Secretary of the Pacifica Foundation.
19 Petitioners Gendelman, Spooner and Travis are former Directors of the Pacifica Foundation.
20 Petitioner da Silva is the current Vice-Chair and former Chair of the Pacifica radio station
21 KPFA's Local Station Board. Petitioner Franck is a former President of the Pacifica Foundation.

22 2. Respondent Pacifica Foundation, Inc. (hereinafter "Pacifica") is a California
23 Nonprofit Public Benefit Corporation, with its main office located at 1925-1929 Martin Luther
24 King, Jr., Blvd., Berkeley, Alameda County, California. Respondents Grace Aaron, Garry Boast,
25 Robin Collier, William G. Crosier, Donald Goldmacher, Jan Goodman, Sabrina Jacobs, Wally
26 James, DeWayne Lark, Adrienne LaViolette, Martha Peterson, Ron Pinchback, Ralph Poynter,
27 Lawrence Reyes, Shawn Rhodes, Eileen Rosen, Mansoor Sabbagh, James Sagurton, Nancy
28 Sorden, Alex Steinberg, and Tom Vorhees are Directors of Pacifica Foundation, Inc.
Respondent JOHN VERNILE is the President/Executive Director of Pacifica Foundation, Inc.

1 **B. Statement of Facts.**

2 3. The Pacifica Foundation was established by pacifists in 1946. In 1949 its first
3 radio station, KPFA in Berkeley, California, went on the air. Over the years it acquired four
4 additional radio stations: KPFK in Los Angeles, California, KPFT in Houston, Texas, WBAI in
5 New York City, and WPFW in Washington, D.C.

6 4. A true and correct copy of Pacifica's current Bylaws (hereinafter "the current
7 Bylaws" or "Pacifica's current Bylaws") is attached and incorporated by this reference as
8 **"Exhibit A."**

9 5. Pacifica first admitted Members with rights to vote on certain matters, including
10 the right to propose and to vote to adopt bylaws amendments proposed by them, in 2003 when
11 Amended and Restated Bylaws were adopted. However, since 2003 no proposed bylaws
amendments have ever been submitted by Members for approval, until now.

12 6. The 2003 Bylaws have been amended several times since then by the Board of
13 Directors and Delegates, but the provisions for electing Directors have remained the same. The
14 Members at each of the 5 radio stations elect 24 Delegates – 18 are elected by the Listener-
15 Sponsor Members and 6 are elected by the Staff Members. The Delegates also serve as members
16 of "Local Station Boards," as committees of the Board of Directors. (**"Exhibit A,"** Article Four,
17 section 3.) In "early January" of each year the Delegates at each station meet to elect 4 Directors
18 from among themselves for 1-year terms on the Pacifica National Board of Directors – 3
19 Listener-Sponsor Directors and 1 Staff Director – for a total of 20 "Station Representative
20 Directors." (**"Exhibit A,"** Article 5, section 3.) In addition, 2 "Affiliate Directors" are elected
21 by the Board of Directors in December of each year for 1-year terms commencing in January of
22 each year. The "Affiliate Directors" are nominated by radio stations that are affiliated with
23 Pacifica by contracts permitting them to air some programming distributed by Pacifica.
24 (**"Exhibit A,"** Article 5, section 4.) The 22 newly elected Directors' 1-year terms begin when
25 they are seated at a Board meeting in "late January." (**"Exhibit A,"** Article 5, sections 3.C. and
26 4.B.)

27 7. Over the years, this governance system has proved unwieldy and contentious.
28 The Delegate Bodies/Local Station Boards have been elected from members of opposing "slates"
under a proportional representation system that keeps these bodies severely polarized. They then
elect the Board of Directors that has been severely polarized as well, and unable to agree on

1 critical matters resulting in lack of proper executive management, financial oversight, and
2 financial planning, among other problems. The Board has been incapable of addressing these
3 issues without such destructive polarization that management cannot make and carry out plans of
4 action without the board countermanding those plans or stifling them or micromanaging them to
5 the point of complete breakdown and inefficacy.

6 8. The President of the Pacifica Foundation is known as the "Executive Director."
7 ("Exhibit A," Article Nine, section 7.A.) In the twelve years since 2007 Pacifica has had 16
8 Executive Directors or "interim" Executive Directors. (Greg Guma, Nicole Sawaya (twice),
9 Sherry Gendelman, Dan Siegel, Grace Aaron (twice), Arlene Englehardt, Summer Reese, Margy
10 Wilkinson, John Proffitt, Lydia Brazon, Bill Crosier, Tom Livingston, Maxie Jackson, III, and
11 John Vernile). Five of those 14 persons have been formally hired to fill the Executive Director
12 position since 2007 (Greg Guma, Nicole Sawaya, Arlene Englehardt, John Proffitt, and Maxie
13 Jackson, III). They all resigned, were terminated, or their contracts were not renewed. The last
14 Executive Director who was hired for that position in 2018 (Maxie Jackson, III) lasted a little
15 over 6 months before he resigned. The previous Executive Director who was hired for that
16 position in 2014 (John Proffitt) lasted a little less than 4 months before he resigned. Most of the
17 other "interim" Executive Directors were the Board Chair or other Board member filling that
18 position on an "interim" and volunteer basis. Pacifica has been operating with hired "interim"
19 Executive Director John Vernile since August 1, 2019.

20 9. Since 2007 Pacifica has had 6 or 7 Chief Financial Officers or persons attempting
21 to fulfill those duties without being formally appointed to that Office. Three of them were
22 actually hired to fill that position (Lonnie Hicks, LaVarn Williams, and Sam Agarwal (twice)).
23 Another 3 or 4 may not have been properly hired as a CFO and may have served "informally."
24 That information is unclear at this point. Pacifica has employed the services of outside
25 accountant Tamra Swiderski to act as a part-time "interim" CFO since May 19, 2019.

26 10. The previous CFO, Sam Agarwal, resigned in March 2018 asserting "constructive
27 termination" and that the Board refused to grant him the authority and resources necessary to do
28 the job.

11. In 2015 the California Attorney General's Charitable Trusts Division launched an
audit of the Pacifica Foundation in response to complaints they had received. Representatives
from the Charitable Trusts Division met with members of the Board of Directors on at least two

occasions in 2016 and 2017. By letter dated March 1, 2017 the Attorney General's Office demanded that Pacifica provide them with "a written plan for either establishing Pacifica's financial stability or dissolving the organization." A true and correct copy of this letter is attached hereto and incorporated by this reference as "**Exhibit B.**" A stabilization plan was submitted, but was never implemented, and Pacifica's financial condition has continued to deteriorate since that time.

12. According to Pacifica's Independent Auditors' reports, Pacifica's net assets dropped from \$7,466,164 as of September 30, 2007 to a net deficit of (\$4,612,278) as of September 30, 2017 – a loss of \$12,078,442 over that 10-year period. A true and correct copy of the Independent Auditors' report for FYE 9/30/07 is attached hereto and incorporated by this reference as "**Exhibit C.**" A true and correct copy of the Independent Auditors' report for FYE 9/30/17 is attached hereto and incorporated by this reference as "**Exhibit D.**"

13. The most recent Independent Auditors' report is for fiscal year ending 9/30/17. It was not completed until June 27, 2019. Pacifica is currently nine months late in filing its FYE 9/30/18 audit with the California Attorney General's office.

14. The FYE 9/30/17 Independent Auditors' report contains a "Disclaimer of Opinion" stating that:

"As explained in Note 9 to the financial statements, the Foundation is the sponsor of two distinct pension plans covering substantially all employees. Both plans are delinquent in obtaining audited financial statements as required by the Internal Revenue Service (IRS) and the Employee Retirement Income and Security Act of 1974 (ERISA). Additionally, both plans are delinquent with filing tax returns with the IRS. As of the date of the Independent Auditors' Report June 27, 2019: (a) audits for the plans for 2017 had not been completed, (b) audits for the plans for 2016 had not been completed, (c) an audit for one of the plans for 2015 had not been completed, and (d) an audit for one of the plans for 2015 was not required. We were thus unable to obtain sufficient appropriate audit evidence about the correct pension accruals, penalties, and fines for the year ended September 30, 2017.

"Additionally, we were unable to obtain audit evidence to support the amounts and disclosures in the financial statements due to difficulties in obtaining sufficient supporting documentation from some of the locations. Certain stations do not use the same accounting software as the corporate office. Some of the data from these stations could not be fully verified because it was missing. As a result, we were unable to determine whether any adjustments were necessary to make relating to the Foundation's statement of financial position; and the elements

1 making up the statement of activities, functional expenses, and cash flows for the
2 year then ended.” (“Exhibit C,” pages 1-2.)

3 15. The FYE 9/30/17 Auditors’ report (dated June 27, 2019) also expresses
4 “Substantial Doubt About the Organization’s Ability to Continue as a Going Concern,” stating as
5 follows:

6 “The accompanying financial statements have been prepared assuming that the
7 Foundation will continue as a going concern. As discussed in Note 12 to the
8 financial statements, the Foundation has suffered recurring losses from operations
9 and has a net deficit that raises substantial doubt about its ability to continue as a
10 going concern. Managements evaluation of the events and conditions, and
11 management’s plans regarding those matters, are described in Notes 12 and 13.
12 The financial statements do not include any adjustments that might result from the
13 outcome of this uncertainty. Our opinion is not modified with respect to this
14 matter.” (“Exhibit C,” page 2.)

15 16. Pacifica’s interim CFO, Tamra Swiderski, has informed the Board to expect
16 another “Disclaimer of Opinion” and “Going Concern” alert in the FYE 9/30/18 Auditors’
17 report.

18 17. Pacifica has lost approximately \$1 million per year in annual funding from the
19 Corporation for Public Broadcasting every year since 2014 due to failure to file timely Auditors’
20 Reports.

21 18. In 2017 the Empire State Building obtained a Judgment against Pacifica for
22 unpaid rents on the lease for the radio broadcasting tower for WBAI on top of the building. In
23 April 2018 Pacifica obtained a 3-year loan for \$3.25 million to pay off the Judgment, subsequent
24 unpaid rents, interest, penalties, and to break the lease so that WBAI could move to a less
25 expensive broadcast tower site. The loan payments are interest only until April 1, 2021, when the
26 principal is due in full.

27 19. Pacifica’s interim CFO sent cash flow projections to the Board on or about
28 September 24, 2019, showing a projected combined negative cash balance for all five Pacifica
stations of (\$1,114,123) as of 9/30/20. A true and correct copy of this report is attached hereto
and incorporated by this reference as “Exhibit E.”

20. Meanwhile, the Board of Directors has been fighting over the removal of its Chair
from that office, with allegations and denials that she had been undermining the efforts of the
interim Executive Director, and efforts by some Board members to get her reinstated as Chair

1 and possibly to remove and replace other Officers. The Vice-Chair of the Board is currently
2 chairing the meetings until such time as a new Chair can be elected.

3 21. Pacifica's Board of Directors has been severely polarized and unable to agree on
4 critical matters resulting in lack of proper executive management, financial oversight, and
5 financial planning, among other problems for a number of years. The Board has been incapable
6 of addressing these issues without such destructive polarization that management cannot make
7 and carry out plans of action without the board countermanding those plans or stifling them or
8 micromanaging them to the point of complete breakdown and inefficacy.

9 22. For several years Petitioners had been alarmed by the financial condition of
10 Pacifica and had reached the conclusion that the Board of Directors either cannot or will not take
11 appropriate action to correct these critical matters. Therefore, Petitioners decided to go to
12 Pacifica's membership for a solution. Proposed Amended and Restated Bylaws for the Pacifica
13 Foundation were drafted reducing the number of Directors from twenty-two (22) to eleven (11),
14 providing that six (6) Directors would be chosen by the Board itself, and five (5) would be
15 elected directly by the Members at each of the five stations rather than elected by and from
16 opposing slates of Delegates. (Hereinafter "the proposed Bylaws" or "Petitioners' proposed
17 amended Bylaws.") (A true and correct copy of the proposed Bylaws is attached hereto and
18 incorporated by this reference as "**Exhibit F.**")

19 23. Pacifica's current Bylaws permit Members to propose bylaws amendments by a
20 petition signed by 1% of the Members. ("**Exhibit A,**" Article Seventeen, Section 1.A(3).) On
21 information and belief Pacifica has approximately 40,000 to 50,000 members. Thus, 1% would
22 be between 400-500 signatures.

23 24. To begin the petition process, Petitioners requested that Pacifica's membership
24 email list be given to a 3rd party mass mailing firm, as permitted under Pacifica's current Bylaws
25 ("**Exhibit A,**" Article Twelve, section 4.A), and had the mass mailing house send an email to
26 Pacifica Members requesting them to visit Petitioners' website and to sign the Petition. (A true
27 and correct copy of the email sent to Pacifica's Members is attached hereto and incorporated by
28 this reference as "**Exhibit G.**") Petitioners launched their on-line petition drive on September
16, 2019, with a method for the members to sign online and authenticate their membership with
their identifying data including their street address, phone number, email address, the station they
are affiliated with, and whether they are a listener-member of a staff member. The Petition was

1 posted on-line together with the full text of the proposed Amended Bylaws, an Introduction, an
2 Executive Summary, a Comparison between the current Bylaws and the Proposed Bylaws, and
3 the Biographies of the proposed Transition "At-Large" Directors to be appointed with the
4 approval of the proposed Bylaws. This material is posted on-line at
5 <https://form.jotform.com/42244096312953>.

6 25. Petitioners submitted their proposed Bylaws to the Foundation Secretary and
7 interim Executive Director, with a copy of their database with 833 signers' names and
8 membership identifying information on September 26th. Even allowing for 10% invalid
9 signatures, 833 is more than the required 1% of the 40,000-50,000 membership. (A true and
10 correct copy of their submission email is attached hereto and incorporated by this reference as
11 "Exhibit H," and a true and correct copy of the database of the signers will be submitted to the
12 court under seal, if requested, to protect the signers' confidential identifying information.)

13 26. The Board is required to set a "Notice Date" for the submission of proposed
14 Bylaws amendments for the process of voting on proposed amendments to begin. ("Exhibit A,"
15 Article Seventeen, section 1.B(1).)

16 27. Petitioners Bill Crosier, Donald Goldmacher, and Mansoor Sabbagh placed on the
17 agenda as the first actionable item (after roll call and approval of the agenda) for a Board
18 telephonic meeting on Thursday September 19th a motion to set a "Notice Date" of September
19 28th for the submission of proposed bylaws amendments. (A true and correct copy of the
20 Agenda for that meeting, together with the proposed motion, is attached hereto and incorporated
21 by this reference as "Exhibit I.")

22 28. At that meeting the Board majority changed the order of items on the agenda and
23 then intentionally ran out the meeting time so that Petitioners' motion could not come to a vote
24 of the Board at that meeting. Revealing that intent, the following day Director Nancy Sorden
25 sent a revelatory email to another Director, Robin Collier, which was copied to the full Board of
26 Directors and reads as follows:

27 "----- Subject Original Message -----:

28 Re: Please DO Not Eliminate Affiliate Directors from the PNB

Date: Fri, 20 Sep 2019 16:27:45 -0400

From: Nancy Sorden <nsordenpfw@gmail.com>

To: Robin Collier <culturalenergy@gmail.com>

Cc: Adrienne LaViolette <myrnaminkoff.ff@gmail.com>, Ursula Ruedenberg
<ursula@pacifica.org>, Pacifica National Board <pnb@pacifica.org>, John

Crosier, et al., v. Pacifica Foundation, Inc.,

Petition for Alternative Writ of Mandate and/or Other Appropriate Relief

1 Vernile <jcv@pacificafoundation.org>

2 Robin - You are correct. Although there are some acceptable changes in parts of
3 this amendment proposal (it is a set of a lot of amendments rolled into one) once it
4 is submitted it cannot be changed and there are some parts that are not acceptable.
5 That is the problem and why the fight to block the timeline occurred last night.
(Emphasis added.)

6 Nancy”

7 A true and correct copy of this email is attached hereto and incorporated by this reference as
8 “Exhibit J”.

9 29. Petitioners had calculated that, with a “Notice Date” of September 28th, they
10 could meet the timeline in the following manner: Petitioners Crosier, Goldmacher, and Sabbagh
11 would give notice a Special Meeting of the Board of Directors for the day after the end of the 45-
12 day “Notice Period” (“Exhibit A,” Article Seventeen, section 1.B(1)), on or about November
13 12th, for the sole purpose of the Board voting on their proposed amended Bylaws. Anticipating
14 that the Board would not approve the proposed amended Bylaws, they assumed that their
15 proposed amended Bylaws would not then be required to be put to the Delegates for a
16 meaningless vote on them. (“Exhibit A,” Article Seventeen, section 1.B(2)(i).) Thus, ballots
17 could be mailed to the Members on or about November 15th to be returned on or about December
18 15th and counted within 5 days thereafter, thus completing the voting prior to the December 31st
19 deadline for voting on member-proposed bylaws amendments. (“Exhibit A,” Article Seventeen,
20 section 1.B(2)(ii).)

21 30. Immediately following the September 19th Board telephone meeting, Petitioners
22 Crosier, Goldmacher, and Sabbagh sent notice of a Special Meeting of the Board by telephone
23 conference on September 26th. The sole item on the agenda for that meeting was a motion to set
24 the “Notice Date” for September 30th – a slippage of two days from their previous motion, but
25 still doable. Unfortunately, that meeting had to be postponed to September 29th because several
26 Directors whose votes were needed sent in excused absences due to travel plans or being in the
27 hospital.

28 31. The September 29th meeting failed to establish the required 51% quorum, as only
11 out of 22 Directors were present, so no resolution could be adopted to set the “Notice Date.”

32. The timeline for Members to propose and approve bylaws amendments is more
stringent than for amendments proposed by Board members or Delegates. Under the current

1 Bylaws, voting on any Amendments proposed by the Members is required to be completed by
2 December 31st of the calendar year in which they are proposed. There is no such requirement for
3 amendments proposed by Board members or Delegates. (“Exhibit A,” Article Seventeen,
4 section 1.B(2)(ii).)

5 33. Under the current Bylaws, proposed amendments are not acted upon immediately
6 but are held until the next following “Notice Date” that is 45 days before “the earliest voting
7 dates as established by the Board.” (**Exhibit A**, Article Seventeen, Section 1.B.) However, the
8 Board has not set any effective “Notice Date” this year, and when Petitioners asked them to do
9 so they “blocked the timeline” by refusing to set the “Notice Date.”

10 34. The Board previously attempted to set a “Notice Date” in the Spring of this year
11 for bylaws amendments that had been proposed by board members, but some radio stations
12 failed to broadcast the notice as required, so the notice was deemed ineffective by the Board and
13 voting on them was never completed as a new “Notice Date” was never set.

14 35. By refusing to set a “Notice Date” the Board has effectively prevented Petitioners
15 from obtaining a vote by the Members on their proposed Bylaws prior to December 31st of this
16 year as required under the current Bylaws.

17 36. Prior to a 2012 amendment to Article Seventeen, section 1.B(2)(ii), there was no
18 such restriction that all voting on amendments proposed by the members must be completed by
19 December 31st.

20 37. The 2012 amendment requiring that voting on amendments proposed by the
21 members be completed by December 31st was never put to a vote of approval by the members.
22 This requirement seriously limits Members’ rights to get a timely vote on amendments proposed
23 by them by cutting off the time to complete voting and forcing them to start again the following
24 year if voting cannot be completed by December 31st or if, as in the case here, the Board refuses
25 to set a “Notice Date” in time for the voting process to be completed by December 31st.

26 38. The Board has also effectively prevented Petitioners’ proposed Bylaws from
27 taking effect before the election under the current Bylaws of the two (2) “Affiliate Directors”
28 scheduled for December of this year (**Exhibit A**, Article Five, section 4.B) and elections of the
twenty (20) “Station Representative Directors” scheduled for “early January” of 2020 (**Exhibit**
A, Article Five, sections 3.B and C), all for 1-year terms commencing at a Board meeting to be
held in “late January” of 2020.

1 39. Petitioners' proposed new Bylaws, if adopted, would reduce the size of the board
2 from 22 to 11 directors. There would be 5 "Station Representative Directors" elected directly by
3 the Members, and there would be 6 "At-Large Directors" elected by the Board itself. There
4 would be no "Affiliate Directors." (**"Exhibit F"**, Article VI, section 1.)

5 40. Under of Petitioners' proposed Bylaws, six (6) specifically named "Transition At-
6 Large Directors" would be seated at the first meeting of the "Transition Board" during the last
7 two weeks of January 2020. (**"Exhibit F,"** Article Fifteen, section 1.) They are a group of
8 substantial and experienced people with legal and grant-making experience (Heidi Boghosian);
9 financial, accounting, asset management, and lending experience (Judy Graboyes); a retired
10 President of the United Auto Workers (Bob King); a Professor of History, Gender and Women's
11 Studies, and African American Studies at the University of Illinois at Chicago (Barbara Ransby);
12 long-time civil rights lawyer and activist (Walter Riley); and the Publisher of *The Progressive*
13 magazine and former 20-year Operations Coordinator at Pacifica Affiliate radio station WORT
14 (Norman Stockwell). (A true and correct copy of their biographies is attached hereto and
incorporated by this reference as **"Exhibit K."**)

15 41. In addition, under Petitioners' proposed Bylaws, five (5) "Transition Station-
16 Representative Directors" would be elected by the Members at each of the 5 stations, with
17 nominations opening in January 2020, and those elected being seated at a Board meeting within
18 the first ten days of May 2020. (**"Exhibit F,"** Article Fifteen, sections 3 and 4.)

19 42. Under the current Bylaws the terms of the current Directors (the 2019 Board) will
20 expire with the seating of the newly elected 2020 Directors at a Board meeting in "late January."
21 (**"Exhibit A,"** Article V, section 3.C.). Under the proposed Bylaws the terms of the current
22 Directors (the 2019 Board) will expire with the seating of the "Transition At-Large Directors" at
a board meeting in the last two weeks of January. (**"Exhibit F,"** Article Fifteen, section 1.)

23 43. Under the proposed Bylaws the "Transition At-Large Directors" will constitute
24 the full Board of Directors and will have all powers of the Board of Directors until the election of
25 the "Transition Station-Representative Directors" by the Members can be completed and they
26 can be seated at a Board meeting to be held within the first 10 days of May 2020. (**"Exhibit F,"**
Article Fifteen, sections 1, 3, and 4.)

27 44. On information and belief, Pacifica's membership lists are in great disarray, and
28 have been for many years, such that the accuracy and integrity of the membership lists cannot be

1 relied upon. During the elections of Delegates by the Members which occur in two out of every
2 three years under the current Bylaws, there are always hundreds of complaints about people
3 receiving ballots who were not eligible to vote and Members who were eligible to vote not
4 receiving ballots.

5 45. There is an election of Delegates currently underway at all five Pacifica radio
6 stations. On information and belief, the condition of the WBAI membership lists is so bad that
7 the current election of the Delegates for that station will have to be extended while the National
8 Elections Supervisor continues to try to verify the membership data and eligibility of the voters,
9 invalidate people who are not current members (or duplicates), and possibly send new ballots to
10 members who were left off the list and give them time to vote. The WBAI station management
11 sent three lists to the National Elections Supervisor, and incorrectly included Members going
12 back to 2015 who are no longer current Members. The number of members shown on the lists
13 mysteriously increased by about 2,000 people this year, although there was not a corresponding
increase in donations.

14 46. On information and belief, some Pacifica stations' staff-member lists may be
15 inflated with people who do not qualify as "staff members," as defined under Pacifica's current
16 Bylaws. Pacifica's current Bylaws, at Article Three, section 1.B, defines "Staff Members" as
17 follows:

18 "Staff Members" shall be: (1) any non-management full-time or part-time paid
19 employee of a Foundation radio station; or (2) any member of a Foundation radio
20 station "Unpaid Staff Organization" or "Unpaid Staff Collective Bargaining Unit"
21 which has been recognized by station management, or, if the station has neither
22 such organization or bargaining unit, then any volunteer or unpaid staff member
23 of a Foundation radio station who has worked for said radio station at least 30
24 hours in the preceding 3 months, exclusive of fund-raising marathon telephone
25 room volunteer time. Said volunteer work shall be performed under the
26 supervision of the Foundation radio station management and shall not include
27 volunteer work on committees of a Local Station Board. Radio station
28 management employees and Foundation staff employees who are not employed at
a Foundation radio station shall not qualify as Staff Members, however, such
employees may qualify as Listener-Sponsor Members by contributing the
requisite minimum dollar amount as set forth in Section 1(A) of this Article of
these Bylaws." (Emphasis added.) ("Exhibit A," Article Three, section 1.B.)

47. On information and belief, there are a significant number of people who come
occasionally to the stations on a casual basis to assist in the production of programs produced by

1 “unpaid staff” who do not meet the “30 hours in 3 months” hours worked requirements. But the
2 stations do not verify hours worked for everyone who casually helps out from time-to-time, and
3 there are sometimes people on the staff-member lists who come in only occasionally. This has
4 been a longstanding problem with at least two and maybe more of the Pacifica radio stations.

5 48. Due to voter apathy and poor record keeping, there is often difficulty reaching a
6 quorum in the Delegate elections as well, such that for some stations the voting period in several
7 elections has been extended by up to four (4) weeks to obtain a quorum.
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1
2 **PRAYER**

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4 Petitioners William G. Crosier, Susan da Silva, Sherry Gendelman, Donald Goldmacher,
5 Mansoor Sabbagh, Carol Spooner, Akio Tanaka, and Carole Travis pray that this court to issue
6 an alternative writ of mandate and/or prohibition commanding respondent Pacifica to do the
7 following or to appear and show cause why the writ should not be issued:

- 8
9 (1) On _____, 2019, which date shall be the "Notice Date" (the day after the
10 issuance of the Writ) post on Pacifica's web page at www.pacifica.org Petitioners'
11 proposed Amended and Restated Bylaws for the Pacifica Foundation, together with the
12 biographies of the "Transition At-Large Directors" who will be appointed and take their
13 seats in January 2020 if the proposed Bylaws are approved by the Members, and with a
14 link to Petitioners' web page at <https://form.jotform.com/42244096312953> where voters
15 can read arguments in favor of the proposed Bylaws, and a link to such web page as the
16 Board may determine, if any, where voters can read arguments opposed to the proposed
17 Bylaws; and
18 (2) Beginning on _____, 2019 (the day after the issuance of the Writ), and
19 until the voting is completed, broadcast notice on all five (5) Pacifica radio stations that
20 the proposed Bylaws to be voted on by the Members are posted at www.pacifica.org; and
21 (3) On _____, 2019 (15 days after the issuance of the Writ), mail and/or
22 make electronically available ballots to all eligible Pacifica Members with links to the
23 same web pages as in paragraph (1) above; and
24 (4) Set a 30-day balloting period for the Members with ballots to be returned no later than
25 _____, 2019, and counted and the results reported no later than 5
26 days thereafter, on _____, 2019; and
27 (5) Reduce the quorum for both classes of Members to the number of ballots cast;
28 (6) Appoint Pacifica's interim Executive Director, John Vernile, or his designated agent, as
the supervisor of the voting (aka "election inspector,") or, if he becomes unavailable for
any reason, then an independent neutral to be agreed upon by the parties; and

- 1 (7) Prohibit the election of any Directors of the Pacifica Foundation for terms commencing
2 in January 2020 under the current Bylaws until after the ballots have been counted and
3 the results announced, and further providing that if Petitioners' proposed Bylaws are
4 approved by the Members then the Directors of Pacifica for terms commencing in
5 January 2020 shall be those "Transition At-Large Directors" appointed by approval of the
6 Members along with their approval of Petitioners' proposed Bylaws, and that if
7 Petitioners' proposed Bylaws are not approved by the Members, then the elections of
8 Directors under the current Bylaws shall proceed; and
9 (8) Extend the deadline for completion of voting beyond December 31st if necessary, until
10 such date as voting and counting can be completed.
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VERIFICATION

I, William G. Crosier, declare as follows:

I am a petitioner herein. I am a Member of the Pacifica Foundation, and a member of the Board of Directors of Respondent Pacifica Foundation, and I hold the office of Secretary of the Pacifica Foundation.

I have read the foregoing Verified Petition for Alternative Writ of Mandate and/or Other Appropriate Relief and know its contents. The facts alleged in the petition are within my own knowledge and I know those facts to be true, except where alleged on information and belief, in which case 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 verification was executed on October 5, 2019, at Houston, Texas.



William G. Crosier

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MEMORANDUM OF POINTS AND AUTHORITIES

I. **MANDATE LIES TO ENFORCE A DUTY TO ACT OR TO CORRECT AN ABUSE OF DISCRETION ON THE PART OF THE RESPONDENT CORPORATION.**

CCP § 1085, provides as follows:

“(a) A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.” (Emphasis added.)

A. **The Pacifica Board’s dilatory and obstructive actions to “stop the timeline” are preventing Petitioners’ proposed Amended Bylaws from being put to a vote of the Members prior to the December 31st deadline for completion of voting on amendments proposed by Members.**

By reordering the agenda and dilatory actions at its September 19th telephonic meeting, the Pacifica Foundation Board of Directors (hereinafter “the Board”) intentionally ran out the time in order to delay setting the required “Notice Date” to initiate the process of bringing Petitioners’ proposed amended Bylaws to a vote of the Members. (Verified Petition, ¶27 and ¶28.) Director Nancy Sorden admitted that the intent was to “stop the timeline” in her email copied to the full Board. (“Exhibit J”)

No quorum was established at the telephonic Special Meeting on September 29th, called for the sole purpose of setting the required “Notice Date,” so a motion to set the “Notice Date” could not be voted upon. There is no longer any possibility for the Board to set a “Notice Date” that would allow Petitioners’ proposed Amended Bylaws to be put to a vote of the membership, and the voting completed before December 31st of this year, as is required for voting on amendments proposed by Members. (“Exhibit A,” Article Seventeen, section 1.B.(2)(ii).)

Mandate lies to compel acts required and to enforce rights under a corporation’s bylaws. Potomac Oil Co. v Dye (1909) 10 Cal.App. 534, 537, therefore this court may order respondent to perform the duty the Board has conspired not to do.

1 **B. Petitioners have no plain, speedy, and adequate remedy at law.**

2 CCP § 1086 provides that:

3 “The writ must be issued in all cases where there is not a plain, speedy, and
4 adequate remedy, in the ordinary course of law. It must be issued upon the
5 verified petition of the party beneficially interested.” (Emphasis added.)

6 In Dowell v Superior Court (1956) 47 Cal.2d 483, 486-487, the California
7 Supreme Court set forth the standard for exercising the court's jurisdiction:

8 “‘It was well said in Potomac Oil Co. v. Dye, 10 Cal.App. 534 at 537 [102 P.
9 677]: ‘Mandamus, although it is an extraordinary legal remedy, is in the nature of
10 an equitable interference supplementing the deficiencies of the common law. It
11 will ordinarily be issued where a legal duty is established, and no other sufficient
12 means exist for enforcing it. . . . [sic] Its issuance is not necessarily a matter of
13 right, but lies rather in the discretion of the court, but where one has a substantial
14 right to protect or enforce, and this may be accomplished by such a writ, and there
15 is no other plain, speedy and adequate remedy in the ordinary course of law, he is
16 entitled as a matter of right to the writ, or perhaps more correctly, in other words,
17 it would be an abuse of discretion to refuse it.’”

18 Because Respondent Pacifica’s Board of Directors has refused to perform their
19 duty under the bylaws and instead is “blocking the timeline” by refusing to set a “Notice
20 Date” to initiate the process of voting on proposed amended bylaws, and because under
21 Pacifica’s current Bylaws the deadline to complete voting on bylaws amendments when
22 proposed by Members is December 31st of the year in which they are proposed
23 (contrasted with no deadline for amendments proposed by Directors or Delegates), then
24 unless the court issues the Writ setting the “Notice Date” at the earliest date possible,
25 along with other appropriate and necessary orders shortening the time periods to carry out
26 the various steps to complete the voting, Petitioners’ rights will be utterly and
27 intentionally frustrated by the ongoing delay perpetrated by the Board.

28 There is no other procedure available in the ordinary course of law that could
enforce Petitioners’ rights quickly enough to meet the highly restrictive timeline and the
urgent need to put the proposed Amended and Restated Bylaws to a vote of the
Membership.

**C. Action by the court is urgently needed so that Petitioners’ proposed
 Amended Bylaws can be approved prior to the seating of a new Board
 of Directors in January 2020.**

1
2 Under Pacifica's current Bylaws, two (2) directors are to be elected by the Board
3 in December and twenty (20) directors are to be elected by the Delegates in January, all
4 for 1-year terms commencing when they are seated at a Board meeting in "late January"
5 2020.

6 Under Petitioners' proposed Amended Bylaws, six (6) specifically named
7 individuals are to be seated as "Transition At-Large Directors" ("**Exhibit F**," Article 15,
8 Section 1.) at a Board meeting to be held in the last two weeks of January 2020, and are
9 to constitute the full Board of Directors until an additional five (5) "Station
10 Representative Directors" can be seated in May 2020 after their election in April by the
11 Members is completed. ("**Exhibit F**," Article 15, Section 3.)

12 Under Corp.Code § 5222(c):

13 "Any reduction of the authorized number of directors or any amendment reducing
14 the number of classes of directors does not remove any director prior to the
15 expiration of the director's term of office unless the reduction or any amendment
16 also provides for the removal of one or more specified directors."

17 Petitioners' proposed amended Bylaws would reduce the number of authorized
18 directors from twenty-two (22) to eleven (11), and therefore could not take effect for one
19 full year if it is not approved by the Members prior to the seating of the next Board for 1-
20 year terms in "late January" 2020.

21 **D. The Pacifica Foundation urgently needs a new Board of Directors that**
22 **is not crippled by factional dysfunction, and that is competent and**
23 **capable of addressing Pacifica's impending financial collapse.**

24 Pacifica's interim CFO has provided the Board with cash flow projections
25 showing a combined negative projected cash balance of (\$1,114,123) for Pacifica's five
26 radio stations at the end of FYE 9/30/20. ("**Exhibit E**")

27 Actions proposed by the interim Executive Director and interim CFO are being
28 blocked, interfered with, and/or ignored by the Board which is caught up with factional
fighting for control of the Board. (**Verified Petition, ¶19, ¶20, ¶21.**)

1 Without the court's intervention, the election of Directors by the factional
2 Delegates at the five stations under the current Bylaws in "early January" would only
3 produce substantially the same Board members, and the same factional infighting that
4 have existed on the Board for the past many years.

5 A new and competent Board that is not caught up in factional fights, such as the
6 Transition Board that would be seated under Petitioners' proposed Amended Bylaws, is
7 urgently needed to address this crisis.

8 **II. IT IS IMPRACTICAL AND UNDULY DIFFICULT, IF NOT**
9 **IMPOSSIBLE, TO OBTAIN THE CONSENT OF THE MEMBERS TO**
10 **BYLAWS AMENDMENTS PROPOSED BY MEMBERS UNDER**
11 **PACIFICA'S CURRENT BYLAWS.**

12 **A. Corp.Code § 5515 gives the court broad authority to order**
13 **appropriate relief when it is impractical or unduly burdensome to**
14 **obtain consent of the Members to proposed Bylaws amendments.**

15 Corp.Code § 5515 provides as follows:

16 "(a) If for any reason it is impractical or unduly difficult for any corporation to
17 call or conduct a meeting of its members, delegates, or directors, or otherwise
18 obtain their consent, in the manner prescribed by its articles or bylaws, or this
19 part, then the superior court of the proper county, upon petition of a director,
20 officer, delegate, member or the Attorney General, may order that such a meeting
21 be called or that a written ballot or other form of obtaining the vote of members,
22 delegates, or directors be authorized, in such a manner as the court finds fair and
23 equitable under the circumstances. (Emphasis added.)

24 "(b) The court shall, in an order issued pursuant to this section, provide for a
25 method of notice reasonably designed to give actual notice to all parties who
26 would be entitled to notice of a meeting held pursuant to the articles, bylaws and
27 this part, whether or not the method results in actual notice to every such person,
28 or conforms to the notice requirements that would otherwise apply. In a
proceeding under this section the court may determine who the members or
directors are.

"(c) The order issued pursuant to this section may dispense with any
requirement relating to the holding of and voting at meetings or obtaining of
votes, including any requirement as to quorums or as to the number or percentage
of votes needed for approval, that would otherwise be imposed by the articles,
bylaws, or this part. (Emphasis added.)

1
2 [...]

3 “(e) Any meeting or other method of obtaining the vote of members, delegates,
4 or directors conducted pursuant to an order issued under this section, and which
5 complies with all the provisions of such order, is for all purposes a valid meeting
6 or vote, as the case may be, and shall have the same force and effect as if it
7 complied with every requirement imposed by the articles, bylaws and this part.”

8 Of the nine Petitioners, one is a Director, Officer, and Member, two are Directors and
9 Members, and six are Members. (**Verified Petition**, ¶ 1.) The orders sought by this Petition are
10 those authorized by this code section for “obtaining the vote of the members. ... in such a
11 manner as the court finds fair and equitable.” (Corp.Code § 5515(a).) To the extent that the
12 requested orders “may dispense with any requirement relating to [...] voting ... quorums ... or
13 percentage of votes needed for approval” such orders are authorized under Corp.Code § 5515(c).

14 **B. Pacifica’s current bylaws provisions for voting to approve bylaws**
15 **amendments proposed by Members are nearly incomprehensible and**
16 **unduly burdensome if not impossible to fulfill.**

17 Article Seventeen, Section 1, of Pacifica’s current Bylaws concerns “Amendment of
18 Bylaws.” Subdivision A. concerns “Proposing Amendments,” and is clear and simple. It
19 provides that:

20 “Amendments may be proposed by:

- 21 (1) six (6) Directors;
22 (2) a majority vote of the Delegates of each of two radio stations; or
23 (3) a petition signed by at least one percent (1%) of all Members, which petition
24 to be considered "proposed" must be delivered to the Foundation's Secretary.”
(Emphasis added.) (“**Exhibit A**,” Article Seventeen, section 1.A.)

25 However, subdivision 1.B. concerns “Voting and Approval” and is less than clear and
26 simple. It covers 1-1/2 pages of ambiguous, nesting, interwoven, and cross-referenced
27 subdivisions and sub-subdivisions.

28 Subdivision 1.B(1) requires that:

“(1) Unless the Board by a 2/3 vote decides otherwise, there shall be a maximum
of two ballots per calendar year related to the amendment of the Foundation's
Bylaws, which annual voting period shall be determined by the Board. All
properly proposed Bylaw amendments shall be held until that date which is 45

1 days before the earliest of the voting dates of the Board and of the Delegates, as
2 determined by the Board (the "Notice Date"). On the Notice Date, the proposed
3 amendment(s) to the Bylaws shall be posted on the Foundation's website and the
4 Foundation's radio stations shall broadcast an announcement three times a day -
5 twice between 6:00 AM and 11:00 PM and once between 11:00 PM and 6:00 AM
6 for a period of 45 days (the "Notice Period") regarding the existence of the
7 proposed amendment(s) on the Foundation's website for review and the upcoming
8 vote by the Board and Delegates regarding said amendment(s). The results of said
9 voting by the Board and the Delegates on the proposed amendment(s) shall be
10 reported within 15 days of the Board and Delegates meetings to vote on these
11 amendments." (Emphasis added.) ("Exhibit A," Article Seventeen, section
12 1.B(1))

13 Subdivision 1.B(2)(i) concerns voting and approval of bylaws amendments proposed by
14 Directors or Delegates:

15 "(2) In order for new Bylaws to be adopted, or these Bylaws amended or repealed
16 and subject to Section 1(B)(3) below:

17 "(i) except as provided in Section 1(B)(3) below, the proposed amendment(s)
18 must be approved by the majority of all Directors on the Board and by the
19 majority vote of all the Delegates of at least three of the Foundation radio stations.
20 The Delegates shall vote on the proposed amendment(s) within the 60 day period
21 beginning with the voting date of the PNB [Pacifica National Board]."
22 (Bracketed text inserted.) (Emphasis added.) ("Exhibit A," Article Seventeen,
23 section 1.B(2)(i))

24 It is not stated in this section, nor anywhere else in Article Seventeen, subdivision 1.B,
25 when the Board is required to vote except that it is after the 45-day notice period. Then, after the
26 Board votes, the Delegates have 60 days to complete their voting on proposed Bylaws
27 amendments.

28 Article Seventeen, section 1.B(2)(ii) concerns voting and approval of amendments
proposed by petition of 1% of the Members:

"(ii) in the case of amendment(s) proposed by Member petition pursuant to
Section 1(A)(3) above, said proposed amendment(s) must first be presented to the
Board and the Delegates for approval as set forth in Section 1(B)(2)(i) above. If
any proposed amendment is approved by the Board and the Delegates, then,
unless membership approval is required under Section 1(B)(3) below, the
amendment shall be adopted. If any proposed amendment is not approved by the
Board and Delegates, then it shall be submitted to the Members for approval and
shall be adopted if approved by the Members as set forth in Section 1(B)(4)
below. Voting shall be completed by December 31 of the year in which the

1 amendments are proposed. (Emphasis added.) (“**Exhibit A**,” Article Seventeen,
2 section 1.B(2)(ii))

3 Thus, Bylaws amendments proposed by the Members can be approved by the Members,
4 even if the Board and/or Delegates do not approve them. However, by not routinely setting a
5 “Notice Date” each year that would allow for Member petitions to be submitted to the Board in
6 time to be voted on before December 31st, the Board has foreclosed on the Members’ rights to
7 petition for Bylaws amendments.

8 Article Seventeen, subdivision 1.B(3) requires a vote of the Members on any Bylaws
9 amendments that would do any of the following:

- 10 “(i) increase or extend the terms of Directors or Delegates;
11 “(ii) increase the quorum for Members’ meetings or Members’ actions;
12 “(iii) change proxy rights;
13 “(iv) authorize cumulative voting or a change in the voting method or manner of
14 counting ballots; or
15 “(v) materially and adversely affect a Member’s rights as to voting or transfer.”
16 (Emphasis added.)

17 “In the event that a proposed amendment would do any of the above-mentioned
18 things, it shall not be adopted unless also approved by the Members; provided
19 however, that such adoption, amendment or repeal also requires approval by the
20 members of a class if such action would materially and adversely affect the rights
21 of that class as to voting or transfer in a manner different than such action affects
22 another class.” (“**Exhibit A**,” Article Seventeen, section 1.B.(3))

23 Petitioners’ proposed new Bylaws would increase Directors’ terms from one (1) to three
24 (3) years, would change the manner of members’ voting from the election of Delegates by Single
25 Transferrable Voting, to the election of Directors by Instant Run-off Voting, and would
26 materially and adversely affect the rights of Staff Members as they would no longer be eligible to
27 serve as Directors of Pacifica. (“**Exhibit A**,” Art. Four, Section 3, and “**Exhibit F**,” Art. V.,
28 sections 1, 2, and 4.)

29 Pacifica’s current Bylaws, at Article Seventeen, subdivision 1.B(4), provides for
30 distribution of ballots to the Members and counting the ballots:

31 “If a vote of the Members is required hereunder for the approval of any proposed
32 amendment, then no later than 60 days after the vote of the Board and Delegates
33 above, written ballots shall be distributed, or otherwise made available to the
34 Members, pursuant to the provisions of Sections 8(A), 8(B), 8(C) and 8(D) of
35 Article 3 of these Bylaws, to vote on the proposed amendments. To be approved,

1 a proposed amendment must receive the approval of the Members by a majority
2 vote, provided that a quorum must be established by written ballot. If the
3 proposed amendment would impact one class of Members differently from
4 another class, the Members shall vote in classes and the majority vote of the
5 Members of each class shall be required to approve the amendment, provided that
6 a quorum of each class must be established by written ballot. The results of said
amendment ballot shall be reported within 30 days of the date the ballots must be
returned to be counted and shall be posted on the Foundation's website.
(Emphasis added.) (“Exhibit A,” Article Seventeen, section 1.B(4))

7 Thus, potentially another 60 days can be used up before the ballots are distributed, and
8 another 30 days used up to count the ballots and report the results. And this subdivision doesn't
9 mention the time required for the balloting to take place and the ballots returned by the voters –
10 possibly another 30-45 days. So, this process of distributing, balloting, and counting the ballots
11 could take up to 120 days, or even more. And that 120 or more days is in addition to the 45 day
12 “Notice Period” set out in subdivision B(1).

13 So, especially with a hostile Board dragging out the procedural timeline, the whole
14 process for approval of bylaws amendments proposed by the members could take at least 165
15 days, or 5-1/2 months! By failing and refusing to set a “Notice Date” each year the Board does
16 not give Members notice of when to submit proposed bylaws amendments.

17 **III. THE REQUIREMENT THAT AMENDMENTS PROPOSED BY THE**
18 **MEMBERS FIRST BE PUT TO A VOTE OF THE BOARD AND THE**
19 **DELEGATES IS AN IDLE ACT AND UNDULY BURDENSOME AND**
20 **SHOULD BE STRICKEN FROM THE BYLAWS.**

21 The current Bylaws requirement that amendments proposed by the Members must first be
22 presented to a vote by the Board and the Delegates (“Exhibit A,” Article Seventeen, section
23 1.B(2)(ii)) is a nonsensical waste of time when “membership approval is required under section
24 1.B(3)” because the Board and Delegate’s votes to approve or disapprove the proposed
25 amendments are inconsequential and without force or effect to putting the proposed amendments
26 to a vote of the members. It is an idle act and “[t]he law neither does nor requires idle acts.”
Civil Code § 3532.

27 It is unduly burdensome because it causes as at least 60 days’ delay for the Delegates to
28 vote after the Board votes, or more, depending on when, or even if, the Board decides to vote in

1 the approval process for Member-proposed bylaws amendments. Because there is no
2 requirement for the Board to vote within a specified time, the unintended consequence is to give
3 the Board a “pocket veto” if they decide to delay their vote, or not to vote at all, so as to make it
4 impossible to complete the voting by the members before December 31st of the calendar year in
5 which the amendments are proposed by the Members.

6
7 **IV. THE 2012 BYLAWS AMENDMENT REQUIRING THAT VOTING ON**
8 **MEMBER-PROPOSED BYLAWS AMENDMENTS BE COMPLETED BY**
9 **DECEMBER 31ST MATERIALLY AND ADVERSELY AFFECTED THE**
10 **RIGHTS OF THE MEMBERS TO PROPOSE AND APPROVE BYLAWS**
11 **AMENDMENTS AND SHOULD BE STRICKEN FROM THE BYLAWS**
12 **AS IT WAS ADOPTED WITHOUT A VOTE OF APPROVAL BY THE**
13 **MEMBERS.**

14 Corp.Code § 5150(a) provides that:

15 “Except as provided in subdivision (c), and Sections 5151, 5220, 5224, 5512,
16 5613, and 5616, bylaws may be adopted, amended or repealed by the board unless
17 the action would materially and adversely affect the rights of members as to
18 voting or transfer.” (Emphasis added.)

19 Pacifica’s own current Bylaws contain the same provision at Article Seventeen section
20 1.B(3):

21 “(3) The Members shall vote on any proposed amendment approved by the Board
22 and the Delegates, even if said amendment was not proposed by Member petition,
23 if said amendment would do any of the following:

24 [...]

25 (v) materially and adversely affect a Member's rights as to voting or transfer.
26 (Emphasis added.).

27 “In the event that a proposed amendment would do any one of the above-
28 mentioned things, it shall not be adopted unless also approved by the Members;
provided however, that such adoption, amendment or repeal also requires
approval by the members of a class if such action would materially and adversely
affect the rights of that class as to voting or transfer in a manner different than
such action affects another class.” (“**Exhibit A**,” Article Seventeen, section
1.B(3)(v))”

The 2012 amendment to Pacifica’s current Bylaws that added the requirement that all voting
on Member-proposed Bylaws amendments (but not on Director-proposed or Delegate-proposed

1 amendments) “must be completed by December 31st of the year in which they are proposed,”
2 was never put to a vote of approval by the members.

3 Because this amendment clearly did “materially and adversely” affect the voting rights of
4 Members to have their proposed bylaws amendments reach a vote of the Members in a timely
5 manner, in the same way as amendments proposed by the Directors or Delegates, and because it
6 was never voted upon by the members, it is void and should be stricken from the current Bylaws.

7
8 **V. THE COURT HAS BROAD DISCRETION TO SET A REASONABLE**
9 **TIMELINE AND NOTICE PERIOD TO BRING PETITIONERS’**
10 **PROPOSED AMENDED BYLAWS TO A VOTE OF THE MEMBERS.**

11 **A. Petitioners request the court to set the “Notice Date” for the day after the**
12 **issuance of the Writ.**

13 Under the current Bylaws, Pacifica’s Board of Directors has a ministerial duty to set a
14 “Notice Date” for submission of proposed Bylaws amendments. (“**Exhibit A**,” Article
15 Seventeen, section 1.B(1).) The Notice Date then begins the process of bringing proposed
16 Bylaws amendments to a vote of the Members. (“**Exhibit A**,” Article Seventeen, section 1.B(1))
17 By failing to set a Notice Date previously or at their September 19th and 29th meetings, the
18 “Notice Period” could not begin, and the Board thereby prevented Petitioners from exercising
19 their Members’ right to vote on amendments to Pacifica’s Bylaws before the deadline of
20 December 31.

21 Accordingly, a Writ of Mandate lies for the court to set a reasonable in time for
22 Petitioners’ proposed amendments to be voted upon by the membership before December 31st of
23 this year, along with such orders as are necessary to make this possible. (CCP § 1085(a) and
24 Corp.Code § 5515.)

25 Petitioners request that this Court set the “Notice Date” for the day after the issuance of
26 the Writ when Petitioners proposed Amended and Restated Bylaws (“**Exhibit F**”), together with
27 the biographies of the individuals who will be the “Transition At-Large Directors” (“**Exhibit**
28 **K**”) if the Members approve the proposed Bylaws, shall be posted on Pacifica’s web page at
www.pacifica.org.

1 **B. Petitioners request the court to set a “Notice Period” from the date of**
2 **posting of the proposed Bylaws through the end of voting on the**
3 **proposed Bylaws by the Members.**

4 In order to comply with the general framework of the current bylaws to accomplish a
5 membership vote on the proposed Bylaws Amendment by December 31st, Petitioners request that
6 the “Notice Period” commence the day after the issuance of the Writ with the posting of their
7 proposed Amended Bylaws at www.pacifica.org and the broadcasting of notice to the listeners
8 on all five Pacifica radio stations to continue until the voting can be completed.

9 **C. Petitioners request the court to order that ballots be mailed and/or**
10 **made electronically available to the Members 15 days after the posting**
11 **of the proposed Bylaws, and that the period for the Members to vote be**
12 **30 days.**

13 Petitioners request the court to order a 30-day voting period by the Members with ballots
14 to be mailed and/or be made electronically available to them 15 days after the beginning of the
15 notice period (16 days after the issuance of the Writ), and that the votes be counted and the
16 results announced within 5 days thereafter.

17 If the court agrees with Petitioners that the vote by the Board of Directors and Delegates
18 is idle and inconsequential and should be dispensed with, then no dates need to be set regarding
19 such. However, if the Court preserves the requirement of a vote by the Board of Directors and
20 Delegates, then the Petitioners request the Court to require that the Board and the Delegates vote
21 on Petitioners’ proposed Bylaws during the same 30-day period as the Members are voting, and
22 if they fail to do so, then dispense with the requirement that they vote.

23 **D. If the court cannot act in time or a timeframe cannot be established to**
24 **be completed in time, then the Court should extend or remove the**
25 **December 31st deadline for completion of voting on the proposed**
26 **amended Bylaws.**

27 Using the court's powers under Corp.Code § 5515, the Court “may dispense with any
28 requirement relating to the holding of and voting at meetings or obtaining of votes, including any
requirement as to quorums or as to the number or percentage of votes needed for approval, that
would otherwise be imposed by the articles, bylaws, or this part.” (Emphasis added.)

 If the court is unable to establish a workable and practical timeline to complete the voting
before December 31st, then the court should remove the deadline altogether or extend the

1 deadline beyond December 31st until such time as the voting can be completed and the votes
2 tallied and reported.

3
4 **VI. THE QUORUM FOR THE MEMBERSHIP VOTE SHOULD BE**
5 **REDUCED TO THE NUMBER OF BALLOTS CAST FOR EACH CLASS**
6 **OF MEMBERS.**

7 Under California Corp.Code § 5515(c), the court has the authority to establish an
8 alternative quorum notwithstanding the quorum stated in the bylaws. Greenback Townhomes
9 Homeowners Assn. v. Rizan (1985) 166 Cal.App.3d 843 (court modified homeowners
10 association's quorum requirement from the number stated in the bylaws to allow approval of
11 amendments.)

12 The current bylaws set a quorum for voting by the membership classes: The quorum for
13 the Staff Members is one quarter (1/4) and the for the Listener-Sponsor Members it is 10%.
14 (“Exhibit A,” Article 3 section 7.) To date, a vote to amend the bylaws has never been put to
15 the members.

16 However, due to voter apathy and poor record keeping in previous elections for
17 Delegates, there has been repeated difficulty obtaining quorum. When this occurs, the current
18 bylaws allow for extending the voting period for up to four (4) additional weeks as determined
19 by the National Elections Supervisor in order to achieve a quorum. (“Exhibit A,” Bylaws
20 Article 4 section 5.) To date, several elections of delegates have not reached quorum within the
21 initial voting period and have required the National Elections Supervisor to extend the voting
22 period until a quorum has been reached.

23 However, extending the voting period in this case of amending the bylaws, because of the
24 urgency of resolving the question of the adoption of the proposed bylaws and getting a new
25 Board of Directors seated as early as possible, the Petitioners ask the court to set the quorum for
26 voting on the proposed amendments at the number of members in each class who return ballots,
27 and to order that the proposed amended Bylaws shall be adopted or rejected upon the majority
28 vote of the number of ballots cast for each of the two classes of members being for or against the
29 proposed Bylaws.

30
31 **VII. TO PRESERVE THE STATUS QUO, PETITIONERS REQUEST THAT**
32 **THERE BE NO ELECTIONS OF DIRECTORS UNDER THE CURRENT**

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1 **BYLAWS UNTIL AFTER THE VOTE ON THEIR PROPOSED BYLAWS**
2 **IS COMPLETED AND THE RESULTS ARE ANNOUNCED.**

3 Petitioners are further requesting the court to preserve the current Directors as the status
4 quo, and to postpone the election of new directors under the current bylaws in December and
5 January until after the vote of the membership is completed.

6 Because there cannot be two boards of directors at the same time, and because once
7 directors are seated and their terms have commenced in "late January"2020 under the current
8 Bylaws ("**Exhibit A**", Article 5, sections 3(C) and 4(B)), amended Bylaws cannot be adopted to
9 unseat any newly elected Directors after their terms begin until after the end of their terms in
10 January 2021 (Corp.Code § 5222(c)), therefore it is essential that Petitioners proposed Bylaws be
11 voted on by the Members prior to the election of any directors in December and January under
12 the current Bylaws.

13 **VIII. THE EXECUTIVE DIRECTOR, HIS DESIGNATED AGENT, OR AN**
14 **INDEPENDENT NEUTRAL AGREED TO BY THE PARTIES SHOULD**
15 **BE APPOINTED BY THE COURT TO SUPERVISE THE VOTING.**

16 Current Bylaws Subdivision 8(E) of Article Three is not referenced in Article Seventeen
17 Section 1.B(4) but appears to be applicable as well. It refers to "Election Voting Supervision
18 and, and states as follows:

19 "Consistent with the provisions of Article 4 of these Bylaws, the Members'
20 elections of Delegates shall be supervised by a national elections supervisor and
21 local elections supervisors and all said ballots shall be counted under their
22 supervision at such place or places designated by the national elections
23 supervisor. All other voting by Members shall be supervised by the Board of
24 Directors, or the Board's designated agent, which shall also be responsible for
25 ensuring and monitoring compliance with its voting procedures and processes and
26 for counting ballots consistent with these Bylaws." (Emphasis added.) ("**Exhibit**
27 **A,**" Article Three, section 8.E.)

28 Corp.Code § 5615(a) provides:

"(a) In advance of any meeting of members the board may appoint inspectors of
election to act at the meeting and any adjournment thereof. If inspectors of
election are not so appointed, or if any persons so appointed fail to appear or
refuse to act, the chairman of any meeting of members may, and on the request of
any member or a member's proxy shall, appoint inspectors of election (or persons
to replace those who so fail or refuse) at the meeting. The number of inspectors

1 shall be either one or three. If appointed at a meeting on the request of one or
2 more members or proxies, the majority of members represented in person or by
3 proxy shall determine whether one or three inspectors are to be appointed. In the
4 case of any action by written ballot (Section 5513), the board may similarly
5 appoint inspectors of election to act with powers and duties as set forth in this
6 section." (Emphasis added.)

7 As the Board has clearly expressed its hostility toward the voting on Petitioners'
8 proposed amended Bylaws, to the extent of engaging in a "fight to stop the timeline," as Director
9 Nancy Sorden put it ("**Exhibit J**"), Petitioners request the court to order that the Executive
10 Director, or his designated agent, be appointed the supervisor of the voting to act as "inspector of
11 elections" pursuant to Corp.Code § 5615 or, if he resigns or is terminated beforehand, then an
12 independent neutral agreed to by the parties should be appointed by the court.

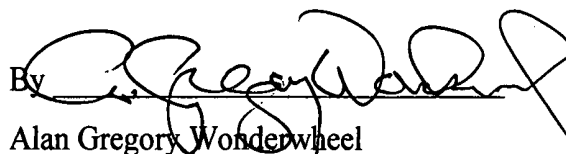
13 CONCLUSION

14 For all the foregoing reasons, the Writ should issue so that the rights of Pacifica's
15 Members to propose and vote upon Amended Bylaws shall not be infringed.

16 Date

10/06/2019

17 By

18 
19 Alan Gregory Wonderwheel
20 Attorney for Petitioners