**Case No. S189476**

SUPREME COURT OF THE STATE OF CALIFORNIA

---

**KRISTIN M. PERRY; SANDRA B. STIER; PAUL T. KATAMI; JEFFREY J. ZARRILLO,**

Plaintiffs/Respondents,

**CITY AND COUNTY OF SAN FRANCISCO,**

Plaintiff-Intervener/Respondent,

vs.

**EDMUND G. BROWN JR *ET AL.*,**

Defendants,

**DENNIS HOLLINGSWORTH; GAIL J. KNIGHT; MARTIN F. GUTIERREZ; MARK A. JANSSON; PROTECTMARRIAGE.COM - YES ON 8, A PROJECT OF CALIFORNIA RENEWAL,** as official proponents of Proposition 8,

Defendants-Interveners/Petitioners,

**HAK-SHING WILLIAM TAM,**

Defendant-Intervener.

---

# CITY AND COUNTY OF SAN FRANCISCO'S REPLY TO AMICUS BRIEFS

---

On Request from the United States Court of Appeals for the Ninth Circuit, Case No. 10-16696

---

DENNIS J. HERRERA, SB #139669
City Attorney
THERESE M. STEWART, SB #104930
Chief Deputy City Attorney
VINCE CHHABRIA, SB #208557
MOLLIE M. LEE, SB #251404
Deputy City Attorneys
City Hall, Room 234
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-5408
Telephone: (415) 554-4708

DANNY CHOU, SB #180240
Chief of Complex and Special Litigation
CHRISTINE VAN AKEN, SB #241755
Deputy City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Telephone: (415) 554-3800

*Attorneys for Plaintiff-Intervener/Respondent*
*CITY AND COUNTY OF SAN FRANCISCO*

# TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**State Cases**

**Federal Cases**



**State Constitution, Statutes & Codes**



**Federal Statutes**



**Federal Constitutional Provisions**

**Other Authorities and References**

## INTRODUCTION

When the People of California established the initiative power, they reserved to themselves a portion of the legislative power of the State. Proponents and their amici now seek to convert that reservation of legislative power by the People into a delegation of executive power to a handful of unelected and unaccountable individuals. The Court should reject this for what it is – an attempt to aggrandize the power of a few at the expense of many. Placing the State's power in the hands of a small group of private individuals is contrary to the foundational principles of California's governmental structure and inconsistent with the letter and spirit of the initiative power.

In their briefs in support of Defendant-Intervener-Appellants (Proponents), amici curiae repeat the argument that initiative proponents are authorized to defend initiative measures on behalf of the State. Like Proponents, amici fail to locate any support for this position in the California Constitution, statutes, or cases. They therefore turn to broad arguments about the sovereignty of the People and the purpose of the initiative power, digging deep into the legislative history of the initiative in the hopes of finding a modicum of support for their position. They do not succeed. The legislative history of the constitutional amendments establishing the initiative, referendum, and recall powers confirms that the initiative was never intended to give Proponents the power they now seek.

Amici curiae also repeat Proponents' argument that initiative proponents have a legally protected interest in the substantive validity of their ballot measures. According to amici briefs filed in support of Proponents, this particularized interest can be inferred from the fact that initiative proponents often participate in litigation about their proposed

measure. But this argument depends on the false premise that California courts require litigants to show a special interest in order to participate in ballot measure litigation. In fact, California has liberal standing rules and initiative proponents have made use of the many procedural vehicles by which individuals with a generalized interest in a matter of public importance may participate in litigation concerning that matter. Thus, the cases merely establish that California courts generally welcome the views of initiative proponents and other supporters of initiative measures. They do not suggest that proponents have any special rights with respect the substantive validity of those measures.

## ARGUMENT

### I. CALIFORNIA DOES NOT AUTHORIZE INITIATIVE PROPONENTS TO DEFEND MEASURES ON BEHALF OF THE STATE.

Amici curiae do not identify a single constitutional provision, statute or case stating that initiative proponents are authorized to defend initiatives on behalf of the State. Like Proponents, they argue that this authority can somehow be implied from the nature of the initiative power or from cases in which initiative proponents and supporters have been permitted to participate. As San Francisco and Plaintiffs explained in their answering briefs, neither of these arguments is persuasive. (City and County of San Francisco's Answer Brief (SF Answer Br.) at 16-31; Plaintiffs-Respondents' Answering Brief (Plaintiffs' Answer Br.) at 9-19.) The initiative power is legislative, while the power to make legal decisions on behalf of the State is delegated to the executive branch. And the cases relied upon by Proponents and amici curiae merely establish that

proponents are often permitted to intervene to represent their own interests, not the interests of the State.

Amici curiae make the additional – and related – arguments that Proponents must have standing in order to 1) preserve the sovereignty of the People, and 2) vindicate the purpose of the initiative. These arguments are addressed below.

### A. The People Delegated To The Governor And The Attorney General The Authority To Enforce And Defend State Laws.

Several amici curiae argue that initiative sponsors must be permitted to defend initiatives in order to preserve the People's sovereignty by ensuring that elected officials do not "effectively veto a ballot measure" or otherwise "interfere with [the initiative] process" when they decide not to defend a measure on appeal. (Brief of Amicus Curiae Pacific Legal Foundation (PLF Br.) at 8-11.) This argument is flawed in numerous respects.

First, it misunderstands the executive branch's enforcement powers to state that elected officials effectively veto a measure when they do not defend it on appeal.[1] Proposition 8 was not invalidated because the Governor and Attorney General refused to defend it. It was invalidated because a federal court determined that the measure violates the Constitution of the United States. And this determination came after a full

[1] The Center for Constitutional Jurisprudence (CCJ) and the Pacific Legal Foundation (PLF) argue that elected officials effectively veto a ballot measure when they refuse to defend it on appeal, allegedly undermining the purpose of the initiative and the People's sovereignty. (Brief of Amicus Curiae Center for Constitutional Jurisprudence (CCJ Br.) at 12-13; PLF Br. at 7.) The Ninth Circuit expressed similar concerns in its Order certifying a question to this Court. (*Perry v. Schwarzenegger* (2011) 628 F.3d 1191, 1197.)

trial, in which the measure's defenders failed to provide any legitimate rationale for its enactment, despite being given every opportunity to do so.[2] The Governor and Attorney General's decision not to appeal is no more a "veto" of Proposition 8 than is the federal district court decision itself.

To be sure, had state officials refused to *implement* Proposition 8 in the wake of its passage, that could be characterized as an indirect veto of an initiative measure by elected officials who are precluded from vetoing it directly (although even in that circumstance the officials would not have the last word, because they would be subject to the mandamus jurisdiction of the California courts).[3] But here the relevant officials implemented Proposition 8 and did not object to interveners' vigorous defense of Proposition 8 at trial. It is telling that amici are unable to name a single initiative, including Proposition 8, that received no defense. Indeed, it is difficult to imagine a case where an initiative would go undefended: in those rare instances where elected officials exercise their prerogative not to defend a measure that has been challenged in court, the measure will receive a defense through the intervention of interested parties and will only be struck down if a court is convinced, after an adversary proceeding, that

---

[2] CCJ argues the present case is controlled by *Baker v. Nelson* (1972) 409 U.S. 810 (dismissing for lack of a federal question the appeal of a Minnesota case where a same sex couple sought to marry) and *Adams v. Howerton* (9th Cir. 1982) 673 F.2d 1036 (rejecting challenge to the definition of "spouse" in a federal statute). However, these specific arguments were made by Proponents and rejected by the trial court. (*Perry v. Schwarzennegger* (N.D. Cal., Sept. 9, 2009, 3:09-cv-02292-VRW) Doc. #172 at 69; *Id.* (Oct. 14, 2009) Doc. #228 at 75-79.)

[3] If elected officials decline to enforce an initiative on constitutional grounds, its proponents can obtain a judicial decision concerning the validity of the measure by filing a mandamus action asserting a public right to performance of a public duty. (*Green v. Obledo* (1981) 29 Cal.3d 126, 144.) Whether the initiative violated the Federal Constitution could be tested by the State court, and absence of Article III standing by initiative proponents to defend an initiative in federal court will not prevent them from having their day in court.

the measure cannot withstand constitutional scrutiny. Simply put, the Attorney General and Governor did not "veto" or "nullify" Proposition 8, either directly or indirectly.

Second, the *entire* constitution is the expression of The People's sovereignty, not just the provisions establishing the right of initiative. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 852 ["the provisions of the California Constitution itself constitute the ultimate expression of the people's will"]; see also *Livermore v. Waite* (1894) 102 Cal. 113, 117 ["the entire sovereignty of the people is represented in the [constitutional] convention"].) The will of the people is reflected in constitutional provisions establishing the offices of Governor and Attorney General just as much as it is reflected in the initiative provision. Put simply, public officials "exercise a portion of the sovereign power of the state." (*Azvedo v. Jordan* (1965) 237 Cal.App.2d 521, 529; see also *Stout v. Democratic County Central Committee* (1952) 40 Cal.2d 91, 94.)

Third, the popular sovereignty argument proves too much. Under this logic, any limits on the right of initiative "would amount to a denial of the people's absolute sovereignty." But as the Attorney General explains, courts have held that the initiative power is limited in a number of respects. (Brief of Attorney General Kamala D. Harris (AG Br.) at 13-14.) An initiative measure may not "render an administrative decision, adjudicate a dispute, or declare by resolution the views of the governing body." (*Widders v. Furchtenicht* (2008) 167 Cal.App.4th 769, 782 [quoting *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 714].) Nor may it encompass more than a single subject (*Senate of State of California v. Jones* (1999) 21 Cal.4th 1142, 1158) or make changes to the Constitution so sweeping or dramatic in their effect on the structure of government as to

amount to a revision (*McFadden v. Jordan* (1948) 32 Cal.2d 330, 333). In sum, while the initiative places significant power directly in the hands of the electorate, this power is not unlimited.

Finally, it bears repeating that the Attorney General's litigation decisions in the present case are a proper exercise of her discretionary powers. There is no requirement to appeal an adverse decision, and there are often good reasons not to. (AG Br. at 18-19.) And while Plaintiffs clearly had the right to bring this case to trial in federal court, "the Federal Constitution guarantees no right to appellate review." (Plaintiffs' Answer Br. at p. 14 [quoting *M.L.B. v. S.L.J.* (1996) 519 U.S. 102, 110]; cf. 28 U.S.C § 1331 [federal question jurisdiction]; U.S. Const. Amend. VII [right to a jury trial in federal civil cases].)

### B. This Delegation Is Consistent With The Purpose Of The Initiative Power, Which Is To Permit Electors To "Supplement The Work Of The Legislature" By Enacting Initiatives, Not To Assume Executive Powers By Defending Them.

Several amici argue that the primary purpose of the initiative power is to give the People a means of acting directly, without relying on government officials as intermediaries. (PLF Br. at 11; CCJ Br. at 7; Brief of Amicus Curiae Judicial Watch, Inc. (Judicial Watch Br.) at 2-4.) Amici are correct that the initiative gives the People a way to enact legislation directly, without relying on the legislative branch of government. But construing the initiative power to encroach on other branches of government would raise serious constitutional questions. (See *Amador Valley v. State Board of Equalization* (1978) 22 Cal.3d 20, 246-247 [recognizing, in the context of a Guarantee Clause challenge to an initiative measure, the need for state and local government to "continue to function

through the traditional system of elected representation"].) Furthermore, the legislative history of the initiative confirms that it does not reserve executive or judicial powers, even though the enacting electorate realized that initiative measures could be declared invalid by the courts. Rather than expanding the initiative power to limit judicial review of initiative measures, or to limit the executive branch's role in enforcing and defending these measures, the People established the recall power as a means of holding elected officials in all branches of government ultimately accountable to the People. This change was substantial, giving the People the ability to vote an official with whom they were unhappy out of office immediately, rather than having to wait until the end of the official's term.[4]

Amici's argument that initiative proponents should be able to override the litigation decisions of elected officials raises a serious constitutional question about whether California's initiative system is consistent with the Federal Constitution's guarantee of a representative government. When California voters adopted initiative, referendum and recall in 1911, they acted against the backdrop of state court decisions indicating that direct democracy could not replace the "republican form of government" guaranteed by Article IV, Section 4 of the Federal Constitution (the Guarantee Clause). In 1906, the California Supreme Court considered whether the City of Los Angeles violated the Guarantee Clause by establishing local initiative and referendum powers. (*In re*

---

[4] The power was little used until 2003, when the People voted then Governor Gray Davis out of office less than a year into his second term. (*Gov. Davis Is Recalled; Schwarzenegger Wins*, L.A. Times (Oct. 08, 2003) < http://articles.latimes.com/print/2003/oct/08/local/me-recall8> [as of May 7, 2011].) With a bang, the 2003 use of the recall demonstrated its effectiveness in a situation in which voters are unhappy with an official's actions.

*Pfahler* (1906) 150 Cal. 71, 79.) It concluded that the Guarantee Clause did not apply to local government but reserved judgment as to whether the Guarantee Clause would prohibit initiative and referendum in state government. The Court noted, however, the Oregon Supreme Court's determination that Oregon's statewide initiative process was compatible with a republican form of government (*Kadderly v. City of Portland* (1903) 44 Or. 118.). The Oregon court's analysis applies with equal force to California's initiative process:

> Now, the initiative and referendum amendment does not abolish or destroy the republican form of government, or substitute another in its place. The representative character of the government still remains. The people have simply reserved to themselves a larger share of legislative power, but they have not overthrown the republican form of the government, or substituted another in its place. The government is still divided into the legislative, executive, and judicial departments, the duties of which are discharged by representatives selected by the people. (*Id.* at 145.)

Amici's arguments about the broad purpose of the initiative also ignore extensive California case law establishing that the initiative is a legislative power. (See SF Answer Br. at 16-17; AG Br. at 14-15.) As the Attorney General explains, the exercise of this power is complete when an initiative measure is adopted or rejected by the voters. (AG Br. at p. 15.) An initiative constitutional measure adopted by the voters becomes effective the day after the election (Cal. Const., art. XVIII, § 4), and the initiative power is fully vindicated at this time.

The legislative history of the 1911 amendment establishing the initiative and referendum powers confirms that the purpose of the initiative is to enact legislation, not to control the discretionary decisions of individual state officials. Amici are correct that California enacted the

initiative, referendum and recall as a package of reforms that responded to rampant government corruption and control of state government by special interests such as the Southern Pacific Railroad.[5] (See Amicus Curiae Brief of Joshua Beckley (Beckley Br.) at 13-14 [describing widespread corruption and control by the Southern Pacific Railroad and other special interests]; CCJ Br. at 8 ["Starting in the late 19th Century, Californians grew frustrated at the unresponsive, corrupt nature of their legislature. Special interests essentially governed the state."]; Amicus Curiae Brief of League of Women Voters of California (LWV Br.) at 2 [noting that initiative, referendum, and recall proposals were "the culmination of the Progressive Party's reform movement to wrest control of the political process from private interests, primarily the railroads"].) In 1911, newly elected Governor Hiram Johnson used his inaugural address to urge the Legislature to submit to the People a constitutional amendment to establish initiative, referendum, and recall. (Legislature of the State of California, Journal of the Senate, 38th Extra Sess., at 64 (1911) [Inaugural Address of Governor Hiram W. Johnson]). In this address, Governor Johnson described initiative and referendum as the means by which the people "may accomplish such other reforms as they desire, the means as well by which they may *prevent the misuse of the power temporarily centralized in the*

[5] Experience shows that the initiative process has not proven immune to the influence of special interests. Initiative petitions are circulated by paid signature gatherers who "sell" signatures at a rate ranging from ten cents to several dollars per signature. (*War by Initiative*, The Economist (Apr. 23, 2011) at p. 9) Media campaigns are even more expensive, and the spending on initiatives has skyrocketed from $9 million in 1977 to over $198 million in 2004. (*Id.*; Steve Geissinger, *For Initiatives, Money Talks*, The Argus (Oct. 30, 2004).) Ironically, even Southern Pacific Railroad has used the initiative system to advance its interests, funding the successful Proposition 108 to support high speed rail. (*War by Initiative* at p. 10.)

*Legislature*." (*Id.* [emphasis added].) He described the recall, by contrast, as "an admonitory and precautionary measure which will ever be present before *weak officials*, and the existence of which will prevent the necessity for its use." (*Id.* [emphasis added].) As these remarks indicate, the initiative and referendum were designed to circumvent the Legislature, while the recall was intended as a means of keeping all elected officials directly accountable to the People.

Governor Johnson's description of initiative, referendum, and recall is echoed in the ballot materials. The ballot argument in favor of the initiative and referendum explains that is intended "to supplement the work of the legislature" and "to hold the legislature in check." (Ballot Pamp., Special Elec. (Oct. 10, 1911) argument in favor of Prop. 7, p. 2, at <http://traynor.uchastings.edu/ballot_pdf/1911g.pdf> [as of May 8, 2011].) There is no indication that it was intended to affect the operation of other branches of government. By contrast, the recall was specifically designed to apply to all elected officials.[6] The voters recognized that once an initiative measure was adopted, it would be subject to the same judicial review as other state laws. (*Id.*, argument in favor of Prop. 8.) At the time, voters were particularly concerned about judicial corruption and they contemplated that judges beholden to special interests might invalidate

[6] Amicus curiae Judicial Watch argues that voting officials out of office is not a satisfactory check because "elected officials terms will probably not expire at a moment precisely timed to allow voters to save an initiative from being abandoned in court" and "elections for statewide office often do not turn on a single issue." (Judicial Watch Br. at 4-5.) That is precisely why the recall was added. It enabled voters to remove an official immediately, even early in their term, if they believed the official's action or inaction even on a single issue warranted this result.

initiative measures opposed by those interests. (*Id.*) They enacted the recall, in part, as a response to this possibility.[7]

The legislative history thus demonstrates that the purpose of the initiative was to act as a check on the Legislature and permit lawmaking without the Legislature's involvement. It was never intended to be a check on all government officials or insulated from the other branches of government, and it does not further the purpose of the initiative to attribute to it this broader purpose. Proponents complain that an initiative measure may be undermined by elected officials who oppose the measure. But this is true of any legislation, and the recall is available to hold elected officials accountable when necessary.

## II. CALIFORNIA DOES NOT GIVE INITIATIVE PROPONENTS ANY SPECIAL RIGHT TO DEFEND THE SUBSTANCE OF THEIR BALLOT MEASURES.

Like Proponents, amici cite numerous cases in which initiative proponents have participated as interveners, petitioners, or real parties in interest. Amici argue that these cases establish that proponents have a particularized interest in the substance of the measure they proposed, but they are incorrect. Initiative proponents have been permitted to participate in substantive challenges to ballot measures not because they have a particularized interest in the validity of the initiative, but because

---

[7] Indeed, if Proponents' interpretation of the initiative power as encompassing all governmental power of the state, there is no logical reason for drawing the line at executive branch officials. Not only would initiative proponents be able to step into the shoes of the Governor and Attorney General, they could, as well, step into the shoes of judges and decide to uphold their own initiatives, since allowing the judiciary to decide that an initiative measure violates the Constitution undermines the initiative power just as much as a decision by executive branch official regarding how and whether to defend it.

California's liberal standing rules often permit participation by individuals with only a generalized interest in the matter under review.

As discussed below, initiative proponents have a particularized interest only in a narrow category of cases, usually arising pre-election, that concern the form in which an initiative measure is presented to the voters. But in post-election cases concerning the substantive validity of a measure, proponents participate on the same terms as any other supporter. These cases show that California courts generally welcome the considered arguments of proponents, but they do not demonstrate that proponents have a particularized interest in the substantive validity of their measures.

In the absence of any legal authority supporting their claim, Proponents are left with a policy argument that they should have a right to defend their measure in order to vindicate the right of initiative. Whatever the merits of this argument, it is one that should be decided by the policymakers of this State, not the Court.

### A. California Standing Rules Are Broader Than Federal Rules.

Amicus curiae CCJ misstates California law in arguing that the relevant California standing requirements are equivalent to federal standing requirements. (CCJ Br. at 17.) CCJ correctly observes that this Court has described the "beneficial interest" required for writ standing as equivalent to the federal injury in fact requirement. (*Associated Builders and Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 362.) However, that standard does not apply in the type of writ cases at issue here, namely, those where public rights are at stake and a petitioner seeks to compel performance of a public duty. In these cases, "[i]t is

sufficient that [the relator] is interested as a citizen in having the laws executed and the duty in question enforced." (*Green v. Obledo* (1981) 29 Cal.3d 126, 144.)

The comparison between state and federal law matters because the ultimate question in this proceeding is not whether proponents have standing under state law, but whether they have a particularized interest that would confer standing under federal law. "Standing to sue in any Article III court is, of course, a federal question which does not depend on the party's prior standing in state court." (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 804.) And since state and federal standing are *not* identical, it will be necessary to examine the precise interests that initiative proponents assert in state court in order to determine whether they have standing to maintain an action in federal court.

As amicus curiae Equality California cogently observes (Brief of Amicus Curiae Equality California, National Center for Lesbian Rights, and Lambda Legal Defense and Education Fund, Inc. (Equality California et al.) at 3), initiative proponents who suffer actual harm from invalidation of their measure would have standing in both state and federal court. (*Angelucci v. Century Supper Club* (2007) 41 Cal. 4th 160, 175 [generally, plaintiffs in state court must allege invasion of a legally protected interest]; (*Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560 [describing the injury-in-fact requirement of federal standing].) But where, as here, the initiative proponents are not actually harmed by the invalidation of Proposition 8, they lack the particularized injury required for federal Article III standing, even if one of the more relaxed standing doctrines would permit them to sue in State court.

### B. Pre-Election, Initiative Proponents Have Certain Special Rights, As Well As Broader Interests Shared With The General Public.

Like Proponents, amici argue that a right to defend initiative measures should be inferred from proponents' participation in ballot measure litigation. As previously briefed, much of that litigation reflects proponents' pre-election interest in seeing the measure reach the ballot in their desired form. (SF Answer Br. at 40; Plaintiffs Answer Br. at 23.) San Francisco readily concedes that initiative proponents have a particularized interest in seeing that a measure they have proposed is presented to the voters and that the measure and arguments in favor of it are presented in a form that is accurate and fair. This interest derives from rights codified in the California Elections Code, which enumerates the specific rights granted to proponents in the initiative process. As the Attorney General explains, these rights can be summarized as "the right, subject to certain limitations and requirements, to suggest to the voters that they propose a particular measure for adoption; to begin the initiative process by obtaining a circulating title and summary; to file signature petitions with appropriate authorities; and to argue in favor of the measure's adoption in the ballot pamphlet." (AG Br. at 11-12; see also SF Answer Br. at 35-36).

It is in the context of these pre-election rights that courts have "distinguished the 'special' and 'particular' interest held by 'the proponent of the ballot initiative' from the interests held by 'members of the general public.'" (Proponents Reply Br. at 34 [quoting *Connerly v. State Personnel Bd.*, 37 Cal.4th 1169, 1179].) Thus, it is puzzling that Proponents continue to rely on *Connerly* for the proposition that initiative proponents maintain a particularized interest in a measure even after it has been adopted. In

*Connerly*, the Court considered whether the California Business Council (the Council), an advocacy group that had participated in the unsuccessful defense of state statutes, had a sufficiently direct interest in the case that it could be liable for attorney fees under California Code of Civil Procedure section 1021.5. (*Id.* at 1175.) Plaintiff Ward Connerly argued that the Council's interest was just as direct as that of the initiative proponents in *Sonoma County Nuclear Free Zone v. Superior Court* (1987) 189 Cal.App.3d 167, who were held to have a particularized interest in the content of ballot arguments concerning their proposed measure. (*Connerly*, 37 Cal.4th at 1178.) This Court rejected that argument, finding that the Council did not have an interest comparable to the proponents in *Sonoma County*. (*Id.* at 1179.) Critically, however, *Sonoma County* concerned pre-election procedures. Proponents miss the point when they note that the Court did not decide the case until after the election. (Proponents Reply Br. at 36-37.) As San Francisco previously explained, proponents have a particularized interest in the form in which a measure is submitted to the voters. (SF Answer Br. at 40.) This interest survives in post-election litigation about the form of the measure, but it does not transform into a particularized interest in the substantive validity of the measure.

Even in the pre-election context, initiative proponents are not the only electors with an interest in the process by which a measure reaches the ballot. As the Attorney General notes, any elector can seek a writ of mandate requiring the Secretary of State to amend or delete language in a ballot pamphlet on the grounds that is false or misleading. (AG Br. at 12-13 [citing Elec. Code, § 9092; Gov. Code, § 8806].) In practice, a variety of electors, with a range of interests, routinely employ this mechanism. (See, e.g., *Howard Jarvis Taxpayers Association v. Bowen* (2011) 192 Cal.

App.4th 110, 118 [taxpayer and taxpayer association petitioned under Elec. Code § 9092, seeking a change to the ballot label, title, and summary for a bond issue that required elector approval]; *Yes on 25, Citizens For An On-Time Budget v. Superior Court* (2010) 189 Cal. App.4th 1445 [the chair of a committee opposing Prop. 25 successfully challenged Attorney General's ballot title and summary in superior court and was subsequently named the real party in interest in a writ proceeding seeking to overturn the superior court order].)

### C. Post-Election, Initiative Proponents Share With All Electors Opportunities To Represent Their Own Ideological Interests In State Court Litigation Concerning Initiatives.

Amici identify numerous cases where initiative proponents have participated as parties and ask the Court to infer that proponents must have a particularized interest in the substantive validity of their ballot measures. This inference would be incorrect. California gives proponents, alongside other electors with ideological interests in a particular matter, a variety of specific vehicles by which to challenge pre-election procedures or post-election enforcement of an initiative. However, these vehicles do not give proponents, by virtue of being proponents, any particularized right to indefinitely and independently defend the initiatives that they supported.

***Intervention***: Amici identify a litany of cases in which proponents and other supporters of an initiative intervened in lawsuits to enforce or challenge an initiative, and they claim that these cases prove that proponents have a legal interest in their initiatives post-enactment. (Beckley Br. at 17; CCJ Br. at 11-12, 15-16; PLF Br. at 7.) For the most part, amici rely on the same cases cited by Proponents. (See, e.g., CCJ Br.

at 11-12 [listing cases cited in Proponents Opening Br. at 17-18]; PLF Br. at 7 [same]; CCJ Br. at 15-16 [citing *Strauss v. Horton* (2009) 46 Cal.4th 364, discussed throughout Proponents Opening Brief].) As San Francisco previously explained, almost all of these cases do not analyze intervention and therefore are not authority even for the limited proposition that proponents are proper interveners.[8] (SF Answer Br. at 38-39 [quoting and discussing *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1041-42 (McGuiness, P.J., with concurrence of Corrigan and Parrilli, JJ.)].)

The few newly cited proponent-intervener cases identified by amici suffer from the same flaw as the cases previously cited by Proponents – they include no analysis of whether proponents were proper interveners in state court.[9] (See, e.g., *City of Santa Monica v. Stewart* (2005) 126

---

[8] Four cases do, however, discuss the nature of proponents' interests in post-election substantive challenges to an initiative's validity. (See SF Answer Br. at 41.) The most extended discussion of proponents' interests appears in *dicta* in *Building Industry Association v. City of Camarillo* (1986) 41 Cal.3d 810, 822, which is discussed in Section III, *infra*. *Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146 and *Paulson v. Abdelnour* (2006) 145 Cal.App.4th 400, also discussed *infra*, treat proponents' interests as interchangeable with those of advocacy groups, and they consider these interests in the context of the procedural right to appeal. Finally, as discussed in San Francisco's Answer Brief, *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030 reserves the question of whether official proponents have standing but holds that supporters of an initiative measure are *not* directly harmed when the measure they supported is invalidated.

[9] Amicus curiae PLF does mention one federal case that briefly discusses whether a proponent was a proper intervener. (*Coalition to Defend Affirmative Action v. Schwarzenegger* (N.D. Cal., Dec. 8, 2010, 3:10-CV-00641-SC) 2010 U.S. Dist. LEXIS 129736 [Order re Mot. to Intervene and Defendants' Motion to Dismiss at Doc. 42 (Aug. 25, 2010)], appeal filed, *Coal. To Defend Affirmative Action v. Brown* (9th Cir. Docketed Jan. 13, 2011, No. 11-15100).) But intervention in federal court does not establish that an intervener has a particularized interest that creates standing to appeal. (See *Diamond v. Charles* (1986) 476 U.S. 54, 68-71.) That proponents were permitted to intervene in Coalition to Defend Affirmative Action does not answer the particularized interest question any

Cal.App.4th 43, 89-90 [not addressing whether intervention by initiative sponsors was proper, and ultimately holding that sponsors did not have a personal interest in the validity of the measure that was strong enough to disqualify them from private attorney general fees].) The same is true for *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 812, which CCJ describes as a case where "initiative proponents appeared as real parties in interest to defend against constitutional challenge." (CCJ Br. at 12.) The *Calfarm* court never considered whether the real party designation was appropriate, and furthermore, the so-called "proponents" were merely supporters of the initiative. (*Calfarm*, 48 Cal.3d at 812.)

At most, then, these cases suggest that other parties rarely object to intervention motions by initiative proponents and that state and federal courts often make the discretionary decision to permit proponents to intervene. As the Attorney General explains, the courts' practice of routinely granting proponents permission to intervene allows proponents to represent their interests when it is helpful to the resolution of disputes, without interfering with state officials' responsibility to represent the State's interests. (AG Br. at 23-24 [citing cases].) The League of Women Voters makes a related point, observing that while it would be a "recipe for confusion" to permit initiative proponents to speak on behalf of the State, proponents may make use of writ proceedings or intervention to represent their own interests regarding a measure. (LWV Br. at 10-14.) Thus, the cases newly cited by amici simply stand for the well-established and uncontroversial principle that supporters of an initiative have a generalized, ideological interest in the validity of a measure they supported.

---

more than does the fact that Prop 8 proponents were permitted to intervene in the federal trial in the present case.

***Right to Appeal***: Amici and Proponents make a similar error in insisting that proponents have a particularized right based on interveners' procedural right to appeal. CCJ, for instance, cites two cases in which initiative supporters were permitted to appeal when the government defendants did not. (CCJ Br. at 16 [citing *Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146, 151-53; *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1321-1322].) But these cases simply demonstrate that interveners have a right to appeal, and *Simac*'s discussion of initiative supporters as an "aggrieved party" must be considered in that context. "Under California law, at least, an intervenor is considered a full-fledged party to an action by virtue of the order authorizing the intervention." (*Connerly,* 37 Cal.4th at 1183 fn.6 [quoting *Hospital Council of Northern Calif. v. Superior Court* (1973) 30 Cal.App.3d 331, 336].) Thus, as the Attorney General explains, in California an intervener has a procedural right to appeal that does not require establishing independent standing. (AG Br. at 8 fn.3, 21 fn. 9; cf. *In re Veterans' Industries, Inc.* (1970) 8 Cal.App.3d 902, 920-927 [person without sufficient interest to intervene could nonetheless seek appellate review by petitioning for writ of mandate].)

***Citizen/taxpayer standing***: Pacific Legal Foundation cites a number of cases to show that Ward Connerly "has had to take it upon himself to ensure" that the State abides by Proposition 209. (PLF Br. at 15.) In the cited cases, however, Connerly relied on ordinary citizen and taxpayer standing, even though he was an official proponent of Proposition 209. (See *Connerly v. State Personnel Bd.* (2001) 92 Cal. App. 4th 16, 30 [Connerly intervened as a plaintiff and subsequently appealed as a citizen and taxpayer]; *Connerly v. Schwarzenegger* (2007) 146 Cal. App. 4th 739

[Connerly filed suit as "taxpayer and citizen;" the court dismissed the suit as moot and rejected proponent's argument that he had standing based on his right to vote on any amendment to the initiative]; *Connerly v. State*, No. 34-2010-80000412 (Sacramento Sup. Ct. filed Jan 6, 2010) [Connerly and advocacy group filed a petition for a writ of mandate, describing plaintiffs as "[Proponent] Ward Connerly, a citizen and taxpayer in California, and American Civil Rights Foundation, a nonprofit public benefit corporation whose members include citizens and taxpayers residing in California"].)

These cases demonstrate that proponents may avail themselves of California's broad doctrine of taxpayer standing, which allows taxpayers to challenge government action as an unlawful expenditure of time and resources. (See Beckley Br. at 20-24; Cal. Code Civ. Proc., § 526a.) As amicus curiae Beckley notes, this standing has been interpreted extremely broadly to require no personal interest on the part of the litigant. (Beckley Br. at 24 [citing *Crowe v. Boyle* (1920) 184 Cal. 117, 152].) This broad standing available to the taxpayers at large, however, cuts against the need for this Court to create a special category of rights and interests for Proponents. As the cases cited in the amici briefs demonstrate, proponents already have an adequate and proper venue for challenging official actions.

***Writ of Mandamus***: As demonstrated by amicus curiae Beckley's unsuccessful attempt to force the Attorney General to appeal in this case, an initiative which creates a non-discretionary duty can be enforced by any member of the public. (See Beckley Br. at 8 and appendix thereto.) As Beckley describes in his brief, this Court has interpreted the standing requirements for a mandamus action quite loosely, allowing relators in public right cases to petition without showing "any legal or special interest in the result." (*Id.* at 18-19 [quoting *Green v. Obledo* (1981) 29 Cal.3d 126,

144]; see also *Miller v Greiner* (1964) 60 Cal.2d 827 [electors and taxpayers of the City of San Jose sought a writ to prevent the city clerk from holding a special election, alleging that under charter amendments, the election could only be held in an even-numbered year].) While the public right exception and its exceptionally broad standing rule frequently apply in litigation about initiatives, the fact that initiative proponents often benefit from this exception does not show that they have, or should have, special status in the eyes of California law once their initiatives have been enacted.

### D. Jurisprudential And Practical Considerations Caution Against Creating New Special Rights For Initiative Proponents.

A determination that proponents have a particularized interest in defending successful ballot measures would raise serious questions about which other supporters of a measure have enough of an interest to defend that measure. Amici briefs filed in support of Proponents demonstrate significant disagreement on precisely this point. CCJ suggests that only official proponents have a particularized interest. PLF does not distinguish between official proponents and other supporters of a measure, often glossing over the distinction by referring to both as "sponsors." Beckley and Judicial Watch argue for granting standing to official proponents, but make arguments that would apply to any person who supported the initiative.

This cacophony echoes Proponents' own confusion about whether their arguments apply only to individual proponents or extend to advocacy groups formed in support of a measure. As San Francisco noted previously, Proponents argue that official proponents have a special status, but they

rely on many cases that involved supporters rather than official proponents. (SF Answer Br. at 44-45.)

Future courts asked to resolve this issue would be faced with a difficult question. A holding that only official proponents have standing would be in tension with numerous cases treating campaign groups the same as proponents. (See, e.g., *Simac Design, Inc. v. Alicati* (1979) 92 Cal. App. 3d 146, 157 [real parties were "CORD, a group of voters who had campaigned for [a measure] ...and SETA, a group formed to preserve open space."); *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 241 [intervener Voter Revolt]; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1250 [intervener Voter Revolt, an "organization that drafted Proposition 103 and campaigned for its passage"]; *Legislature v. Eu* (1991) 54 Cal.3d 492, 500 [intervener Californians for a Citizen Government was "organization that sponsored" initiative]; *City of Westminster v. County of Orange* (1988) 204 Cal.App.3d 623, 626 [intervener California Tax Reform Movement was "sponsor[]" of initiative]; *Sonoma County Nuclear Free Zone v. Superior Court* (1987) 189 Cal.App.3d 167, 171 [petitioner Pro-NFZ was "group supporting the initiative"].) On the other hand, a holding that standing extends beyond official proponents would lead to a difficult exercise in drawing lines between those supporters with a particularized interest and those without—a judicial task made all the more difficult by the absence of any statutory or constitutional text to guide the drawer's hand.[10]

---

[10] As previously noted in San Francisco's Answer Brief, a holding that proponents or supporters are authorized to represent the State's interest would lead to an even larger set of questions. (SF Answer Br. at 20; see also LWV Br. at 10-12; Santa Clara Br. at 7-9, 11-14.)

If lawmakers, including the People, wish to expand the role of initiative proponents despite these considerations, they may propose a constitutional amendment to do so. But this is a policy decision, and it is not one the voters made in adopting the initiative power in 1911 or in adopting Proposition 8 in 2008. Nor has the Legislature ever adopted this policy. To the contrary, the Legislature recently rejected a proposal to authorize proponents of an initiative to defend the measure if the Attorney General were disqualified. (See SF Answer Br. at 23 fn.10 [describing Senate Bill 5]; Official California Legislative Information [Legislative Counsel of California] <http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_5_bill_20110505_status.html> [Senate Bill 5 failed passage in the Senate Judiciary Committee on May 4, 2011].)

## III. THE COURT'S DISCUSSION OF PROPONENT INTERVENTION IN *BUILDING INDUSTRY ASSOCIATION V. CAMARILLO* SPEAKS TO THE ROLE OF STATE COURTS, NOT THE ROLE OF INITIATIVE PROPONENTS.

Lacking support in the language of the Constitution, statutes or case law, amici are left to rely on dictum in *Building Industry Association v. City of Camarillo* (1986) 41 Cal.3d 810, 822, in which this Court identified a possible need for intervention by proponents of growth-control measures. (See CCJ Br. at 12-14; PLF Br. at 7; Beckley Br. at 11, 24-25; Judicial Watch Br. at 4; see also Proponents Opening Br. at 18-23, Proponents Reply Br. at 8.) However, even if that dictum were a holding of Court, it would not support the notion that initiative proponents may act as agents of the State or have a particularized interest in the substantive validity of the measure they proposed.

The discussion in *Building Industry Association* of intervention by initiative proponents must be understood against the backdrop of the principle that supporters of an initiative have a generalized, ideological interest in the validity of a measure they supported. Under normal circumstances, then, it is not an abuse of discretion to deny intervention to an initiative supporter who does not have a tangible interest in the proceedings. (See, e.g., *City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030 [denying intervention to a group created by proponent to defend Proposition 22].)

However, in circumstances where government officials do not vigorously defend a popularly-enacted initiative, an initiative proponent may be able to offer the court a perspective that would otherwise be lacking. Under these circumstances, the official proponents of the initiative should be permitted to intervene, notwithstanding their lack of a direct and immediate interest in the litigation, as a procedural device to allow the court to hear and consider all potential arguments in favor of the measure's validity. Critically, in this circumstance, it is the courts—and not the proponents—who "guard the people's right to exercise the initiative power . . .." (*Building Industry Ass'n*, 41 Cal.3d at 822.)

Although *Building Industry Association* discusses proponents, the reasoning applies equally to other supporters. And the reasoning further suggests that once a vigorous defense is before the court, it would not be an abuse of discretion to deny intervention even to official proponents. In short, under the most expansive possible reading of the Court's dictum, the Court identifies a prophylactic rule that state courts should follow to guard the People's right of initiative, not a substantive right that is conferred on initiative proponents. (Cf. AG Br. at 22 fn.9 [noting that a state procedural

rule gives interveners a right to appeal, but this "cannot be bootstrapped into a substantive right the violation of which would cause actionable injury"].)

None of this, then, supports an argument that initiative proponents act as agents of the State or have a particularized interest when permitted to intervene in such cases. For all the reasons we have discussed, such a conclusion would threaten our entire Constitutional structure. If the initiative power were construed to encompass all of the powers of government, there would be no end to that power, and California would no longer have a representative form of government or a judiciary empowered to invalidate *any* law that violates the constitution.

## CONCLUSION

For the reasons stated above, San Francisco respectfully submits that initiative proponents are not authorized to defend initiative measures on behalf of the State and have no particularized interest in the substantive validity of a measure that has been adopted by the voters. San Francisco

///
///
///
///

therefore requests that the Court answer the certified question in the negative.

Dated: May 9, 2011

DENNIS J. HERRERA
City Attorney
THERESE M. STEWART
Chief Deputy City Attorney
DANNY CHOU
Chief of Complex and Special Litigation
CHRISTINE VAN AKEN
VINCE CHHABRIA
MOLLIE M. LEE
Deputy City Attorneys

By: _____
THERESE M. STEWART

By: _____
MOLLIE M. LEE

Attorneys for Plaintiff-Intervener/Respondent
CITY AND COUNTY OF SAN FRANCISCO

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 7,374 words, excluding the tables required under California Rule of Court 8.204(a)(1), field codes that were inserted in the text of the brief in order to create the table of authorities but are not visible in the printed version, the cover information required under Rule 8.204(b)(10), this certificate of compliance, the certificate of interested entities or persons, and the signature blocks.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on May 9, 2011, in San Francisco, California.

DENNIS J. HERRERA
City Attorney
THERESE M. STEWART
Chief Deputy City Attorney
DANNY CHOU
Chief Deputy City Attorney
CHRISTINE VAN AKEN
VINCE CHHABRIA
MOLLIE M. LEE
Deputy City Attorneys

By: _____
MOLLIE M. LEE

Attorneys for Plaintiff-Intervener/Respondent
CITY AND COUNTY OF SAN FRANCISCO

**PROOF OF SERVICE**

I, Pamela Cheeseborough, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, 1 Dr. Carlton B. Goodlett Place, City Hall, Room 234, San Francisco, CA 94102. The electronic notification address from which I served the documents is: *pamela.cheeseborough@sfgov.org.*

On May 9, 2011, I served the following document(s):

**CITY AND COUNTY OF SAN FRANCISCO'S REPLY TO AMICUS BRIEFS**

on the following persons at the locations specified:

Jesse Panuccio
David Thompson
Charles J. Cooper
Nichole Jo Moss
Peter A. Patterson
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, DC 20036
*[Via Mail/Electronic Mail]*

Brian William Raum, Senior Counsel
James Andrew Campbell
Litigation Staff Counsel
ALLIANCE DEFENSE FUND
15100 N 90th Street
Scottsdale, AZ 85260
*[Via Mail/Electronic Mail]*

Andrew P. Pugno
Law Offices of Andrew P. Pugno
101 Parkshore Drive, Suite 100
Folsom, CA 95630
*[Via Mail/Electronic Mail]*

Terry L. Thompson
Law Office of Terry L. Thompson
P.O. Box 1346
Alamo, CA 94507
*[Via Mail/Electronic Mail]*

David Boies
Rosanne C. Baxter
BOIES, SCHILLER & FLEXNER
333 Main Street
Armonk, NY 10504
*[Via Mail/Electronic Mail]*

Theodore Olson
Matthew McGill
Amir C. Tayrani
GIBSON DUNN & CRUTCHER, LLP
1050 Connecticut Ave., NW
Washington, DC 20036-5306
*[Via Mail/Electronic Mail]*

Theodore J. Boutrous, Jr.
Christopher D. Dusseault
Theane Evangelis Kapur
GIBSON DUNN & CRUTCHER, LLP
333 South Grand Avenue, Suite 5350
Los Angeles, CA 90071-3197
*[Via Mail/Electronic Mail]*

Ethan Douglas Dettmer
Enrique Antonio Monagas
Sarah E. Piepmeier
GIBSON DUNN & CRUTCHER, LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-2933
*[Via Mail/Electronic Mail]*

Jeremy Michael Goldman
BOIES, SCHILLER & FLEXNER, LLP
1999 Harrison Street
Oakland, CA 94612
*[Via Mail/Electronic Mail]*

Theodore H. Uno
BOIES, SCHILLER & FLEXNER, LLP
2435 Hollywood Blvd.
Hollywood, FL 33020
*[Via Mail/Electronic Mail]*

Joshua Irwin Schiller
Richard Jason Bettan
BOIES, SCHILLER & FLEXNER, LLP
575 Lexington Avenue, 7th Floor
New York, NY 10022
*[Via Mail/Electronic Mail]*

Tamar Pachter, Deputy Attorney General
Daniel Powell, Deputy Attorney General
CALIFORNIA DEPT. OF JUSTICE
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
*[Via Mail/Electronic Mail]*

Kenneth C. Mennemeier, Jr.
Andrew W. Stroud
MENNEMEIER, GLASSMAN & STROUD LLP
980 9th Street, Suite 1700
Sacramento, CA 95814
*[Via Mail/Electronic Mail]*

Claude Franklin Kolm
OFFICE OF COUNTY COUNSEL
1221 Oak Street, Suite 450
Oakland, CA 94612-4296
*[Via Mail/Electronic Mail]*

Judy W. Whitehurst
Principal Deputy County Counsel
LOS ANGELES COUNTY COUNSEL
6th Floor
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2713
*[Via Mail/Electronic Mail]*

Harold E. Johnson
Damien M. Schiff
Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, CA 95834-2918
*[Via Mail]*

Cynthia Tobisman
Greines Martin Stein & Richland, LLP
5900 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90036
*[Via Mail]*

Eric Alan Isaacson
ROBBINS GELLER RUDMAN & DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
*[Via Mail]*

Miguel Alberto Marquez
Office of the County Counsel
70 W. Hedding Street, 9th Floor
San Jose, CA 95110
*[Via Mail]*

James Joseph Lynch, Jr.
P.O. Box 4144
Sacramento, CA 95821-8802
*[Via Mail]*

Laura W. Brill
KENDALL BRILL & KLIEGER LLP
10100 Santa Monica Blvd., Suite 1725
Los Angeles, CA 90067
*[Via Mail]*

Julie Beth Axelrod
Judicial Watch, Inc.
425 Third Street, SW, Suite 800
Washington, DC 20024
*[Via Mail]*

Kevin Trent Snider, Chief Counsel
Pacific Justice Institute
9851 Horn Road, Suite 115
Sacramento, CA 95827
*[Via Mail]*

John C. Eastman
The Claremont Institute Center for Constitutional Prudence
c/o Chapman Univ. School of Law
One University Drive
Orange, CA 92866
*[Via Mail]*

Jon W. Davidson
Lambda Legal Defense and Education Fund, Inc.
3325 Wilshire Blvd., Suite 1300
Los Angeles, CA 90010
*[Via Mail]*

Shannan P. Minter
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102

David C. Codell
Caldwell Leslie & Proctor PC
1000 Wilshire Blvd., Suite 600
Los Angeles, CA 90017
*[Via Mail]*

Clerk of the Court
US Court of Appeals for the Ninth Circuit
James Browning Courthouse
95 7th Street
San Francisco, CA 94103
*[Via ECF]*

in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☒ **BY ELECTRONIC SERVICE**: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed: *jpanuccio@cooperkirk.com, dthompson@cooperkirk.com, jcampbell@telladf.org. ccooper@cooperkirk.com, nmoss@cooperkirk.com, ppatterson@cooperkirk.com, andrew@pugnolaw.com, braum@telladf.org, tl_thompson@earthlink.net, dboies@bsfllp.com, tolson@gibsondunn.com, rbaxter@bsfllp.com, tboutrous@gibsondunn.com, EDettmer@gibsondunn.com, cdusseault@gibsondunn.com, jgoldman@bsfllp.com, tkapur@gibsondunn.com, MMcGill@gibsondunn.com, emonagas@gibsondunn.com, spiepmeier@gibsondunn.com, atayrani@gibsondunn.com, tuno@bsfllp.com, jischiller@bsfllp.com, rbettan@bsfllp.com, Tamar.Pachter@doj.ca.gov, stroud@mgslaw.com, daniel.powell@doj.ca.gov, kcm@mgslaw.com, claude.kolm@acgov.org, jwhitehurst@counsel.lacounty.gov.*

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed May 9, 2011, at San Francisco, California.

Pamela Cheeseborough