

NO. _____
S281977

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

LEGISLATURE OF THE STATE OF CALIFORNIA;
GAVIN NEWSOM, in his official capacity as Governor of the
State of California; and JOHN BURTON,
Petitioners,

v.

SHIRLEY N. WEBER, Ph.D., in her official capacity as
Secretary of State of the State of California,
Respondent,

THOMAS W. HILTACHK,
Real Party in Interest.

**EMERGENCY PETITION FOR WRIT OF MANDATE;
MEMORANDUM OF POINTS AND AUTHORITIES**

CRITICAL DATE: JUNE 27, 2024

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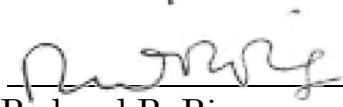
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

This Certificate is being submitted on behalf of petitioners LEGISLATURE OF THE STATE OF CALIFORNIA, GOVERNOR GAVIN NEWSOM, and JOHN BURTON. There are no interested entities or persons that must be listed in this certificate pursuant to Rules 8.488 and 8.208 of the California Rules of Court.

Dated: September 26, 2023

Respectfully submitted,

OLSON REMCHO, LLP

By: _____
Richard R. Rios

Attorneys for Petitioners Legislature
of the State of California, Governor
Gavin Newsom, and John Burton

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TO THE HONORABLE PATRICIA GUERRERO, CHIEF JUSTICE OF THE SUPREME COURT OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

INTRODUCTION

A proposed initiative that attempts to revise rather than amend the California Constitution is beyond the power of the voters to adopt and should not be permitted to be placed on the ballot. (*McFadden v. Jordan* (1948) 32 Cal.2d 330, 331-332.) The “Taxpayer Protection and Government Accountability Act”¹ – referred to here as the “Measure” – is exactly that: an unlawful attempt to revise the Constitution. The LEGISLATURE OF THE STATE OF CALIFORNIA, GOVERNOR GAVIN NEWSOM, and JOHN BURTON therefore respectfully petition this Court to prevent the Measure from being placed on the November 5, 2024 ballot.

A ballot initiative constitutes an unlawful revision of the Constitution if it would “make a far-reaching change in the fundamental governmental structure or the foundational power of its branches as set forth in the Constitution.” (*Strauss v. Horton* (2009) 46 Cal.4th 364, 444 (*Strauss*); *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 341 (*Raven*)). The Measure now before this Court would do both, all in order to restrict the ability of the State, local governments, and the people themselves to raise any revenue of any kind.

¹ Secretary of State No. 1935, attached hereto as Exhibit A.

Specifically, the Measure would restructure the power among the legislative branch, the executive branch, local governments, and the initiative process to create new requirements for adopting laws that result in additional money being paid to the government, whether a “tax” or not.

- ***State Legislative Branch:*** The Measure would revoke the LEGISLATURE’s power to *impose* state taxes – a power the LEGISLATURE has had since California’s founding – leaving it with only the power to *propose* state taxes to the voters, who alone would have the power to impose taxes. (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (b)(1).)
- ***State Executive Branch:*** The Measure would eliminate much of the executive branch’s administrative and regulatory power by requiring that any state agency action or GOVERNOR’s executive order that has the effect of increasing any payment to the State be adopted *by the LEGISLATURE*, not by executive branch regulation, even if the payment is now considered a non-tax “charge.” (Measure, Sec. 4, proposed art. XIII A, § 3, subds. (a), (b)(1), (c), (h)(4).) This would effectively gut the administrative state, and shift the longstanding balance of powers in California by adopting such a strict nondelegation rule. Moreover, any regulation or executive order that is deemed to be a tax would not only have to be adopted by the

LEGISLATURE, but also presented to the voters for approval. (*Id.*, Sec. 4, proposed art. XIII A, § 3, subds. (b)(1), (h)(4).)

- ***Local Governments:*** The Measure would likewise eliminate much of the power of local executive agencies to take actions that result in higher taxes or fees, requiring local legislative bodies and voters to assume much of the work that executive agencies now do. (Measure, Sec. 6, proposed art. XIII C, § 2, subds. (a)-(c), (e); Sec. 5, proposed art. XIII C, § 1, subd. (f).)

The Measure also expands the definition of “taxes” to place what are currently non-tax charges beyond the power of the LEGISLATURE and local governments to enact directly. (Measure, Sec. 4, proposed art. XIII A, § 3, subds. (b)(1), (h)(4); Sec. 6, proposed art. XIII C, § 2, subds. (b), (c); Sec. 5, proposed art. XIII C, § 1, subd. (f).) And it would extend the referendum power to certain executive actions that result in higher charges – for the first time in the nearly twelve decades the referendum power has existed – while diminishing the power of local voters to use the initiative to increase their own taxes. (Cal. Const., art. II, § 9; Measure, Sec. 4, proposed art. XIII A, § 3, subd. (d); Sec. 5, proposed art. XIII C, § 1, subd. (i); Sec. 6, proposed art. XIII C, § 2, subds. (c), (f).)

Such far-reaching changes to the foundational powers of the government would amount to an unlawful constitutional revision. Preelection review is therefore necessary because the

Measure cannot lawfully be enacted through the initiative process. Urgency is particularly warranted because the Measure would retroactively impose *all* of these requirements as of January 1, 2022 – meaning every non-compliant state and local tax, charge, and administrative fee adopted in the thirty-four months between then and November 5, 2024 would become void unless reenacted within twelve months to comply with the Measure. (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (f); Sec. 6, proposed art. XIII C, § 2, subd. (g).) As a result, governments throughout the State would be forced to take significant steps to comply with the Measure, and voters would be forced to vote on *many* laws that have already passed.

That is why preelection review of this Measure is particularly critical: If review is delayed until after the election and the Measure passes, it will commence a rush to reauthorize legislation and ballot measures, all while the courts are determining whether the Measure is valid and thus whether such a monumental undertaking is even necessary.

Petitioners are filing now to give the Court ample time to review this case before the Secretary of State formally places the Measure on the ballot on June 27, 2024. This Court therefore can and should grant preelection review and issue emergency relief directing elections officials not to include the Measure on the November 5, 2024 statewide ballot.

NEED FOR EMERGENCY RELIEF

1. Preelection review is necessary and appropriate because the Measure proposes to revise the California

Constitution. A revision cannot lawfully be enacted through the initiative process. (*McFadden v. Jordan, supra*, 32 Cal.2d 330, 331-332; Cal. Const., art. XVIII, §§ 1-3.)

2. Voters will be harmed if the Measure appears on the November 5, 2024 ballot. An invalid measure “steals attention, time, and money from the numerous valid propositions on the same ballot.” (*Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1154, quoting *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 697 (*AFL*)). Delaying review until after the election runs the risk that voters will approve a measure that is later ruled invalid, which “tends to denigrate the legitimate use of the initiative procedure.” (*Senate*, at p. 1154.)

3. Preelection review is uniquely urgent here because the Measure’s retroactivity provision would have a direct, immediate effect on how the State and local governments craft their budgets and plan for the fiscal future. If the Measure passes, governments will have only twelve months to ensure *every tax, fee, or charge of any sort* adopted over the previous thirty-four months conforms to the Measure’s requirements. Among other things, that means initiatives just approved by the voters would have to go back on the ballot *again* in 2025.

4. Without preelection review, every governmental entity that has enacted nonconforming taxes or fees since January 1, 2022 will be forced to cut government spending or hold a special off-year election – all because this Measure was placed on the ballot without preelection review of its validity. In addition to planning one or more special elections,

policymakers would have to reckon with the possibility that the voters would reject revenues that pay for services that people are already relying upon and which are part of the jurisdiction's current budget. Prudent policymakers will take that possibility into account in planning their budgets *before* the 2024 election.

5. Preelection review will also provide more time for this Court to consider the Measure's constitutionality than would be available after the 2024 election. This Court now has until June 27, 2024 to decide this case. If, however, review does not occur and the Measure passes, post-election review would take place in the brief period before special election ballots would need to be finalized, during the twelve-month window the Measure provides jurisdictions to reenact all non-compliant taxes and charges enacted in the previous thirty-four months. This would create substantial pressure for a speedy ruling to restore certainty to state and local finances and potentially avoid dozens of elections that would become unnecessary if the Measure is struck down. Therefore, this Court should decide the Measure's validity now.

JURISDICTION

6. Petitioners respectfully invoke the original jurisdiction of this Court pursuant to section 10 of article VI of the California Constitution, Code of Civil Procedure sections 1085 and 1086, and California Rule of Court 8.485. This Court has jurisdiction to decide the constitutionality of an initiative where, as here, it presents issues of great public importance that must be resolved promptly. (*Amador Valley Joint Union High School*

Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 219
(*Amador Valley*).

7. Original relief in this Court, rather than a lower court, is necessary because the leaders of the legislative and executive branches are raising an issue of broad public importance that requires the kind of speedy and final resolution that can best be provided in an original proceeding in this Court. The constitutionality of this Measure can be determined without the kind of factual record that is usually developed in a lower court. Furthermore, although this action presents this Court with ample time to resolve the matter, the approaching election does not readily afford sufficient time to reach a final resolution in this Court if petitioners were to first file in the lower courts.

8. Petitioners are entitled to a writ of mandate because they have no other “plain, speedy, and adequate remedy” available to them in the ordinary course of law. (Code Civ. Proc., § 1086.) There are no other proceedings available to timely prevent the placement of the invalid Measure on the ballot.

PARTIES

9. Petitioner the LEGISLATURE OF THE STATE OF CALIFORNIA is vested with the State’s legislative power and consists of the Senate and the Assembly. (Cal. Const., art. IV, § 1.) The LEGISLATURE has the authority to enact taxes, appropriate public funds, and enact other laws. The Measure seeks to usurp those powers in whole or in substantial part.

10. Petitioner GOVERNOR GAVIN NEWSOM is the Governor of the State of California. Under article V, section 1

of the Constitution, he is vested with the State's executive power. The Measure would strip the GOVERNOR's executive power – exercised through his own orders and through state administrative agencies – to impose non-tax charges of any kind.

11. Petitioner JOHN BURTON is an elector and was a member of the State Assembly from 1965 to 1974 and from 1988 to 1996. He was elected to the State Senate in 1996, and served as Senate President pro Tempore from 1998 through 2004. While in the LEGISLATURE, petitioner BURTON chaired the Assembly Rules Committee (1971-72, 1993-94) and the Senate Rules Committee (1998-2004), and served on the Senate Revenue and Taxation Committee (1997-2004) and Senate Appropriations Committee (1997-2004), among numerous others. The Measure threatens to diminish his rights, as an elector, by unlawfully proposing a constitutional revision through the initiative process and by impairing the ability of state and local governments to provide essential government functions.

12. Respondent SHIRLEY N. WEBER, Ph.D., is the Secretary of State for the State of California. As the State's chief elections officer, she is responsible for overseeing statewide elections, including certifying statewide initiative measures for the ballot. (Elec. Code, §§ 10, 9033.) Elections Code section 13314 requires that the Secretary of State be named as a respondent in proceedings concerning statewide ballot measures. Respondent WEBER is sued solely in her official capacity.

13. Real Party in Interest THOMAS W. HILTACHK is the official proponent of the Measure.² He therefore has an interest in whether the initiative is placed before the voters.

FACTUAL BACKGROUND

14. The Measure would revise the California Constitution to restrict the ability of the government and people to raise revenue for essential government services in the following four ways:

15. **First, the Measure revokes and diminishes core legislative powers.** Most significantly, it revokes the LEGISLATURE's power to impose state taxes. Today, the LEGISLATURE can enact taxes with a two-thirds vote. (Cal. Const., art. XIII A, § 3.) Under the Measure, the LEGISLATURE would lose this power. It could only *propose* state taxes to the voters who alone would have authority to approve those taxes. (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (b)(1).)

16. The Measure also requires the LEGISLATURE, when proposing special taxes to the voters, to relinquish its spending power over the revenues generated by those taxes. Today, the LEGISLATURE has broad authority to appropriate funds, including the authority to generally change how funds from a particular revenue source are appropriated from one year to the next. The Measure, however, would require that each new state tax measure either impose binding limitations on how the

² Measure, at p. 1.

revenue could be spent – *which could only be changed by the voters* – or contain a statement that the tax revenue could be spent for “unrestricted general revenue purposes.” (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (b)(1)(B).) Because voters are more likely to reject taxes that can be used for unrestricted purposes than special taxes that are “earmarked for specific purposes,” like schools or public safety,³ the Measure compels the LEGISLATURE to propose special taxes at the cost of relinquishing a portion of its spending authority with each new tax.

17. **Second, the Measure strips the executive branch of government of the power to impose charges of any kind.** Under the Measure, the State executive branch of government would lose the ability to impose *any* charges whatsoever, regardless of whether defined as a tax or a non-tax “exempt charge.” The Measure accomplishes this goal through two steps. First, the Measure changes article XIII A’s scope to include not only changes to state statutes, but also executive actions. Today, article XIII A applies to changes in “state statute” (Cal. Const., art. XIII A, § 3), but the Measure would apply more broadly to any change in “State law” – a term that would be defined to include all executive branch actions, from regulations to opinion letters to legal interpretations and enforcement actions. (Measure, Sec. 4, proposed art. XIII A, § 3,

³ See *Coleman v. Cty. of Santa Clara* (1998) 64 Cal.App.4th 662, 673.

subd. (h)(4).) Similar changes are made at the local level. (*Id.*, Sec. 5, proposed art. XIII C, § 1, subd. (f).)⁴

18. Then, the Measure requires that any change in “state law” that results in a higher tax *or* non-tax “exempt charge” must be enacted by the LEGISLATURE: by a two-thirds vote, and subject to voter approval, for an increased charge that is deemed a “tax” (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (b)(1)), and by majority vote for any “exempt charge.” (*Id.*, Sec. 4, proposed art. XIII A, § 3, subd. (c) [“Any *change in a state law which results in any taxpayer paying a new or higher exempt charge must be imposed by an act passed by each of the two houses of the Legislature.*” (Emphasis added.)].) Put otherwise, the Measure fully revokes the power of the GOVERNOR or state administrative agencies to impose or increase any charge, even those that are not a “tax.”

19. Similarly, with respect to virtually all local charges,⁵ “[o]nly the governing body of a local government” or the voters exercising their power of initiative “shall have the authority to impose any exempt charge.” (Measure, Sec. 6, proposed art. XIII C, § 2, subd. (e).)

⁴ Actions by the judicial branch, the University of California, the California State University, and California Community Colleges are excluded. (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (h)(4).)

⁵ There is an exception for certain local charges related to health care services. (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (e)(3); Sec. 6, proposed art. XIII C, § 2, subd. (e); Sec. 5, proposed art. XIII C, § 1, subd. (j)(7).)

20. This means, for example, that if a state or local administrative agency promulgates a regulation or interprets a statute in a manner that would result in even a single individual paying a new or higher fee that is labeled a “tax” under the Measure, that regulation or interpretation would be deemed a tax that only the legislative branches could propose and the voters could enact. Likewise, even for *non-tax* administrative fees, the administrative agency could no longer act alone under delegated authority, but rather would have to submit any fee change to the LEGISLATURE or local legislative body. This would dramatically slow if not impede critical government operations and force the LEGISLATURE and voters to become involved in the minutiae of governance. For example, the Measure could deprive the State Board of Equalization or Department of Health Care Services of the ability to promulgate many of the regulations under their jurisdiction, and require the LEGISLATURE and voters to assume tasks that could include setting the annual fee for fishing licenses and parking fines.

21. As a consequence of these two changes, administrative agencies would lose the power to do much of the work they do today under legislatively delegated authority, such as assessing fees for the disposal of hazardous waste (at the state level) and setting fees for trash collection or charges for health care at public hospitals (at the local level).

22. Viewed from a different perspective, these changes also mean that the LEGISLATURE and local legislative bodies would lose the power to delegate these administrative

tasks to the agencies with the expertise to best perform them. This would dramatically restructure the balance of powers between the legislative and executive branches at the state and local levels.

23. **Third, the Measure expands the definition of taxes to place many additional charges beyond the power of the LEGISLATURE and local legislative bodies to enact.** Under today’s Constitution, charges imposed by state or local government are defined as “taxes” unless they fall into enumerated categories of non-tax “charges.” (Cal. Const., art. XIII A, § 3, subd. (b) [state charges]; art. XIII C, § 1, subd. (e) [local charges].) The Measure would transform many of these charges – which would be renamed “exempt charges” – into taxes that require voter approval. To cite just three of many examples:

- (a) The Measure would eliminate the category of charges imposed for “a specific benefit conferred or privilege granted directly to the payor” (Measure, Sec. 4, proposed art. XIII A [deleting Cal. Const., art. XIII A, § 3, subd. (b)(1)]; Sec. 5, proposed art. XIII C [deleting Cal. Const., art. XIII C, § 1, subd. (e)(1)].)

Consequently, some franchise fees,⁶ professional licensing fees, and regulatory fees, like fees on manufacturers of consumer products with adverse environmental impacts⁷ – all of which are deemed

⁶ *Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 270-271.

⁷ *Am. Coatings Assn., Inc. v. State Air Res. Bd.* (2021) 62 Cal.App.5th 1111, 1125-1129.

non-tax fees under current law – would become taxes under the Measure.

- (b) Charges for “a specific government service or product” would have to reflect the government’s “actual costs” for providing the service or product. (Measure, Sec. 4, proposed art. XIII A, § 3, subds. (e)(1), (h)(1); Sec. 5, proposed art. XIII C, § 1, subds. (a), (j)(1).) Moreover, the enacting body would have to prove these elements by clear and convincing evidence. (*Id.*, Sec. 4, proposed art. XIII A, § 3, subd. (g)(1); Sec. 6, proposed art. XIII C, § 2, subd. (h)(1).) This could transform many charges like court filing fees⁸ and utility service charges⁹ into taxes.
- (c) The Measure would limit charges that could be imposed by the judicial branch or the State for violations of the law to include only fines imposed “to punish” a violation of law after undefined “adjudicatory due process.” (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (e)(5); Sec. 5, proposed art. XIII C, § 1, subd. (j)(4).)

24. By transforming these charges into taxes, the Measure would make it far more difficult to modify or enact them. Currently, the state and local governments can enact such

⁸ *Townzen v. Cty. of El Dorado* (1998) 64 Cal.App.4th 1350, 1359.

⁹ *Humphreville v. City of L.A.* (2020) 58 Cal.App.5th 115, 124.

charges directly. (Cal. Const., art. XIII A, § 3, subd. (a); art. XIII C, § 1, subd. (e).) Under the Measure, such charges would become taxes requiring approval by both a legislative body and the voters.

25. **Fourth, the Measure restructures the voters’ fiscal powers in several ways.** As an initial matter, it extends the power of referendum to taxes and charges that have long been beyond its reach. Since 1911, the voters’ power of referendum has not extended to “statutes providing for tax levies.” (Cal. Const., art. II, § 9, subd. (a).) This Court has held that “tax” has a far broader meaning under article II, section 9 than it does under articles XIII C and D, placing many charges that are “taxes” under the latter provisions beyond the voters’ power of referendum. (*Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105, 1116-1118 (*Wilde*).) The Measure would reverse that decision by declaring that the word “tax” has the same meaning under article II, section 9 as it does under articles XIII A and XIII C. (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (d); Sec. 5, proposed art. XIII C, § 1, subd. (i).) This means that some exactions that are now considered exempt from the referendum would become subject to the referendum.

26. In conjunction with the revocation of the LEGISLATURE’s taxation power (¶ 15), these changes ensure that *every single revenue-raising measure enacted at the state or local level would be subject to voter approval, either because it is a tax that the voters must enact in the first instance, or because it is an exempt charge that can only be enacted by the legislative*

*branch, subject to the voters' power of referendum.*¹⁰ This would have sweeping consequences for state and local governance. Perhaps most urgently, the time needed to seek voter approval would eviscerate government's ability to respond quickly to emergencies, like the 2009 global financial crisis, the COVID-19 pandemic, or the Northridge earthquake. In doing so, the Measure would in many cases impair the government's ability to perform its essential functions.

27. The Measure also reduces the power of local voters to increase their own taxes. Under today's Constitution, local voters can propose initiatives to amend their city or county charters in many ways, including by increasing their taxes. (See Cal. Const., art. XI, § 3, subd. (a).) Such amendments are more enduring than taxes enacted via ordinance because it is easier for opponents of the tax to amend ordinances than charter provisions. The Measure would revoke the voters' power to amend their charters to increase their own taxes. (Measure, Sec. 6, proposed art. XIII C, § 2, subd. (f).)

28. Also, under today's Constitution, voters can enact and increase their own special taxes by a simple majority vote.¹¹ (See, e.g., *City of Fresno v. Fresno Bldg. Healthy*

¹⁰ Courts would have to determine whether the Measure changes the law providing that the voters' referendum power does not extend to administrative acts. (*City of San Diego v. Dunkl* (2001) 86 Cal.App.4th 384, 399-400.) If that rule survives, some charges might remain exempt from the referendum.

¹¹ A "special tax" is a tax imposed for a specific purpose while a "general tax" is imposed for general government purposes. (Cal. Const., art. XIII C, § 1, subds. (a), (d).)

Communities (2020) 59 Cal.App.5th 220, 235, 238.) The Measure would increase that requirement to a two-thirds supermajority vote. (Measure, Sec. 6, proposed art. XIII C, § 2, subd. (c).)¹²

29. Finally, as if those prospective effects were not enough, the Measure would also effectively undo nearly three years' worth of taxes and fees by making all of the foregoing requirements retroactive to January 1, 2022. This means that any state or local "tax" or "exempt charge" that is adopted between January 1, 2022 and the effective date of the Measure thirty-four months later, and which does not comply with the Measure – including every tax enacted by the LEGISLATURE in that time and every state and local administrative change – would become void within twelve months unless reenacted to comply with the Measure. (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (f); Sec. 6, proposed art. XIII C, § 2, subd. (g).)

30. Accordingly, this Measure is unlike any measure that has come before with respect to the sweeping changes it would make both to the fundamental governmental structure and the allocation of foundational powers among the branches of government.

31. An error or omission within the meaning of Elections Code section 13314 is therefore about to occur in

¹² The Measure would make many additional changes to further constrain the ability to raise governmental revenues. To cite one of many examples, the Measure would establish new limits on the ability of the State to assess property taxes by expanding the scope of restrictions on the collection of property taxes by local government agencies to any entity of government. (Measure, Sec. 7, proposed art. XIII D, § 3, subd. (a).)

placing the Measure on the November 5, 2024 ballot because it is a constitutional revision that cannot be enacted by initiative and that gravely impairs essential government functions.

32. Because elections officials will not have to take steps to place this Measure on the November 5, 2024 ballot until June 2024, the Court can issue the requested writ without interfering with the conduct of the election.

FIRST CAUSE OF ACTION
**(Writ of Mandate – Unlawful Attempt To Revise
Constitution Via Initiative)**

33. Petitioners hereby reallege and incorporate paragraphs 1 through 32 above as if fully set forth within.

34. The “Taxpayer Protection and Government Accountability Act” constitutes a constitutional revision and, as such, is invalid and may not be proposed to the voters under section 3 of article XVIII of the California Constitution.

35. The Measure is a qualitative revision because it would alter the fundamental structure of California’s government and the foundational powers of its branches.

36. Under article VI, section 10 of the California Constitution, Code of Civil Procedure sections 1085 and 1086, and Elections Code section 13314, the Court should exercise its original jurisdiction and issue a writ of mandate to enjoin respondent WEBER and her counterparts statewide from placing the Measure on the November 5, 2024 ballot.

37. The writ should issue because the Measure is invalid, respondent has a ministerial duty to refrain from placing the Measure on the ballot, and the LEGISLATURE, the

GOVERNOR, and petitioner BURTON have no plain, speedy, and adequate remedy in the ordinary course of law.

SECOND CAUSE OF ACTION
**(Writ of Mandate – Impairment Of
Essential Government Functions)**

38. Petitioners hereby reallege and incorporate paragraphs 1 through 37 above as if fully set forth within.

39. California courts have long held that an initiative or referendum is invalid if it would impair essential government functions. (*See, e.g., Rossi v. Brown* (1995) 9 Cal.4th 688, 703.) More than any other previous initiative, the Measure would make it impossible for state and local government to provide the essential government services upon which our civil society depends. Police and fire protection, highway maintenance and mass transit, education and public health all depend on the ability of state and local government to raise the revenue needed to meet the needs of a changing population.

40. Although prior constitutional amendments, none of which are called into question here, have altered the *voting threshold* required for the LEGISLATURE to raise and spend the revenue upon which these services depend, they left the LEGISLATURE's *authority* to do so intact. The Measure in contrast strips that power and in so doing guts the State's ability to provide essential governmental services that rely on new revenue.

41. Nowhere is this more true than during an emergency, whether it is a natural disaster such as a wildfire or a fiscal crisis like the one that occurred in 2008. Governments will

necessarily have to spend the money needed to deal with the crisis, but other essential government functions will suffer or remain unfulfilled if elections must be held and voter approval acquired in order to raise the money necessary to provide essential services.

42. Even absent an emergency, essential government functions will be impaired if certain charges can no longer be imposed without voter approval or are subject to referendum once passed by a legislative body. For example, in order to enact the kind of water rate increase at issue in *Wilde v. City of Dunsmuir*, *supra*, 9 Cal.5th 1105, 1116-1118, the legislative body would either have to call a special election costing millions or wait two years until the next general election to adjust rates. That situation, this Court held, would jeopardize the essential government function of providing water to the residents of an entire city.

43. For the same reasons set forth in paragraphs 36 and 37 above, the Court should exercise its original jurisdiction and issue a writ of mandate as requested below.

WHEREFORE, petitioners pray for relief as follows:

1. That this Court issue a writ of mandate prohibiting respondent and all persons acting pursuant to her direction, including all county registrars of voters, from taking any steps to place the “Taxpayer Protection and Government Accountability Act” on any statewide election ballot or submitting the initiative to the voters for approval;

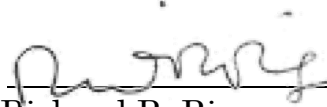
2. That this Court grant petitioners their reasonable attorneys' fees and costs; and

3. That this Court grant such other, different, or further relief as the Court may deem just and proper.

Dated: September 26, 2023

Respectfully submitted,

OLSON REMCHO, LLP

By:  _____
Richard R. Rios

Attorneys for Petitioners Legislature
of the State of California, Governor
Gavin Newsom, and John Burton

VERIFICATION

I, John Burton, hereby declare as follows:

I am one of the petitioners in this action. I have read the foregoing Petition for Writ of Mandate and know the contents thereof. I certify that the facts contained therein are true of my own knowledge except as to those facts which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of September, 2023, at San Jose California.



John Burton

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I.

INTRODUCTION AND SUMMARY OF ARGUMENT

It is well-established that an initiative cannot be placed on the ballot if it is beyond the power of the voters to enact. (*McFadden v. Jordan, supra*, 32 Cal.2d 330, 331-332.) Although the voters “may *amend* the Constitution by initiative” (Cal. Const., art. XVIII, § 3, emphasis added), they may not *revise* it. Instead, a “revision” may be accomplished only by convening a constitutional convention or by the Legislature submitting a constitutional revision to the voters for their approval. (*Id.*, art. XVIII, §§ 1, 2.) Either way, the proposal must secure the approval of a deliberative body, and the voters must consent after being told that they are revising, not amending, the state Constitution.

The initiative Measure at issue here does not merely amend the Constitution; it revises it. As demonstrated below, the Measure makes such “far reaching changes in the nature of our basic governmental plan” that it amounts to a qualitative revision. (*Amador Valley, supra*, 22 Cal.3d 208, 223.) That in itself would be sufficient to keep the Measure off the ballot, but it contains a second fatal flaw: Its passage would gravely impair the essential government functions of state and local government.

The Legislature and the Governor rarely seek to invoke this Court’s original jurisdiction, but they respectfully do so now for two reasons. First, in addition to the harms usually

caused by allowing an invalid initiative to appear on the ballot,¹³ this Measure contains a retroactivity provision that reaches back nearly three years to January 1, 2022. As described in the Petition, the mere presence of such a provision on the November 2024 ballot could cause anticipatory budget cuts that are both painful and unnecessary. Second, unlike most preelection challenges, this one provides the Court ample time for briefing and review before the June 2024 date by which the Measure will be placed on the November ballot. That would *not* be the case, however, for a post-election challenge, because the Measure gives state and local governments only one year to obtain voter approval for any nonconforming revenue measures adopted after January 1, 2022. A post-election challenge would have to be conducted at the same time as numerous hastily scheduled state and local special elections costing millions of dollars. It is far better to resolve the matter now, in the State’s highest court, than to let the Measure appear on the ballot only to be overturned later after having sparked confusing, costly, and irreversible harms.

II.

PREELECTION REVIEW IS NECESSARY AND APPROPRIATE

Preelection review is necessary and appropriate when a “measure cannot lawfully be enacted through the initiative process,” as is the case here. (*Independent Energy Producers*

¹³ *AFL, supra*, 36 Cal.3d 687, 697 [an invalid measure “steals attention, time, and money” from valid propositions].

Assn. v. McPherson (2006) 38 Cal.4th 1020, 1029-1030.) This Court has described the harm that is caused to voters when an invalid measure is allowed to appear on the ballot:

The presence of an invalid measure on the ballot steals attention, time, and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure.

(Senate of the State of Cal. v. Jones, supra, 21 Cal.4th 1142, 1154, quoting AFL, supra, 36 Cal.3d 687, 697.)

If the Measure appears on the ballot despite its unconstitutionality, it will cause these generic harms. Yet it would also have a much more urgent effect on how state and local officials craft their budgets and plan for the fiscal future because the Measure is retroactive to January 1, 2022. (Pet., ¶ 29.)

Under that retroactivity provision, governments would have only twelve months from November 2024 in which to conform any taxes or fees adopted over the previous thirty-four months to the Measure's requirements.¹⁴ For every tax and many fees, that process would require voter approval, forcing a

¹⁴ By contrast, Proposition 218, which added article XIII C in November 1996, gave local governments two years in which to reenact nonconforming taxes, which meant they did not have to call a special election. (Cal. Const., art. XIII C, § 2, subd. (c).)

plethora of state and local special elections. The cost of those elections alone would be staggering, but policymakers must also consider the possibility that most of these measures will fail because voters could be overwhelmed by so many tax and fee measures on the ballot at once. Faced with this, affected cities, counties and special districts will likely (and prudently) plan for the potential revenue loss by reducing expenditures. Such reductions could greatly – and permanently – affect people’s lives and the institutions they rely upon, all because an invalid measure was allowed to appear on the ballot.

The problem is magnified because the Measure is unclear, requiring policymakers to guess at its meaning. For example, the Measure proposes to amend articles XIII A and XIII C to require that the ballot materials for any state or local tax include “the duration of the tax,” whereas only the amendment to article XIII A requires that a statewide tax “Act” – but not the ballot materials – include “[a] specific duration of time that the tax will be imposed” (Measure, Sec. 6, proposed art. XIII C, § 2, subd. (d)(2); Sec. 4, proposed art. XIII A, § 3, subd. (b)(1)(A), (b)(2)(B).) Notwithstanding the difference in language, some local officials have interpreted the Measure to require that local taxes passed without a sunset date be resubmitted to the voters.¹⁵ If the Measure passes, voters and

¹⁵ See, e.g., City of Sebastopol City Council Meeting, March 7, 2023, Agenda Item #5 at pp. 1-7, <https://ci.sebastopol.ca.us/wp-content/uploads/2023/04/Agenda-Item-Number-5-Opposition-of-CA-Business-Roundtable-Ballot-Measure-Relating-to-City-UUT.pdf>.

local officials will have to wait until the courts resolve the duration issue. Because that could occur after the one year the Measure permits for taxes to be resubmitted for voter approval, some local officials will feel compelled to submit all affected taxes that were passed without sunset clauses with new sunset dates for voter approval. This could result in numerous unnecessary ballot measures and elections if the courts rule the sunset dates are not required.

The situation is even worse when it comes to fee increases. State and local officials will have to examine every administratively enacted fee increase made in the nearly three years – from local library overdue fines to state-imposed penalties for oil spills – to determine whether it is an “exempt charge” that must be reenacted legislatively. If there is doubt about whether the charge is an “exempt charge” or a “tax,” the jurisdiction will have to hold an election on those charges too.

The sheer numbers of taxes and charges at stake under the Measure’s retroactivity clause – nearly every fee or tax passed anywhere in the State on or after January 1, 2022 – makes the Measure very different than the typical initiative that challenges an existing tax. In *Rossi v. Brown, supra*, 9 Cal.4th 688, this Court affirmed that an initiative can be used to repeal an existing tax because, unlike a referendum on a tax, an initiative “will rarely affect the current budgetary process of a local government.”¹⁶ (*Id.* at p. 703.) That is not the case here,

¹⁶ The *Rossi* measure did not apply to the current budgetary process. (*Rossi v. Brown, supra*, 9 Cal.4th 688, 703.)

where the Measure threatens current budgetary processes and existing revenue sources enacted after January 1, 2022.

Furthermore, the typical initiative challenging an existing tax is unquestionably valid following this Court's decision in *Rossi*. Here, the Measure is *not* valid, as explained below, but unless this Court acts, its very presence on the ballot will result in unnecessary budget cuts.

Unlike most preelection challenges, which typically unfold in the “charged and rushed atmosphere of an expedited preelection review,”¹⁷ here the opposite is true. The Measure will not be on the ballot until November 2024, leaving this Court ample time to consider and decide the matter before the election. In contrast, if review is postponed until after the election and the Measure passes, review would necessarily be hurried because of the looming deadline for submitting existing taxes for voter approval. Governments would have to decide whether to call special elections and take steps to put measures on the ballot before the one-year window specified in the Measure closes. And all of this would take place in the context of the kind of anticipatory budget cuts described above. Because the issues are too important to allow those things to come to pass, and for all of the other reasons stated above, the case should be decided now.

¹⁷ *Independent Energy Producers Assn. v. McPherson*, *supra*, 38 Cal.4th 1020, 1025.

III.

THE MEASURE IS INVALID BECAUSE IT WOULD REVISE THE CONSTITUTION

A. A Revision Is A Far-Reaching Change In The Structure Or Power Of Government

A constitutional proposal may exceed the bounds of an amendment and become a revision either quantitatively or qualitatively. (*Amador Valley, supra*, 22 Cal.3d 208, 223.) A quantitative revision is one that “is so extensive . . . as to change directly the ‘substantial entirety’ of the Constitution” (*Ibid.*) A qualitative revision is one that would “make a far-reaching change in the *fundamental governmental structure* or the *foundational power of its branches* as set forth in the Constitution.” (*Strauss, supra*, 46 Cal.4th 364, 444, emphasis added; *Amador Valley*, at p. 223 [describing a revision as “far reaching changes in the nature of our basic governmental plan”].) This Court has illustrated the meaning of the qualitative revision test by explaining that an initiative that “purported to vest all judicial power in the Legislature” would constitute a revision. (*Strauss*, at p. 427, quoting *Amador Valley*, at p. 223.)

The distinction between an amendment and a revision is critical because “comprehensive changes’ to the Constitution require more formality, discussion and deliberation than is available through the initiative process.” (*Raven, supra*, 52 Cal.3d 336, 349-350, quoting Note, *Preelection Judicial Review: Taking the Initiative in Voter Protection* (1983) 71 Cal. L. Rev. 1216, 1224.) Thus, a revision is a “change that is *so far-reaching and extensive* that the framers of the 1849 and 1879

Constitutions would have intended that the type of change could be proposed only by a constitutional convention, and not by the normal amendment process” (*Strauss, supra*, 46 Cal.4th 364, 447.)

Significantly, the difference “does *not* turn on the relative *importance* of the measure but rather upon the measure’s *scope*” (*Strauss, supra*, 46 Cal.4th 364, 447.) Consequently, many deeply significant changes have been deemed to be amendments rather than revisions because, however significant the changes might be to substantive rights or governmental processes, the changes would not broadly impact the fundamental *structure of government* or the foundational *powers of its branches*. (See, e.g., *id.* at pp. 442-443, 457 [Proposition 8, which provided that only marriages between a man and a woman are valid, was not a revision]; *Legislature v. Eu* (1991) 54 Cal.3d 492, 508 (*Eu*) [Proposition 140, which imposed legislative term limits and a budget cap, was not a revision];¹⁸ *Amador Valley, supra*, 22 Cal.3d 208, 228 [Proposition 13, which imposed significant changes to the tax system, was not a revision].)¹⁹

Yet in *Raven v. Deukmejian, supra*, 52 Cal.3d 336, 352 this Court invalidated an initiative that sought to “vest all judicial interpretative power, as to fundamental criminal defense rights, in the United States Supreme Court” rather than in the California courts. (Emphasis omitted.) Two lessons follow: (1) a revision occurs when an initiative seeks to revoke a significant

¹⁸ See discussion of this decision below. (Pp. 55-58.)

¹⁹ See discussion of this decision below. (Pp. 47-49.)

part of a foundational power of a branch of government, and (2) even a single far-reaching change in the foundational power of one branch of government can constitute a revision.

The Measure now before this Court is unlike any it has seen before with respect to the sweeping changes it would make to the fundamental governmental structure and the foundational powers of its branches. The changes to the State Legislature’s taxing and spending powers *alone* are at least as sweeping as the revisionary changes made to the judiciary’s powers described in *Raven*. (See Section III(B).) Yet the Measure would change much more for the legislative and executive branches and the voters. (See Sections III(C) & (D).) Because the Measure would make multiple fundamental changes to the government structure and core powers of two branches of our government, it constitutes a revision.

B. The Measure Is A Revision Because It Revokes Core Legislative Powers

This Court has declared that “the core functions of the legislative branch include passing laws, levying taxes, and making appropriations.” (*Carmel Valley Fire Prot. Dist. v. California* (2001) 25 Cal.4th 287, 299 (*Carmel Valley*).) As described above, the Measure targets two of these core powers by revoking the Legislature’s power to levy new or increased taxes, and revoking the Legislature’s power to appropriate the revenue from special taxes for purposes that differ from those originally articulated by the Legislature. (Pet., ¶¶ 15, 16.)

These changes constitute a revision under *Raven v. Deukmejian*, *supra*, 52 Cal.3d 336. At issue in *Raven* was a challenge to a provision of Proposition 115 providing that California courts would have to construe the rights of criminal defendants consistently with the United States Constitution. In other words, it “would vest all judicial interpretive power, as to fundamental criminal rights, in the United States Supreme Court.” (*Id.* at p. 352, emphasis omitted.)

The *Raven* Court described this change as “devastating” because it ensured that criminal defendants in California could have no greater constitutional rights under the California Constitution than afforded by the federal Constitution. (*Raven*, *supra*, 52 Cal.3d 336, 352.) In doing so, the initiative implicated both fundamental constitutional rights and the independence of the California Constitution. The Court acknowledged that California courts already defer to United States Supreme Court interpretations when construing language in the state Constitution that is similar to language in the federal Constitution unless there are “cogent reasons” to depart from federal precedent. (*Id.* at p. 353.) Nevertheless, the California judiciary retains the ability to construe the California Constitution differently and had done so at least eight times in the previous sixteen years. (*Id.* at pp. 353-354.)

The *Raven* Court declared that Proposition 115 would require deference to the federal courts “for the first time in California’s history.” (*Raven*, *supra*, 52 Cal.3d 336, 354.) It would “substantially alter[] the preexisting constitutional

scheme” the courts used to enforce state constitutional protections and contradict the principle that the judiciary “must possess the right to construe the Constitution in the last resort.” (*Id.*, quoting *Nogues v. Douglass* (1857) 7 Cal. 65, 70.) This Court therefore concluded that Proposition 115 was an invalid constitutional revision.²⁰ (*Raven*, at pp. 354-355.)

The same analysis applies here. The changes the Measure would make to the Legislature’s core powers would also be imposed “for the first time in California’s history,” would “substantially alter[] the preexisting constitutional scheme” the Legislature uses to fund the entire state government, and would contradict the principle that the Legislature’s power over taxes is “supreme.”²¹ (See *Raven, supra*, 52 Cal.3d 336, 354.) However, while Proposition 115 would have revoked one aspect of one core judicial power – the interpretive power relating to the

²⁰ Importantly, however, Proposition 115 left most judicial power intact. Courts would have retained the power to interpret all state statutes and all constitutional principles except the rights of criminal defendants; to apply laws to the facts of a case; and to resolve specific controversies. The fact that this Court nevertheless found the measure to be a revision demonstrates that an initiative cannot revoke a significant aspect of a foundational power of a branch of government, even if it leaves most of that branch’s powers intact.

²¹ The Legislature has long been considered “supreme in the field of taxation,” such that its power to impose taxes “exists unless it has been expressly eliminated by the Constitution.” (*The Gillette Co. v. Franchise Tax Bd.* (2015) 62 Cal.4th 468, 477, citation omitted.)

constitutional rights of criminal defendants²² – the Measure would revoke one of the Legislature’s core powers *in its entirety*, by transforming the power to impose taxes into the ability merely to propose taxes, and revoke aspects of two other core legislative powers – the powers to appropriate and make laws. (See *Carmel Valley, supra*, 25 Cal.4th 287, 299.) Thus, the changes the Measure would make to the Legislature’s powers are at least as sweeping as the changes Proposition 115 would have made to the judiciary’s power.

More specifically, the Legislature’s power over taxing and spending is a vital part of our fundamental governmental structure, just like the judiciary’s power to construe the Constitution as a last resort. This Court has, from its earliest days, acknowledged that the Legislature’s power of taxation is “an indispensable power, without which it would become impossible for that body to perform its functions.” (*Taylor v. Palmer* (1866) 31 Cal. 240, 252, disapproved on another ground in *Turney v. Dougherty* (1879) 53 Cal. 619, 620-621; *Carmel Valley, supra*, 25 Cal.4th 287, 299, quoting *In re Attorney Discipline Sys.* (1998) 19 Cal.4th 582, 595 [“the power to collect and appropriate the revenue of the State is one peculiarly within the discretion of the Legislature.”].) Yet for the first time in California’s history, the Measure would take from the Legislature this “indispensable” power and instead make the Legislature into a mere advisor to the voters in the taxation process. (*Taylor*, at p. 252.) A change

²² *People v. Bunn* (2002) 27 Cal.4th 1, 15 (describing interpretation of law as an “essential power of the judiciary”).

to the legislative power of this magnitude would be unprecedented in the 117-year history of initiatives. Even Proposition 13, which is often recognized as one of the most consequential measures in the State's history, merely raised the Legislature's voting threshold for taxes from a simple majority to a two-thirds majority.

It is no answer to say that the Measure does not change the foundational power of the legislative branch because it gives the taxing power to the people and so keeps the power within the legislative branch. Today's Constitution grants the Legislature greater control over taxes and appropriations than the people. Specifically, the Constitution grants the people the power of referendum, but excepts "tax levies or appropriations for the usual current expenses of the State." (Cal. Const., art. II, § 9, subd. (a).) This Court has recently explained why: in the areas of taxes and appropriations, "legislators must be permitted to act expediently, without the delays and uncertainty that accompany the referendum process." (*Wilde, supra*, 9 Cal.5th 1105, 1122.) If such measures were subject to referendum, the government's "ability to adopt a balanced budget and raise funds for current operating expenses through taxation would be delayed and might be impossible." (*Rossi v. Brown, supra*, 9 Cal.4th 688, 703.)

These taxation and appropriations safeguards have been part of the Constitution since the people adopted the powers of initiative and referendum in 1911. (*Wilde, supra*, 9 Cal.5th 1105, 1117.) Given their enduring nature and the importance this Court has ascribed to them, these safeguards must be

considered part of our “fundamental governmental structure.” (*Strauss, supra*, 46 Cal.4th 364, 444.) Nevertheless, the Measure would fatally undermine these safeguards by requiring that all new or increased taxes proposed by the Legislature, and all changes in how special tax revenues could be spent, would have to receive voter approval. This could create delays of *several years* from the time that the Legislature identifies the need for new revenue to the time when the voters cast votes on the proposed new tax. Such legislation would have to garner a two-thirds vote in both houses, the Governor’s signature, and then voter approval at a statewide election. (Measure, Sec. 4, proposed art. XIII A, § 3, subd. (b)(1).) If the voters reject the tax, the process would either begin again or the citizens would be forced to do without whatever services the revenue was intended to fund.

The effect on California’s fundamental governmental structure would be profound, and not only because of the drastic consequences that would follow from the inevitable delays and decline in new revenues. The courts have long recognized the Legislature’s power and duty to “effectively resolve the truly fundamental issues” facing the State. (*People v. Wright* (1982) 30 Cal.3d 705, 712, quoting *Kugler v. Yocum* (1968) 69 Cal.2d 371, 376.) Many such fundamental issues are resolved when the Legislature exercises its intertwined powers to tax and appropriate within the context of its constitutional duty to pass balanced budgets every year. (Cal. Const., art. IV, § 12, subd. (g).) If the Legislature can no longer directly raise new

revenues, but must instead wait months or years for the voters to decide whether to do so, its capacity to resolve fundamental issues will be greatly diminished. The Legislature simply could not rely on new tax revenues to meet emerging or urgent circumstances, including climate change, deteriorating infrastructure, recessions, wildfires, earthquakes, and global pandemics.

For these reasons, the changes to the Legislature’s powers – *standing alone* – constitute a far-reaching change both in the “fundamental governmental structure” and “the foundational power of its branches as set forth in the Constitution.”²³ (See *Strauss, supra*, 46 Cal.4th 364, 444.)

It is important to note that in 1978 this Court concluded that Proposition 13 did not revise the Constitution by requiring that *local* special taxes be imposed by the voters instead of local legislative bodies. (*Amador Valley, supra*, 22 Cal.3d 208, 229.) Yet that holding does not govern this case. The *Amador Valley* petitioners argued that Proposition 13 would (1) result in the loss of home rule, *i.e.*, the ability of local government to control local affairs and (2) undermine the federal constitutional guarantee of a republican form of government. (*Id.* at pp. 224-228.) This case does not turn on those issues.

Nor does the *Amador Valley* Court’s reasoning apply here because the Legislature’s power to tax stands on much

²³ These changes are made more sweeping by the fact that the Measure expands the definition of taxes, placing many additional charges beyond the power of the Legislature. (Pet., ¶ 23.)

greater constitutional footing than the power of local governments to tax. As noted above, the Legislature's power to tax is part of its plenary power to legislate that can only be limited by the Constitution itself. (*The Gillette Co. v. Franchise Tax Bd.*, *supra*, 62 Cal.4th 468, 477.) By contrast, local governments "have no inherent power to tax" whatsoever. (*Santa Clara Cty. Local Transp. Auth. v. Guardino* (1995) 11 Cal.4th 220, 248.) The only taxes that local governments may impose are those which the Legislature or the voters authorize them to impose. (*Ibid.*) Thus, the *Amador Valley* Court was not considering a question involving the revocation or reduction of the constitutional power of a coordinate branch of state government. It was considering only the implications of a voter approval requirement on a local power that has always been controlled by state statute. (*Guardino*, at pp. 248-249 [describing Legislature's power to impose conditions on the local power to tax].)

Furthermore, Proposition 13 was far more limited in scope than the Measure because it left intact both the local government's power to impose general taxes and the Legislature's ability to impose taxes. Consequently, when the *Amador Valley* Court concluded that a voter approval requirement for special taxes did "not change our basic governmental plan" (*Amador Valley*, *supra*, 22 Cal.3d 208, 227), it did so knowing that Californians had a safety net: local governments could still raise some revenue directly and the Legislature could still raise state revenues for local governments. Indeed, the *Amador Valley*

Court observed that the Legislature had responded to Proposition 13 by directing new state revenues to local governments to “minimize” Proposition 13’s impact. (*Id.* at pp. 226-227.) This Court, by contrast, confronts a Measure that leaves no safety net. If the Measure passes, there will be no legislative body left in the State that could impose taxes directly or with any speed, regardless of how urgent the need for new revenues becomes.

C. The Measure Shifts Substantial Power Between The Executive And Legislative Branches Of State And Local Government

More than a century ago, this Court declared that “the ever-increasing multiplicity and complexity of administrative affairs” had made it “imperative” to allow the legislative branch to entrust “many quasi-legislative and quasi-judicial functions . . . to departments, boards, commissions, and agents.” (*Gaylord v. Pasadena* (1917) 175 Cal. 433, 436 (*Gaylord*)).) The Court therefore refused to deprive a local legislative branch of the ability to delegate power to its executive branch, declaring that doing so would “stop the wheels of government and bring about confusion, if not paralysis, in the conduct of the public business.” (*Id.* at p. 437, quoting *Union Bridge Co. v. United States* (1906) 204 U.S. 364, 383; *E. Bay Mun. Util. Dist. v. Dept. of Pub. Works* (1934) 1 Cal.2d 476, 479 [same].) More than eighty years later, another court affirmed the “imperative” role administrative agencies play. (*Schabarum v. Cal. Legislature* (1998) 60 Cal.App.4th 1205, 1223.) Indeed, the *Schabarum* court proclaimed that any effort to return to a form of

government in which the Legislature and courts are forced to perform legislative and judicial functions without the aid of administrative agencies “may well be impossible, without risking paralysis in the conduct of the public business ***But it is certainly too late in the day to return to such a form of government without effecting a constitutional revision.***” (*Id.* at p. 1224, emphasis added.)

The Measure risks exactly the kind of “paralysis in the public business” that the *Gaylord* and *Schabarum* courts refused to allow. It would reorder the balance of powers by effectively (1) prohibiting the Legislature from delegating certain powers to the executive branch; (2) prohibiting the executive branch from exercising certain delegated powers; and (3) compelling the Legislature to perform administrative acts. Specifically, the Legislature would lose the power to delegate, and the executive branch would lose the authority to perform, virtually any task resulting in “any taxpayer” paying *any* new or increased amount of money – whether those funds are deemed a “tax” or an “exempt charge.” Again, this means that the executive branch would become powerless to do much that state administrative agencies do today, including promulgating many state regulations and enforcing or interpreting the law in particular ways. The Measure’s restrictions even extend to the Governor’s executive orders. (Pet., ¶¶ 17-22.) Thus, these provisions of the Measure – *standing alone* – would implement the kind of restructuring that the *Schabarum* court declared

could only be done by “constitutional revision.” (See *Schabarum, supra*, 60 Cal.App.4th 1205, 1224.)

Consider how the Measure would change the outcome in the following cases. In *Western States Petroleum Association v. Board of Equalization* (2013) 57 Cal.4th 401, this Court rejected a challenge to the executive branch’s authority to perform administrative acts that result in higher taxes. As background, the California Constitution governs how property must be valued for property tax purposes, and the Legislature delegated to the State Board of Equalization the duty to prescribe rules governing property assessments. (Cal. Const., art. XIII, § 2, subd. (a); Gov. Code, § 15606, subd. (c).) In 2006, the Board adopted a new rule addressing the assessment of petroleum refinery property after officials testified at a public hearing that the current method of assessment was inaccurate. (*Western States*, at pp. 408, 413.) Because the new rule increased the refineries’ property taxes, the petroleum industry sued, arguing that the rule resulted in a “tax” that only the Legislature could enact under article XIII A of the Constitution. (*Id.* at pp. 423-424.) The Court disagreed because article XIII A requires legislative approval only of specified changes in a “state statute,” not administrative efforts to implement a tax statute. (*Ibid.*)

The Measure would override that outcome by stretching the definition of a tax enacted by “state law” to include “state regulation[s].” (Pet., ¶ 17.) This could mean:

- The Legislature’s delegation of authority to the Board to prescribe assessment rules would be nullified to

the extent the Board exercises that authority in ways that increase taxes;

- The Board would be forced to balance its duty to faithfully implement state tax law with the provisions that allow it to act if it lowers or maintains taxes, but prohibits it from acting if its interpretation would increase taxes for anyone, even if that interpretation lowers taxes for others;
- Although the Board has deep expertise in administering the “highly technical,” “intensely detailed and fact-specific” tax systems under its jurisdiction,²⁴ the Legislature and voters would be forced to adopt regulations concerning these matters; and
- At best, it would take months or years for an amended rule to complete the legislative process; at worst, the voters would refuse to approve the new rule, leaving (in this case) refinery property to be assessed in a manner that does not comply with constitutional requirements.

River Garden Retirement Home v. Franchise Tax Board (2010) 186 Cal.App.4th 922 provides a second example. At issue was a state statute that had permitted corporations to take deductions for certain dividends, but was struck down on the

²⁴ See *City of Fontana v. Cal. Dept. of Tax & Fee Admin.* (2017) 17 Cal.App.5th 899, 935, citation omitted.

ground that it gave preferential treatment to California corporations in violation of the federal Commerce Clause. (*Id.* at p. 932.) When the Franchise Tax Board (“FTB”) notified affected corporations that it would seek to recover taxes on those dividends, River Garden unsuccessfully appealed to the State Board of Equalization and then sued, arguing that the FTB’s decision to disallow the deductions constituted a tax under article XIII A. (*Id.* at pp. 949-950.) Although the *River Garden* court rejected that argument, the outcome could be different under the Measure, which allows only the Legislature to exercise any “legal authority” that increases taxes. (Measure, Sec. 4, proposed art. XIII A, § 3, subds. (b)(1), (h)(4).) This could leave the FTB powerless to recover these taxes, *even though a court had ruled that the deductions taken for those taxes violated the United States Constitution*, unless the voters agreed to implement the court’s decision, or another court ordered the FTB to remedy the constitutional violation. In other words, the Measure could mean that the State’s implementation of the law would sometimes become contingent on voter approval.

These two examples are only the proverbial tip of a massive iceberg. To understand the number of actions that the executive branch could no longer perform, consider a *single category* of duties that the legislative branch routinely delegates to the executive branch: the duty to establish regulatory and other fees that are not deemed “taxes” under current law or the Measure. The Legislature has delegated the duty to set many such fees to state agencies, for everything from controlling

hazardous waste to medical services for injured workers.²⁵ Now imagine the many other categories of charges that are implicated by the Measure and multiply those numbers accordingly. Again, the Measure sweeps broadly, reaching every change by an executive agency that would increase any payment, including agency rules, regulations, rulings, executive orders, opinion letters, and even acts of enforcement and interpreting laws. (Pet., ¶¶ 17-18.)

Furthermore, as noted, the Measure makes the same changes at the local level. (Pet., ¶ 19.) Accordingly, city councils, county boards, and other local legislative bodies could no longer delegate many duties to local administrative agencies, and local administrative agencies could no longer do much of the work they do now.

This would drastically reduce the power of the executive branch – and correspondingly impose substantial new duties on the legislative branch and the electorate. The

²⁵ See, e.g., Bus. & Prof. Code, § 2340.8 (California Medical Board to determine fees relating to the Physician and Surgeon Health and Wellness Program); Food & Agr. Code, §§ 33291-33298 (Department of Food and Agriculture to establish certain inspection fees for milk production facilities); Gov. Code, § 12182 (Secretary of State to establish fees relating to business programs); Health & Saf. Code, § 13110 (State Fire Marshal to establish fire safety fees); *id.*, § 18870.3 (Department of Housing and Community Development to establish fees relating to mobilehome parks); *id.*, §§ 25205.2.1, 25205.5.01, 25205.6.1 (Board of Environmental Safety to establish hazardous waste fees); Lab. Code, § 5307.1 (Division of Workers' Compensation to establish fees for medical services); Pub. Util. Code, § 728 (Public Utilities Commission to adjust utility rates).

Department of Tax and Fee Administration could lose the authority to adjust taxes to account for changes in the cost of living. (See Rev. & Tax Code, § 60050.) The California Public Utilities Commission could lose its authority to approve the rates that each electric utility charges its customers. (See Pub. Util. Code, § 451.) Municipal utilities could lose the authority to impose late charges when customers fail to pay their trash collection or water service bills. (See *id.*, § 12811.) Local agencies would no longer be able to adjust or impose fees, presumably including fees for trash collection and water service, sewer connections, permits and licenses, cemeteries, and parks and recreation. There are undoubtedly thousands of other examples that would collectively transform day-to-day governmental activities across every community in California, requiring that the legislative body and (for charges deemed “taxes”) the voters perform the work that administrative agencies have done for decades.

To petitioners’ knowledge, no single ballot measure has ever sought to make such far-reaching changes, so there are no cases analyzing whether the voters have the power to do so. *Legislature v. Eu, supra*, 54 Cal.3d 492, is nevertheless instructive. There, this Court rejected a challenge to Proposition 130, which capped the Legislature’s budget and imposed term limits on officials including state legislators. (*Id.* at p. 506.) In doing so, the Court provided four reasons why Proposition 130 did *not* revise the Constitution. (*Id.* at pp. 508-512.) Those reasons demonstrate why this Measure *does*.

First, the *Eu* Court observed that Proposition 140 “does not affect either the structure or the foundational powers of the Legislature, which remains free to enact whatever laws it deems appropriate.” (*Eu, supra*, 54 Cal.3d 492, 509.) By contrast, the Measure revokes both the Legislature’s taxing authority (see Section III(B)) and its power to delegate many administrative duties to executive agencies, an authority that is also among the Legislature’s core powers. (See, e.g., *Carmel Valley, supra*, 25 Cal.4th 287, 299; *State Bd. of Educ. v. Honig* (1993) 13 Cal.App.4th 720, 750.) There can be no doubt about the importance of this power given this Court’s declaration that the Legislature’s ability to delegate administrative duties to the executive branch is “imperative” to “the conduct of the public business.” (*Gaylord, supra*, 175 Cal. 433, 436-437.)

Second, the *Eu* Court noted that Proposition 140 “alters neither the content of [the laws enacted by the legislative branch] nor the process by which they are adopted.” (*Eu, supra*, 54 Cal.3d 492, 509.) The Measure, however, does both. It would transform the process for enacting fees, by requiring that proposed taxes and exempt charges proceed through the legislative rather than administrative processes. And it alters the content of those enactments by requiring tax laws to specify their duration and (for state taxes) how the revenues would be spent, while laws enacting exempt charges would have to specify their type and amount. (Measure, Sec. 4, proposed art. XIII A, § 3, subds. (b)(1), (c); Sec. 6, proposed art. XIII C, § 2, subds. (d), (e).)

Third, the *Eu* Court declared that “[n]o legislative power is diminished or delegated to other persons or agencies” by Proposition 140. (*Eu, supra*, 54 Cal.3d 492, 509.) Yet the Measure would deprive the Legislature of parts of its tax, spending, and delegation powers, as previously described.

Fourth, the *Eu* Court observed that, under Proposition 140, “[t]he relationships between the three governmental branches, and their respective powers, remain untouched.” (*Eu, supra*, 54 Cal.3d 492, 509.) The Measure, however, shows no similar restraint. At its core, “the executive power is the power to execute or enforce statutes” (*Lockyer v. City & Cty. of S.F.* (2004) 33 Cal.4th 1055, 1068.) Yet the Measure would strip much of the executive branch’s power to execute and enforce laws while simultaneously forcing the legislative branch to perform administrative acts. This is no mere reshuffling of interchangeable duties among branches that are equally capable of performing them. Administrative duties have been vested in the executive branch for reasons of capacity and institutional expertise. Even with cooperation from the executive branch, the Legislature lacks the capacity to draft, debate, and pass all of the bills needed to impose or increase each and every administrative fee or fee increase, particularly given the requirement that “the amount charged does not exceed the

actual cost of providing the service or product to the payor.”

(Measure, Sec. 4, proposed art. XIII A, § 3, subd. (g)(1).)²⁶

Furthermore, the Legislature, local legislative bodies, and the voters themselves lack the deep institutional expertise of the executive agencies that they would be forced to replace. Indeed, this is one of the leading reasons why the legislative and judicial branches rely on, and defer to, administrative agencies: They have the expertise and technical knowledge necessary to resolve matters within their jurisdiction. (See, e.g., *Young v. State Bd. of Control* (1979) 93 Cal.App.3d 637, 641 [deferring to agency because “the intricate and technical nature of” regulated matters “require[s] the expertise and full technical knowledge” of the agency].) Yet under the Measure, instead of administrative experts making decisions like how to assess industrial property, establish groundwater pumping charges, and rule on the administrative cases that come before administrative law judges, voters and legislative bodies that are not designed for or staffed to perform these functions would have to make those decisions.

If California wishes to eviscerate its executive branches in these ways, it must do so by revising the Constitution. It cannot do so with only the minimal deliberation afforded by the initiative process.

²⁶ Nor could it build that capacity. The voters have capped the Legislature’s spending on staff and operating expenses. (Cal. Const., art. IV, § 7.5 [added by Proposition 140 in 1990].) Similar capacity issues would arise among local governments, which would struggle to raise additional revenue for new legislative staff under the Measure’s provisions.

D. The Measure Restructures The Voters' Fiscal Powers

The Measure also makes far-reaching changes to the voters' foundational powers and, in doing so, to the fundamental governmental structure in this State.

On the one hand, the Measure reduces the power of local voters to increase their own taxes by (1) revoking their power to amend local charters to increase taxes, and (2) requiring supermajority rather than simple majority votes to approve voter-initiated increases in special taxes. (Pet., ¶¶ 27, 28.) This Court's own statements establish the significance of these changes. The Court recently declined – in a decision that the Measure expressly overturns (Measure, Sec. 3, subd. (e)) – to extend to the people's power of initiative the requirement in today's article XIII C that general taxes must be submitted to the voters at regularly scheduled general elections. (*Cal. Cannabis Coal. v. City of Upland* (2017) 3 Cal.5th 924, 943.) The Court concluded that doing so would be a “quite significant consequence” given that voters currently “exercise the initiative power . . . subject to precious few limits on that power.” (*Id.* at pp. 940, 935.) The Measure's limits on the voters' power are at least as consequential as dictating the election at which a measure must appear.

On the other hand, the Measure vastly increases the voters' power to reject new or increased taxes and charges as described in Sections III(B) and (C) above. It would also newly subject large categories of state and local charges to referendum. (Pet., ¶ 25.) In these ways, *every* state and local revenue-raising

measure would be subject to voter approval, either as a tax that requires voter approval, or an exempt charge subject to the voters' power of referendum. (Pet., ¶ 26.)

These are profound changes for all of the reasons described above. Yet, in addition, the Measure makes changes in the initiative and referendum power itself. When the voters adopted that power in 1911, they were told that it would allow the people to “supplement the work of the legislature by initiating those measures which the legislature either viciously or negligently fails or refuses to enact” (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1140-1141 [quoting 1911 ballot pamphlet materials].) Under the Measure, however, the voters would now replace rather than supplement the Legislature with respect to imposing taxes.

Furthermore, the initiative power would favor some voters over others. Voters who *disfavor* revenue-raising measures could amend their local charters to limit taxes and charges and could approve revenue-reducing initiatives by simple majorities. Voters who *favor* revenue-raising measures, however, could not amend their local charters to reflect their views and would have to muster supermajorities to pass new special taxes.

Finally, by compelling voters to assume a far more active role in state government, the Measure would have sobering implications for the future of governance. Taxation is both highly complex and essential to the adequate functioning of the State. (Pp. 45-50.) Sound tax policy therefore requires time and expertise. California's full-time Legislature has the capacity to

implement tax policy because legislators can spend weeks in committees reviewing a law and debating its impact, all while being advised by professional legislative staff. Not so with voters. As it is, voters have neither the time nor resources at their disposal to comprehensively study their crowded ballots, as the courts have repeatedly acknowledged. Indeed, this Court has observed that “even the most conscientious voters may lack the time to study ballot measures with [a high] degree of thoroughness.” (*Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Comm’n* (1990) 51 Cal.3d 744, 770; accord, *Schmitz v. Younger* (1978) 21 Cal.3d 90, 99 (dis. opn. of Manuel, J.); *B.M. v. Superior Court* (2019) 40 Cal.App.5th 742, 768, fn. 4 (dis. opn. of McKinster, J.) [expressing doubt “that initiative voters read the actual text of the proposed laws” based on cited authorities].) The Measure would greatly amplify these concerns.

Moreover, under the Measure, the work of democracy would demand far more from voters than it does today, both in terms of the volume of decisions to be made and their complexity. Future ballots would include more – likely *many* more – ballot measures presenting highly technical questions like what formulas to use to ensure local property taxes are sufficient to pay local bond obligations and whether to increase sewage fees to prevent the deterioration of a local wastewater treatment plant. Such added burdens create the risk of rising voter fatigue and frustration, with corresponding declines in voter engagement and turnout.

It may be that some Californians would conclude that the Measure is worth these trade-offs. Yet that is not the question before this Court. The question is whether these changes combined with the changes described in Sections III(B) and (C) are “so far-reaching and extensive that the framers of the 1849 and 1879 Constitutions would have intended” that they may only be adopted by a constitutional convention or by a revision proposed by the Legislature, rather than as a mere initiative constitutional amendment. (*Strauss, supra*, 46 Cal.4th 364, 447, emphasis omitted.) As this Court has previously explained, legislative consideration or a constitutional convention is necessary for “comprehensive changes” requiring “more formality, discussion, and deliberation.” (*Raven, supra*, 52 Cal.3d 336, 349-350.) Surely a proposal that would so profoundly change the powers of the legislative and executive branches of government to raise the revenues required to meet the needs of the people is a proposal that demands the kind of deliberation that only a constitutional revision provides.

IV.

THE MEASURE GRAVELY INTERFERES WITH ESSENTIAL GOVERNMENT FUNCTIONS

California courts have long held that the initiative or referendum process cannot be used if it would seriously impair essential government functions. (*Rossi v. Brown, supra*, 9 Cal.4th 688, 703, citing *Geiger v. Bd. of Supervisors* (1957) 48 Cal.2d 832, 839-840.) Only recently, in *Wilde v. City of Dunsmuir, supra*, 9 Cal.5th 1105, this Court held that a city’s

increase in water rates was not subject to referendum because it was exempt as a tax within the meaning of the referendum provision of the state Constitution, at article II, section 9. In doing so, the Court declared: “[I]f essential governmental functions would be seriously impaired by the referendum process, the courts, in construing the applicable constitutional and statutory provisions, will assume that no such result was intended.” (*Id.* at p. 1123, quoting *Geiger*, at p. 839.)

Wilde acknowledges that a government’s ability to manage its fiscal affairs is arguably the most essential government function, because without it, government services could not be provided at all. The Measure at issue here endangers those essential functions because it makes their funding hinge on voter approval, either expressly for new or increased taxes or indirectly by making new fees subject to referendum because they must be passed by a legislative body. In either case, even if the voters ultimately approve a tax or fee increase, the delay inherent in obtaining voter approval itself endangers essential government functions.

The degree of the danger can only be understood in the context of earlier amendments that narrowed the ability of state and local government to raise and spend the funds necessary to meet the needs of the State’s nearly 40 million people. Petitioners do not challenge the validity of these earlier amendments, which targeted specific aspects of government taxation and spending. The current Measure is qualitatively different, however, because it targets *every* aspect of government

funding, thus gravely impairing the ability of state and local government to provide essential government services to the people of California. That result is inconsistent with the voters' original understanding when they adopted the initiative process and with the need to protect essential government functions.

A. The Initiative Process Was Not Intended To Replace Legislative Control Over Fiscal Affairs

The history of the initiative process demonstrates that it was not meant to interfere with a legislative body's overall ability to manage the government's fiscal affairs. When California voters adopted the initiative process in 1911, they expressly stated that "[t]he legislative power of this state shall be vested in a senate and assembly which shall be designated 'The legislature of the State of California,' but the people reserve to themselves the power to propose laws and amendments to the constitution" ²⁷ As this language makes clear, "[t]he original concept of the initiative was to provide a check on elected officials, not to replace representative government."²⁸

This was especially true with respect to matters involving taxation and fiscal affairs. The 1911 amendments left intact former article XIII of the Constitution, which was titled

²⁷ Cal. Const., former art. IV, § 1, added by Sen. Const. Amend. No. 22, approved by voters, Special Elec. (Oct. 10, 1911), https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1006&context=ca_ballot_props#page=3 [measure placed on the ballot by the Legislature].

²⁸ Cain & Noll, *Constitutional Reform in California* (1995) at pp. 288-289.

“Taxation” and which ended with the requirement that “[t]he Legislature shall pass all laws necessary to carry out the provisions of this article.”²⁹ The Legislature also retained authority to authorize taxation by local governments. (Cal. Const., former art. XI, § 12, now art. XIII, § 24, subd. (a).) Moreover, the 1911 amendments not only declared taxation out of bounds for the referendum power, but they provided that tax levies and appropriations for the usual current expenses of the State go into effect immediately.³⁰ This was an important safeguard meant to ensure that legislative bodies could respond to a crisis by raising the money necessary to deal with it.

The Measure would eliminate these protections for many revenue-raising mechanisms. For example, the Measure would require that every utility rate increase be passed legislatively, thereby subjecting it to referendum. As noted earlier, this Court has recognized that “in certain areas, legislators must be permitted to act expediently, without the delays and uncertainty that accompany the referendum process.” (*Wilde, supra*, 9 Cal.5th 1105, 1122.) The Court accordingly held that the increase in water rates, “*like other utility fees used to fund essential governmental services*,” was protected from the referendum power under the broader definition of a tax the voters

²⁹ Cal. Const., former art. XIII, § 13, now art. XIII, § 33, available at <https://archives.cdn.sos.ca.gov/collections/1879/archive/1879-constitution.pdf#page=18>.

³⁰ See footnote 27, at p. 64. Essentially the same provision now appears in article IV, section 8, subdivision (c).

enacted in article II, section 9 in 1911. (*Id.* at p. 1124, emphasis added.) That would no longer be the case if the Measure is approved, because it specifically states that it is meant to overrule this Court’s opinion in *Wilde*. (Measure, Sec. 3, subd. (e) [listing *Wilde* and five other cases that the Measure would reverse].)

B. Constitutional Amendments Since 1978 Have Severely Restricted Legislative Authority Over Fiscal Affairs

The immediate effects of the Measure are described above, but those effects must also be understood in the context of existing restrictions on the revenue-raising ability of state and local government.

This Court has described the power to collect and appropriate state revenue as “one peculiarly within the discretion of the Legislature,”³¹ and for nearly 100 years, that authority was largely unrestricted. The passage of Proposition 13 in 1978 marked a shift, followed by Proposition 218 in 1996 and Proposition 26 in 2010, as this Court described in *Wilde, supra*, 9 Cal.5th 1105, 1112.

In roughly the same time period, these revenue-raising restrictions were accompanied by limits on legislative spending. In 1990, the voters added “the Gann limit” to the Constitution to limit state and local appropriations from the proceeds of taxes and require the Legislature to provide funding

³¹ *Carmel Valley, supra*, 25 Cal.4th 287, 299, internal quotation marks omitted.

whenever the State “mandates a new program or higher level of service on any local government” (Cal. Const., art. XIII B, § 6, subd. (a).) The pressure on state revenues therefore increased as the Legislature attempted to fill in gaps in local services caused by revenues lost under Proposition 13.

Further amendments limited how the Legislature could spend state revenues. The most significant was Proposition 98, which sets a minimum annual funding level for support of public education. (Cal. Const., art. XVI, §§ 8, 8.5.) Because of restrictions on local taxes imposed by Propositions 13, 62, 218, and 26, much of the minimum guarantee must be supplied by the State. Additional initiatives³² placed more restrictions in the Constitution.

Although these constitutional amendments passed in the last forty-five years have altered the Legislature’s authority over taxing and spending, until now the Legislature has retained its plenary power to tax and to authorize state and local agencies to raise fees. The Measure would change that, making it materially different in kind from those prior measures in its impacts on the State’s ability to provide essential governmental functions.

The Measure threatens almost every service or program that requires funding in the State, but the danger is most starkly apparent with respect to the State’s ability to

³² These initiatives include Prop. 22, as approved by voters, Gen. Elec. (Nov. 3, 2010) and Prop. 69, as approved by voters, Primary Elec. (June 6, 2018).

respond to a crisis. Under current law, statewide elections occur only once every two years. (Elec. Code, § 1001.) If the Legislature needs voter approval for an extension or increase of a tax before a regularly scheduled statewide election, it will have to call a special election. The last statewide special election was the gubernatorial recall election on September 14, 2021, which cost more than \$200 million.³³ If the State is facing a fiscal emergency, the Measure could force the State to spend more than \$200 million on an election that may not be successful. Even if the voters approved the proposed tax increase, the State would have \$200 million less to spend on the emergency.

This scenario is by no means unrealistic. In 2008, the State faced an unprecedented budget crisis, with a \$11.2 billion shortfall.³⁴ In response, Governor Schwarzenegger called the Legislature into special sessions that resulted in increases in state income, vehicle, and sales taxes.³⁵ When the Legislature proposed constitutional amendments in 2009 to restructure the budget process and request that the voters

³³ Secretary of State Shirley N. Weber, Ph.D., letter to Sens. Skinner, Ting, Portantino, Holden and Keely Bosler, Director of Dept. of Finance, Feb. 1, 2022, <https://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/report-to-legislature.pdf>.

³⁴ Dept. of Finance, Rep., Governor's Budget, Special Session 2008-09, p. 1, https://dof.ca.gov/wp-content/uploads/sites/352/budget/publications/2008-09/special_session_08-09-web.pdf.

³⁵ A.B. 3, Stats. 2009 (2009-2010 3rd Ex. Sess.) ch. 18, §§ 1-13, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920103AB3.

approve extending the tax increases, the voters rejected the proposal.³⁶

The special sessions of 2008-2009 demonstrate that the basic framework of our Constitution depends upon having a means to call a representative body into special session in order to deal with a fiscal crisis of the sort that occurred in 2008. If the Measure is enacted, that flexibility will be lost. It will be replaced by a rigid structure requiring voter approval for every new tax, tax increase, or extension, no matter how urgent or well justified, and making every fee increase subject to referendum. Because that structure gravely imperils essential government functions, it cannot be imposed by an initiative constitutional amendment.

CONCLUSION

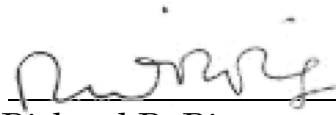
The Measure that is now before this Court is unlike any measure that has ever gone before the voters with respect to the sweeping changes it would make to California's fundamental governmental structure, the foundational powers of its branches, and the government's ability to provide the essential government functions required by a functioning state. This effort to enact these changes by initiative is therefore unconstitutional, and the Legislature, the Governor, and petitioner Burton respectfully ask this Court to intervene now to prevent it from appearing on the ballot.

³⁶ Ballot Pamp., Special Elec. (May 19, 2009), text of Prop. 1a, at p. 46, https://repository.uclawsf.edu/ca_ballot_props/1294/.

Dated: September 26, 2023

Respectfully submitted,

OLSON REMCHO, LLP

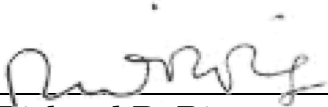
By:  _____
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**BRIEF FORMAT CERTIFICATION PURSUANT TO
RULE 8.204 OF THE CALIFORNIA RULES OF COURT**

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 13,988 as counted by the Microsoft Word 365 word processing program used to generate the brief.

Dated: September 26, 2023



Richard R. Rios

EXHIBIT A

**TAXPAYER PROTECTION AND GOVERNMENT
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21-0042 Amdt. # 1

January 4, 2022

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Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Initiative 21-0042 - Amendment Number One

Dear Initiative Coordinator:

Pursuant to subdivision (b) of Section 9002 of the Elections Code, enclosed please find Amendment #1 to Initiative No. 21-0042 "The Taxpayer Protection and Government Accountability Act." The amendments are reasonably germane to the theme, purpose or subject of the initiative measure as originally proposed.

I am the proponent of the measure and request that the Attorney General prepare a circulating title and summary of the measure as provided by law, using the amended language.

Thank you for your time and attention processing my request.

Sincerely,



Thomas W. Hiltachk

The Taxpayer Protection and Government Accountability Act

[Deleted codified text is denoted in ~~strikeout~~. Added codified text is denoted by *italics and underline*.]

Section 1. Title

This Act shall be known, and may be cited as, the Taxpayer Protection and Government Accountability Act.

Section 2. Findings and Declarations

(a) Californians are overtaxed. We pay the nation's highest state income tax, sales tax, and gasoline tax. According to the U.S. Census Bureau, California's combined state and local tax burden is the highest in the nation. Despite this, and despite two consecutive years of obscene revenue surpluses, state politicians in 2021 alone introduced legislation to raise more than \$234 *billion* in new and higher taxes and fees.

(b) Taxes are only part of the reason for California's rising cost-of-living crisis. Californians pay billions more in hidden "fees" passed through to consumers in the price they pay for products, services, food, fuel, utilities and housing. Since 2010, government revenue from state and local "fees" has more than doubled.

(c) California's high cost of living not only contributes to the state's skyrocketing rates of poverty and homelessness, they are the pushing working families and job-providing businesses out of the state. The most recent Census showed that California's population dropped for the first time in history, costing us a seat in Congress. In the past four years, nearly 300 major corporations relocated to other states, not counting thousands more small businesses that were forced to move, sell or close.

(d) California voters have tried repeatedly, at great expense, to assert control over whether and how taxes and fees are raised. We have enacted a series of measures to make taxes more predictable, to limit what passes as a "fee," to require voter approval, and to guarantee transparency and accountability. These measures include Proposition 13 (1978), Proposition 62 (1986), Proposition 218 (1996), and Proposition 26 (2010).

(e) Contrary to the voters' intent, these measures that were designed to control taxes, spending and accountability, have been weakened and hamstrung by the Legislature, government lawyers, and the courts, making it necessary to pass yet another initiative to close loopholes and reverse hostile court decisions.

Section 3. Statement of Purpose

(a) In enacting this measure, the voters reassert their right to a voice and a vote on new and higher taxes by requiring any new or higher tax to be put before voters for approval. Voters also intend that all fees and other charges are passed or rejected by the voters themselves or a governing body elected by voters and not unelected and unaccountable bureaucrats.

(b) Furthermore, the purpose and intent of the voters in enacting this measure is to increase transparency and accountability over higher taxes and charges by requiring any tax measure placed on the ballot—

either at the state or local level—to clearly state the type and rate of any tax, how long it will be in effect, and the use of the revenue generated by the tax.

(c) Furthermore, the purpose and intent of the voters in enacting this measure is to clarify that any new or increased form of state government revenue, by any name or manner of extraction paid directly or indirectly by Californians, shall be authorized only by a vote of the Legislature and signature of the Governor to ensure that the purposes for such charges are broadly supported and transparently debated.

(d) Furthermore, the purpose and intent of the voters in enacting this measure is also to ensure that taxpayers have the right and ability to effectively balance new or increased taxes and other charges with the rapidly increasing costs Californians are already paying for housing, food, childcare, gasoline, energy, healthcare, education, and other basic costs of living, and to further protect the existing constitutional limit on property taxes and ensure that the revenue from such taxes remains local, without changing or superseding existing constitutional provisions contained in Section 1(c) of Article XIII A.

(e) In enacting this measure, the voters also additionally intend to reverse loopholes in the legislative two-thirds vote and voter approval requirements for government revenue increases created by the courts including, but not limited to, *Cannabis Coalition v. City of Upland*, *Chamber of Commerce v. Air Resources Board*, *Schmeer v. Los Angeles County*, *Johnson v. County of Mendocino*, *Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Commission*, and *Wilde v. City of Dunsmuir*.

Section 4. Section 3 of Article XIII A of the California Constitution is amended to read:

Sec. 3(a) Every levy, charge, or exaction of any kind imposed by state law is either a tax or an exempt charge.

(b)(1) (a) Any change in state statute law which results in any taxpayer paying a new or higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, and submitted to the electorate and approved by a majority vote, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property, may be imposed. Each Act shall include:

(A) A specific duration of time that the tax will be imposed and an estimate of the annual amount expected to be derived from the tax.

(B) A specific and legally binding and enforceable limitation on how the revenue from the tax can be spent. If the revenue from the tax can be spent for unrestricted general revenue purposes, then a statement that the tax revenue can be spent for “unrestricted general revenue purposes” shall be included in a separate, stand-alone section. Any proposed change to the use of the revenue from the tax shall be adopted by a separate act that is passed by not less than two-thirds of all members elected to each of the two houses of the Legislature and submitted to the electorate and approved by a majority vote.

(2) The title and summary and ballot label or question required for a measure pursuant to the Elections Code shall, for each measure providing for the imposition of a tax, including a measure proposed by an elector pursuant to Article II, include:

(A) The type and amount or rate of the tax;

(B) The duration of the tax; and

(C) The use of the revenue derived from the tax.

(c) Any change in state law which results in any taxpayer paying a new or higher exempt charge must be imposed by an act passed by each of the two houses of the Legislature. Each act shall specify the type of exempt charge as provided in subdivision (e), and the amount or rate of the exempt charge to be imposed.

(d) ~~(b)~~ As used in this section and in Section 9 of Article II, "tax" means every ~~any~~ levy, charge, or exaction of any kind imposed by the State state law that is not an exempt charge, except the following:

(e) As used in this section, "exempt charge" means only the following:

~~(1) a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the State of conferring the benefit or granting the privilege to the payor.~~

~~(1) (2) A reasonable charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the State of providing the service or product to the payor.~~

~~(2) (3) A charge imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.~~

~~(3) A levy, charge, or exaction collected from local units of government, health care providers or health care service plans that is primarily used by the State of California for the purposes of increasing reimbursement rates or payments under the Medi-Cal program, and the revenues of which are primarily used to finance the non-federal portion of Medi-Cal medical assistance expenditures.~~

~~(4) A reasonable charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property, except charges governed by Section 15 of Article XI.~~

~~(5) A fine, or penalty, or other monetary charge including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or the State, as a result of a state administrative enforcement agency pursuant to adjudicatory due process, to punish a violation of law.~~

~~(6) A levy, charge, assessment, or exaction collected for the promotion of California tourism pursuant to Chapter 1 (commencing with Section 13995) of Part 4.7 of Division 3 of Title 2 of the Government Code.~~

~~(f) (e) Any tax or exempt charge adopted after January 1, 2022 2010, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax or exempt charge is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this section.~~

~~(g) (1) (d) The State bears the burden of proving by a preponderance of the clear and convincing evidence that a levy, charge, or other exaction is an exempt charge and not a tax. The State bears the burden of proving by clear and convincing evidence that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor. ~~that the amount is no more than necessary to cover the reasonable costs of the governmental activity and~~~~

that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity

(2) The retention of revenue by, or the payment to, a non-governmental entity of a levy, charge, or exaction of any kind imposed by state law, shall not be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(3) The characterization of a levy, charge, or exaction of any kind as being voluntary, or paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be a factor in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(4) The use of revenue derived from the levy, charge or exaction shall be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(h) As used in this section:

(1) "Actual cost" of providing a service or product means: (i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing "actual cost" the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(2) "Extend" includes, but is not limited to, doing any of the following with respect to a tax or exempt charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.

(3) "Impose" means adopt, enact, reenact, create, establish, collect, increase or extend.

(4) "State law" includes, but is not limited to, any state statute, state regulation, state executive order, state resolution, state ruling, state opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by the legislative or executive branches of state government. "State law" does not include actions taken by the Regents of the University of California, Trustees of the California State University, or the Board of Governors of the California Community Colleges.

Section 5. Section 1 of Article XIII C of the California Constitution is amended, to read:

Sec. 1. Definitions. As used in this article:

(a) "Actual cost" of providing a service or product means: (i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing "actual cost" the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.

(b) "Extend" includes, but is not limited to, doing any of the following with respect to a tax, exempt charge, or Article XIII D assessment, fee, or charge: lengthening its duration, delaying or eliminating its expiration, expanding its application to a new territory or class of payor, or expanding the base to which its rate is applied.

~~(c) (a)~~ "General tax" means any tax imposed for general governmental purposes.

~~(d)~~ "Impose" means adopt, enact, reenact, create, establish, collect, increase, or extend.

~~(e) (b)~~ "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity, or an elector pursuant to Article II or the initiative power provided by a charter or statute.

~~(f)~~ "Local law" includes, but is not limited to, any ordinance, resolution, regulation, ruling, opinion letter, or other legal authority or interpretation adopted, enacted, enforced, issued, or implemented by a local government.

~~(g) (c)~~ "Special district" means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

~~(h) (d)~~ "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

~~(i) (e)~~ As used in this article, and in Section 9 of Article II, "tax" means every any-levy, charge, or exaction of any kind, imposed by a local government ~~law that is not an exempt charge,~~ except the following:

~~(i)~~ As used in this section, "exempt charge" means only the following:

~~(1)~~ A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

~~(1) (2)~~ A reasonable charge imposed for a specific local government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable actual costs to the local government of providing the service or product.

~~(2) (3)~~ A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

~~(3) (4)~~ A reasonable charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

~~(4) (5)~~ A fine, or penalty, or other monetary charge including any applicable interest for nonpayment thereof, imposed by the judicial branch of government or a local government administrative enforcement agency pursuant to adjudicatory due process, as a result of to punish a violation of law.

~~(5) (6)~~ A charge imposed as a condition of property development. No levy, charge, or exaction regulating or related to vehicle miles traveled may be imposed as a condition of property development or occupancy.

~~(6) (7)~~ An Assessments and property related fees assessment, fee, or charge imposed in accordance with the provisions of subject to Article XIII D, or an assessment imposed upon a business in a tourism marketing district, a parking and business improvement area, or a property and business improvement district.

(7) A charge imposed for a specific health care service provided directly to the payor and that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the health care service. As used in this paragraph, a "health care service" means a service licensed or exempt from licensure by the state pursuant to Chapters 1, 1.3, or 2 of Division 2 of the Health and Safety Code.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

Section 6. Section 2 of Article XIII C of the California Constitution is amended to read:

Sec. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) Every levy, charge, or exaction of any kind imposed by local law is either a tax or an exempt charge. All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local ~~law government~~, whether proposed by the governing body or by an elector, may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b). ~~(d) No local law government, whether proposed by the governing body or by an elector, may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.~~

(d) The title and summary and ballot label or question required for a measure pursuant to the Elections Code shall, for each measure providing for the imposition of a tax, include:

(1) The type and amount or rate of the tax;

(2) the duration of the tax; and

(3) The use of the revenue derived from the tax. If the proposed tax is a general tax, the phrase "for general government use" shall be required, and no advisory measure may appear on the same ballot that would indicate that the revenue from the general tax will, could, or should be used for a specific purpose.

(e) Only the governing body of a local government, other than an elector pursuant to Article II or the initiative power provided by a charter or statute, shall have the authority to impose any exempt charge. The governing body shall impose an exempt charge by an ordinance specifying the type of exempt charge

as provided in Section 1(j) and the amount or rate of the exempt charge to be imposed, and passed by the governing body. This subdivision shall not apply to charges specified in paragraph (7) of subdivision (i) of Section 1.

(f) No amendment to a Charter which provides for the imposition, extension, or increase of a tax or exempt charge shall be submitted to or approved by the electors, nor shall any such amendment to a Charter hereafter submitted to or approved by the electors become effective for any purpose.

(g) Any tax or exempt charge adopted after January 1, 2022, but prior to the effective date of this act, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of this act unless the tax or exempt charge is reenacted in compliance with the requirements of this section.

(h)(1) The local government bears the burden of proving by clear and convincing evidence that a levy, charge or exaction is an exempt charge and not a tax. The local government bears the burden of proving by clear and convincing evidence that the amount of the exempt charge is reasonable and that the amount charged does not exceed the actual cost of providing the service or product to the payor.

(2) The retention of revenue by, or the payment to, a non-governmental entity of a levy, charge, or exaction of any kind imposed by a local law, shall not be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

(3) The characterization of a levy, charge, or exaction of any kind imposed by a local law as being paid in exchange for a benefit, privilege, allowance, authorization, or asset, shall not be factors in determining whether the levy, charge, or exaction is a tax or an exempt charge.

(4) The use of revenue derived from the levy, charge or exaction shall be a factor in determining whether the levy, charge, or exaction is a tax or exempt charge.

Section 7. Section 3 of Article XIII D of the California Constitution is amended, to read:

Sec. 3. Property Taxes, Assessments, Fees and Charges Limited

(a) No tax, assessment, fee, ~~or~~ charge, or surcharge, including a surcharge based on the value of property, shall be assessed ~~by any agency~~ upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax ~~imposed pursuant to~~ described in Section 1(a) of Article XIII and Section 1(a) of Article XIII A, and described and enacted pursuant to the voter approval requirement in Section 1(b) of Article XIII A.

(2) Any special non-ad valorem tax receiving a two-thirds vote of qualified electors pursuant to Section 4 of Article XIII A, or after receiving a two-thirds vote of those authorized to vote in a community facilities district by the Legislature pursuant to statute as it existed on December 31, 2021.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

Section 8. Sections 1 and 14 of Article XIII are amended to read:

Sec. 1 Unless otherwise provided by this Constitution or the laws of the United States:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value.

(c) All proceeds from the taxation of property shall be apportioned according to law to the districts within the counties.

Sec. 14. All property taxed by state or local government shall be assessed in the county, city, and district in which it is situated. Notwithstanding any other provision of law, such state or local property taxes shall be apportioned according to law to the districts within the counties.

Section 9. General Provisions

A. This Act shall be liberally construed in order to effectuate its purposes.

B. (1) In the event that this initiative measure and another initiative measure or measures relating to state or local requirements for the imposition, adoption, creation, or establishment of taxes, charges, and other revenue measures shall appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be null and void.

(2) In furtherance of this provision, the voters hereby declare that this measure conflicts with the provisions of the "Housing Affordability and Tax Cut Act of 2022" and "The Tax Cut and Housing Affordability Act," both of which would impose a new state property tax (called a "surcharge") on certain real property, and where the revenue derived from the tax is provided to the State, rather than retained in the county in which the property is situated and for the use of the county and cities and districts within the county, in direct violation of the provisions of this initiative.

(3) If this initiative measure is approved by the voters, but superseded in whole or in part by any other conflicting initiative measure approved by the voters at the same election, and such conflicting initiative is later held invalid, this measure shall be self-executing and given full force and effect.

C. The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not

declared invalid or unconstitutional without regard to whether any portion of this Act or application thereof would be subsequently declared invalid.

D. If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of state or federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

(1) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(2) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made publicly available upon request.

(3) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(4) Nothing in this section shall prohibit the proponents of this Act, or a bona fide taxpayers association, from intervening to defend this Act.

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

On September 26, 2023, I served a true copy of the following document(s):

**Petition for Writ of Mandate;
Memorandum of Points and Authorities**

on the following party(ies) in said action:

Steven J. Reyes
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*Real Party in Interest
Thomas W. Hiltachk*

Office of the Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550
(By United States Mail)

*Pursuant to Rule 8.29 of the
California Rules of Court*

BY UNITED STATES MAIL: By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and

- depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- placing the sealed envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in Sacramento, California, in a sealed envelope with postage fully prepaid.
- BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY PROCESS SERVER:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional process server for service.
- BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.
- BY EMAIL TRANSMISSION:** By causing the document(s) to be emailed to persons at the email addresses listed above.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on September 26, 2023, in Gardnerville, Nevada.



Nina Leathley