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12
13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SACRAMENTO

16 HOWARD JARVIS TAXPAYERS
ASSOCIATION, DAVID WOLFE,
17 and ANTHONY WRIGHT

18 Petitioners,

19 v.

20 DEBRA BOWEN, in her official capacity as
CALIFORNIA SECRETARY OF STATE,

21 Respondent,

24 GEOFF BRANDT, in his official capacity as State
Printer; the LEGISLATURE OF THE STATE OF
25 CALIFORNIA; MAC TAYLOR, in his official
capacity as Legislative Analyst.

26 Real Parties in Interest.
27
28

CASE NO.: 34-2009-80000182

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF
MANDATE

[ELEC. CODE, §§ 13314; 9092]

STATEWIDE ELECTION MATTER
IMMEDIATE ACTION REQUESTED

STATUTORY DEADLINE: MARCH 5, 2009

[PROPOSITION 1A]

Date:
Time:
Dept.:

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INTRODUCTION AND BACKGROUND

Every ballot measure that goes before the voters is included in a ballot pamphlet distributed to the voters “to inform the prospective signer of the general purpose of the proposal, and to protect him from being misled or imposed upon.” (*Clark v. Jordan* (1936) 7 Cal.2d 248, 252, italics added.) The ballot pamphlet typically includes the following: the text of the measure to be considered; a 100-word title and summary¹ and shorter ballot label prepared by the Attorney General; an “impartial analysis” prepared by the Legislative Analyst’s Office; and the arguments and rebuttals for and against the measure. (Elec. Code, §§ 9050-9052, 9080-9096, 13247, 13280-81; see also Gov. Code, §§ 88001-88003.) The ballot label and title and summary, relied upon most heavily by the voters, are required by law to constitute a “fair and impartial” presentation of the measure. (Elec. Code, § 9051.)

But the ballot materials prepared for the May 19, 2009 Special Election are far from “typical” because the Legislature has essentially suspended all the usual elections laws that protect the voters.

On February 20, 2009, the Governor signed a series of bills adopted by the Legislature collectively referred to as the “budget package.” A number of elements in this package required voter approval, however, and so the package included SB 19, which sets a special election for May 19, 2009 and places several measures that require voter approval on that ballot, designated as Propositions 1A through 1F. (RJN, Ex. A.) This action concerns the ballot materials for Proposition 1A, a measure that proposes among other things to amend existing constitutional provisions to increase the size of the State’s reserve account. The actual changes to the Budget Stabilization Fund set forth in SCA 13 and ACA 1. (RJN, Exs. B & C.)

In addition to setting the special election, SB 19 changes or overrides the normal Elections Code procedures that are designed to safeguard the integrity of the information provided to voters. For the six measures to be considered at the special election, the Legislature has taken the responsibility for preparing the ballot label and title and summary away from the Attorney General and has imposed its own ballot label and title and summary for each of these proposed measures. The language chosen by the Legislature to describe these measures, including Proposition 1A, is not “fair and impartial,” but is

¹ Elections Code sections 9050 and 9051 refer only to preparation of the “title,” but because the Attorney General is allowed 100 words in which to explain the measure, it is typically referred to as the “title and summary.”

1 extremely one-sided and is written in such a way as to persuade voters to adopt the Legislature's
2 proposals. This is not the function of the ballot label or title and summary and, when used by the
3 government to further a particular electoral result, is unlawful.

4 With respect to Proposition 1A, section 2(c)(1) of SB 19 provides that "[n]otwithstanding
5 Sections 13247 and 13281 of the Elections Code or any other provision of law, all ballots for the May
6 19, 2009, statewide special election shall have printed thereon as the ballot label for Proposition 1A the
7 following:"

8 'RAINY DAY' BUDGET STABLIZATION FUND. Reforms the budget process.
9 Limits future deficits and overspending by increasing the size of the state 'rainy day'
10 fund and requiring above-average revenues to be deposited into it, for use during
11 economic downturns.

(RJN, Ex. A, p. 2.)

12 Likewise, section 2(d)(1) of SB 19 provides that "[n]otwithstanding Sections 9050, 9053, and
13 9086 of the Elections Code or any other provision of law, the Secretary of State shall use the following
14 as the ballot title and summary for Proposition 1A:"

15 STABILIZES STATE BUDGET. REFORMS CALIFORNIA BUDGET PROCESS.
16 LIMITS STATE SPENDING. INCREASES 'RAINY DAY' BUDGET
17 STABILIZATION FUND. Increases size of state 'rainy day' fund from 5% to 12.5% of
18 the General Fund. A portion of the annual deposits into that fund would be dedicated to
19 savings for future economic downturns, and the remainder would be available to fund
20 education, infrastructure, and debt repayment, or for use in a declared emergency.
21 Requires additional revenue above historic trends to be deposited into state 'rainy day'
22 fund, limiting unsustainable spending of one-time spikes in revenue.

(*Id.* at p. 2-3.)

21 Other provisions of SB 19 make clear that the foregoing language is the *only* language to appear
22 as the ballot label or title and summary and that "the Attorney General shall not supplement, subtract
23 from, or revise that language. . ." other than to add a "fiscal summary" from the LAO analysis. (RJN,
24 Ex. A, p. 7, emphasis added.) The Attorney General did add the following fiscal summary from the
25 LAO to the ballot label on February 26, 2009: "Higher state tax revenues of roughly \$16 billion from
26 2010-11 through 2012-13. Over time, increased amounts of money in state rainy day reserve and
27 potentially less ups and downs in state spending." (RJN, Ex. G.) And he added the following summary
28 to the title and summary required by SB 19:

- 1 • Higher state tax revenues of roughly \$16 billion from 2010-11 through 2012-13 to help
2 balance the state budget.
- 3 • In many years, increased amounts of money in state “rainy day” reserve fund.
- 4 • Potentially less ups and downs in state spending over time.
- 5 • Possible greater state spending on repaying budgetary borrowing and debt,
6 infrastructure projects, and temporary tax relief. In some cases, this would mean less
7 money available to spend on ongoing spending increases.

7 (RJN, Ex. H.)

8 The Legislative Analyst’s Office also released its fiscal analysis and its “Yes/No Statement”
9 (which explains the effect of each vote) at approximately 4:45 p.m. on February 26, 2009. (RJN, Ex. I.)
10 As discussed more fully below, the documents provided by the Legislative Analyst make two things
11 clear: First, the Legislature has omitted critical information. For example, the LAO states that “A YES
12 vote on this measure means. . . *Higher state taxes recently passed would be extended for up to two*
13 *years.*” (*Ibid*, emphasis added.) This critical fact is missing from the Legislature’s description and is
14 obscured by the “fiscal summary.” Second, the LAO analysis provides a level of detail about the actual
15 operation of Proposition 1A that is at odds with the rosy picture painted by the Legislature in its
16 summary of the measure. Several of the specific claims made in the ballot label and title and summary,
17 when examined, turn out to be simply inaccurate. And, in addition to the sins of omission and
18 commission in these documents, is the use of loaded, value-laden and, ultimately, argumentative
19 language that is designed not to inform but to persuade – a function peculiarly inappropriate in materials
20 provided by the government to voters to assist them in understanding the consequences of their vote.

21 Elections Code sections 9092 and 13314 authorize this court to issue a writ of mandate ordering
22 that changes be made to the official ballot materials to ensure that the information provided to voters
23 meets the requirements of law. Section 13314 authorizes courts to issue a peremptory writ of mandate
24 “upon proof . . . that an error, omission, or neglect of duty” is about to occur with regard to the printing
25 of the ballot materials “in violation of [the Elections Code] or the Constitution” and section 9092
26 authorizes courts to amend or delete language proposed to be included in the official ballot pamphlet
27 upon clear and convincing proof that such language is false or misleading. (Elec. Code, §§ 9092,
28 13314(a)(2).)

1 The ballot label and the title and summary for Proposition 1A do not satisfy the requirement that
2 they be fair and impartial, and the Legislature cannot eliminate this requirement by simply
3 “notwithstanding” all the elections laws. It cannot lawfully engage in “electioneering” in the ballot
4 materials. Petitioners also assert that there is clear and convincing evidence that these materials are false
5 and misleading within the meaning of the Elections Code. Petitioners therefore request that the ballot
6 label and title and summary be amended or corrected to provide a more neutral language, and have
7 provided such alternative language below.

8 **DEADLINES IMPOSED BY SB 19**

9 Section 8(c) of SB 19 provides that “[n]otwithstanding Section 13282 of the Elections Code or
10 any other provision of law, the public shall be permitted to examine the condensed statements of the
11 ballot titles for eight days. **Any voter may seek a writ of mandate for the purpose of requiring the
12 condensed statements of the ballot titles, or portions thereof, to be amended or deleted only within
13 that eight-day period.**”

14 Late in the day on Friday, February 20, 2009, the Secretary of State’s office issued an Elections
15 Calendar for the May 19, 2009 Special Election (RJN, Ex. F) with the following deadlines:

- 16 February 25, 2009 Ballot Labels Available for Inspection
- 17 February 26, 2009 Remaining Ballot Materials Available for Inspection
- 18 **March 5, 2009 Deadline for Inspection and Challenge to Ballot Labels**
- 19 March 18, 2009 Deadline for Inspection and Challenge to Other Materials

20 This action seeks to correct both the ballot label and the title and summary. It is being filed on
21 the second business day following the publication of the title and summary, and the third business day
22 following the publication of the ballot label. Although only the lawfulness of the ballot label must be
23 litigated within the eight-day period imposed by SB 19, these actions are filed together because the
24 arguments related to the ballot label and the title and summary are significantly intertwined and
25 petitioners believe it is in the interest of judicial economy to address them together. The Court may,
26 however, choose to address only the ballot label before the March 5 deadline and reserve the title and
27 summary issues to be resolved before the March 18 deadline.

28

ARGUMENT

I. THE LAW IMPOSES A HIGHER STANDARD OF NEUTRALITY FOR THE BALLOT LABEL AND TITLE AND SUMMARY THAN IT DOES FOR ARGUMENTS SUBMITTED BY ADVOCATES FOR OR AGAINST A MEASURE

A. The Government is Not Permitted to Use Public Resources to Takes Sides in an Election Contest

As stated at the outset, the ballot pamphlet typically includes the following: the text of the measure to be considered; a 100-word title and summary and shorter ballot label prepared by the Attorney General, which are to be a “fair and impartial” presentation of the measure; an “impartial analysis” prepared by the Legislative Analyst’s Office; and the arguments and rebuttals for and against the measure. (Elec. Code, §§ 9050-9052, 9080-9096, 13247, 13280-81; see also Gov. Code, §§ 88001-88003.) It is clear from these provisions that, unlike the arguments for and against a measure, those portions of the ballot pamphlet prepared by the government, i.e., the title and summary, the ballot label and the fiscal analysis, are required to be impartial. These statutes reflect the fundamental policy underlying the requirements for the preparation of the title and summary and “impartial” fiscal analysis in the first instance; namely, “to protect [the voters] *from being misled or imposed upon.*” (*Clark v. Jordan* (1936) 7 Cal.2d 248, 252, italics added.)

In 1932, the California Constitution was amended to require that all ballot measures – prior to circulation for signatures or placement on the ballot – be submitted to the Attorney General for the preparation of a title and summary of the “chief purpose and points” of a proposed measure. (*Epperson v. Jordan* (1938) 12 Cal.2d 61, 65.) Similar amendments to the Political Code in 1937 vested in the Attorney General the duty to prepare similar shorter summaries on each page of a ballot measure petition. (*Ibid.*) This amendment was deemed necessary after a series of lawsuits challenging the misleading nature of proponent-prepared ballot materials led to courts prohibiting the placement of measures on the ballot. (*Ibid.*, citing *Clark v. Jordan, supra*, 7 Cal.2d 248; *Boyd v. Jordan* (1934) 1 Cal. 2d 468.) Thus, the entrusting of drafting the ballot label, title, and summary to the Attorney General, a neutral third party, can be seen as explicit recognition of the need for impartiality in ballot materials. Further underscoring this emphasis on impartiality, the Elections Code specifically provides that when the Attorney General is himself a proponent of a ballot proposal, the Legislative Counsel is to prepare

1 the ballot labels and titles and summaries in his place. (Elec. Code, § 9003.)

2 Although the ballot materials have been expanded over the years to include arguments for and
3 against, this does not change the government's responsibility to provide neutral summaries and
4 descriptions to assist the voters in understanding the measures they are considering. Thus, while a
5 challenger must show by clear and convincing evidence that an argument is false or misleading in order
6 to have it corrected or amended, the Elections Code also permits corrections if necessary to comply with
7 other Elections Code provisions or even the Constitution. (Elec. Code, §§ 13314.) Included in the latter
8 category are the requirements that the title and summary and fiscal analysis prepared by governmental
9 entities be "impartial" and the constitutional limitations on the government using public funds to engage
10 in political advocacy.

11 The Legislature cannot avoid this restriction simply by "notwithstanding" all the elections laws,
12 as the California Supreme Court has made clear that, as a matter of federal and state *constitutional* law,
13 government officials may only include objective and impartial information in ballot materials at the
14 public expense: "A fundamental precept of this nation's democratic electoral process is that the
15 government may not [use the public treasury to] 'take sides' in election contests or bestow an unfair
16 advantage on one of several competing interests." (*Stanson v. Mott* (1976) 17 Cal.3d 206, 217 and cases
17 cited therein.)

18 The prohibition against the government using public monies to "take sides" in an election is
19 rooted in the concern that, if left unfettered, holders of government authority could use their official
20 powers to distort the election process to further their own interests. (*Stanson, supra*, 17 Cal.3d at 217.)
21 "Selective use of public funds in election campaigns [by the government] . . . raises the specter of just
22 such an improper distortion of the democratic electoral process." (*Ibid.*) All public bodies are thus
23 subject to the same constitutional prohibition on using public treasury funds to persuade or otherwise
24 attempt to influence voters to approve or disapprove measures presented on the ballot. (*Id.* at 218;
25 *League of Women Voters of California v. Countywide Criminal Justice Coordination Com.* (1988) 203
26 Cal.App.3d 529, 546-47.) This applies no less to the Legislature when it chooses to involve itself in
27 dictating the contents of the ballot materials to be provided to the voters.

28 This is not to say that individual legislators cannot engage in arguments for or against a measure

1 and several have done so in the case of Proposition 1A. But the government cannot take actions that
 2 clearly favor one side in an election contest by, for example, providing favored ballot placement to
 3 incumbents. (*Gould v. Grubb* (1975) 14 Cal.3d 661, 673.) Nor may the government expend public
 4 funds to create a forum for speech – i.e., a ballot pamphlet – and then manipulate that forum to enhance
 5 its own views on an election matter relative to the views of others. (*Miller v. California Comm. on the*
 6 *Status of Women* (1984) 151 Cal.App.3d 693, 701.) Or, as in this case, combine the preference given to
 7 legislators to supply arguments for or against a measure (see Elec. Code, §§ 9041-43) with an
 8 argumentative, electioneering title and summary to essentially crowd out any dissenting voices in the
 9 materials that go to the public. Such actions pose serious threats to the integrity of the election process.
 10 (See *Stanson, supra*, 17 Cal.3d 218; *Gould, supra*; *Miller, supra*.)

11 When government action appears to favor one side in a matter submitted to the voters, as with
 12 the ballot materials for Proposition 1A, “there is a heightened necessity for constitutionally based
 13 judicial oversight to avoid ‘poisoning the well’ of majoritarian principle.” (*Miller, supra*, 151
 14 Cal.App.3d at 702.) The reach of this heightened judicial scrutiny necessarily reaches information
 15 contained in the official voter pamphlet, which the state distributes to all registered voters. Unlike
 16 normal campaign literature, the official voter pamphlet “carries the imprimatur of the government and is
 17 likely to ‘carry greater weight in the minds of the voters.’” (*Drexel v. Mann* (1991) 13 Cal.App.4th 170,
 18 183, citing *Knoll v. Davidson* (1974) 12 Cal.3d 335, 352.)

19 The purpose of the voter pamphlet as primarily an informational device for voters is well-
 20 recognized. (*Hart, supra*, 14 Cal.2d at 292.) Indeed, the layout of the ballot pamphlet itself
 21 differentiates for voters between “Arguments” and the sources of impartial, government-provided
 22 information – e.g., the title and summary and the LAO’s fiscal analysis.² And courts frequently consult
 23 the Attorney General’s title and summary and LAO Analysis as “legislative history of an initiative
 24 measure adopted by the voters” when seeking to interpret its terms. (*Patterson v. Board of Supervisors*

25
 26 ² Unlike materials prepared for the ballot by government officials, of course, there is no expectation that arguments and
 27 rebuttals will be impartial. However, *both* the ballot materials drafted by government officials *and* the arguments and
 28 rebuttals are subject to challenge as being false or misleading. (Elec. Code, § 9092.) This content-neutral restriction on
 speech appearing in the voter pamphlet is important because every aspect of the official voter pamphlet, including the
 arguments, “can have a substantial impact on the equality and fairness of the electoral process.” (*Patterson v. Board of*
Supervisors (1988) 202 Cal.App.3d 22, 30.) They are, after all, part of an official state document on which the voters rely for
 accurate information about the measures that they are asked to vote on. (*Ibid.*)

1 (1988) 202 Cal.App.3d 22, 30 [quoting *Board of Supervisors v. Lonegran* (1980) 27 Cal.3d 855, 866];
2 see also *Washburn v. City of Berkeley* (1987) 195 Cal.App.3d 578, 585.) Misuse of the ballot pamphlet
3 materials by the government to further its own interests thus poses an acute danger to the integrity of the
4 electoral process making heightened judicial scrutiny appropriate.

5 Nor would it be appropriate in this case for the court to pay the Legislature the usual level
6 deference afforded to it, or even the same deference typically afforded to the Attorney General in
7 crafting the ballot label and title and summary. The Legislature is presenting Proposition 1A to the
8 voters as one piece of a legislatively-brokered panacea to solve the state's current budget problem. The
9 Legislature therefore unquestionably has a direct interest in whether the voters adopt Proposition 1A.
10 By contrast, the Attorney General is an independently elected constitutional officer with no official
11 interest in the outcome of the measures for which he or she crafts a ballot label and title and summary.
12 Indeed, courts have routinely declined to afford deference to legislative judgments in matters where, as
13 here, the Legislature's own self-interest in solving the state budget problem is at stake: "[a]
14 governmental entity can always find a use for extra money, especially when taxes do not have to be
15 raised." (*Valdes v. Cory* (1983) 139 Cal.App.3d 773, 790.) Equally important, courts have recognized
16 that the judiciary must not "turn a blind eye" to constitutional matters out of deference to the
17 Legislature. (*Professional Engineers v. Kempton* (2007) 40 Cal.4th 1016, 1046; *Amwest Surety Ins. Co.*
18 *v. Wilson* (1995) 11Cal.4th 1243, 1251.)

19 Thus, pursuant to Elections Code section 13314, this court may prevent the State from printing
20 the ballot label and title and summary for Proposition 1A if it determines that they do not constitute a
21 "fair and impartial" presentation of the terms and purposes of Proposition 1A and may correct or amend
22 these statements as necessary to meet this standard.

23 **B. The Government Is Not Permitted to Include False and/or Misleading Information**
24 **in the Ballot Materials Distributed to Voters**

25 Even if the Court concludes that the ballot label and title and summary required by the
26 Legislature for Proposition 1A do not have to meet the "fair and impartial" standard, it may still order
27 revisions to any false or misleading statements contained in those materials pursuant to Elections Code
28 section 9092.

1 Government Code section 88006 and Elections code section 9092 authorize this Court to delete
2 or amend materials to be included in the ballot pamphlet that are false or misleading. These statutes are
3 unmistakable in their intent – which is to protect the electorate from deceptive copy in the ballot
4 pamphlet. In order to preserve the integrity of the electoral process, courts have been called upon on
5 many occasions to enforce these provisions. Recognizing that the essential purpose of the ballot
6 materials is to give voters *truthful* information about the measures they are to consider, courts have long
7 held that the ballot pamphlet is a limited public forum and therefore the government has a compelling
8 interest in prohibiting material that is false or misleading. (Cf. *Gebert v. Patterson* (1986) 186
9 Cal.App.3d 868 [voter pamphlet is “limited public forum” requiring equal access]; see also *Patterson v.*
10 *Bd. of Supervisors, supra.*) Voter pamphlets provide a unique vehicle of expression and it is only
11 through the deletion of false or misleading statements that the integrity of the ballot materials, and the
12 election itself, can be preserved.

13 In fact, the courts have also observed that the voter pamphlet has a “substantial impact on the
14 equality and fairness of the electoral process” since it is assembled, published and distributed by the
15 government and therefore appears to the public to be approved by the government. (See *Patterson,*
16 *supra*, at 30.) As the California Supreme Court stated in *Knoll v. Davidson* (1974) 12 Cal.3d 335, 352,
17 the voter pamphlet purports to be an authoritative document that appears to give the imprimatur of
18 official approval to the statements contained therein, and is therefore likely to carry greater weight in the
19 minds of the voters than other campaign literature. In addition, voter pamphlets are extremely
20 significant to the judicial process as they may constitute the only legislative history of an initiative
21 measure adopted by the voters. (See, e.g., *Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855,
22 866.) Given the importance of ballot pamphlets to the election process, it is absolutely critical that this
23 Court exercise its statutory authority to delete or amend all false or misleading statements.

24 **II. THE BALLOT LABEL AND TITLE AND SUMMARY PREPARED BY THE**
25 **LEGISLATURE FOR PROPOSITION 1A ARE NOT IMPARTIAL AND, INSTEAD,**
26 **CONSTITUTE THE GOVERNMENT “TAKING SIDES” IN AN ELECTION CONTEST**

27 While cloaked in the guise of ballot materials that are relied upon by the voters to be sources of
28 “fair and impartial” information, the ballot label and title and summary for Proposition 1A are, in fact,
so one-sided in their presentation as to violate the constitutional prohibition on using public monies to

1 “take sides” in an election campaign. The language used in these descriptions is skillfully designed to
2 substitute for a more direct exhortation to the public to vote for the measure. While perhaps more
3 subtle, it is equally unlawful. In addition, the ballot label and title and summary omit crucial facts
4 necessary for voters to make an informed choice of whether to support Proposition 1A and contain false
5 and misleading statements that obfuscate both the necessity for and consequences of adopting that
6 measure.

7 **A. The Language Used to Describe Proposition 1A in the Ballot Materials Is Neither Fair**
8 **Nor Impartial**

9 It is no secret that the Legislature has a huge and unabashed stake in the voters’ adoption of
10 Proposition 1A. The increased reserve and the “spending cap” in Proposition 1A were central to the
11 deal brokered in the Legislature, as is the extension of the tax increases that were adopted as part of the
12 budget package. That is the reason the Legislature enacted the measures now being presented as
13 Proposition 1A and it is the reason the Legislature wants it to be approved at the Special Election. But
14 the desire to win approval for this measure simply doesn’t relieve the Legislature of the obligation to be
15 truthful with the State’s voters. The Legislature cannot constitutionally use ballot materials that are
16 intended to be fair and impartial to further their chosen political interest. But this is precisely what the
17 Legislature has done with respect to the ballot materials for Proposition 1A.

18 To determine whether government-financed election materials distributed to the public cross the
19 line from informational to improper political advocacy, courts must consider such factors as the “style,
20 tenor, and timing of the publication.” (*Stanson, supra*, 17 Cal.3d at 222.) Here, Legislature has
21 employed every conceivable means at its disposal to manipulate the ballot materials to further its interest
22 in having the voters adopt the six measures, including Proposition 1A, that it has placed on the May 19,
23 2009 Special Election Ballot. It suspended the Secretary of State’s role in determining the order and
24 number designations for these measures and performed these functions itself. (RJN, Ex. A.) It
25 suspended the Attorney General’s role in preparing the impartial ballot label and title and summary and,
26 again, performed these functions itself. (*Ibid.*) And it reduced to only eight days, including weekends,
27 the period in which voters may review and bring legal challenges to the ballot labels for these measures.

28 While the Legislature may have the authority to take responsibility for portions of the ballot

1 materials, the *manner* in which it has crafted the ballot label and title and summary is beyond
2 constitutional pale. The “style” and “tenor” of the language it has required to be placed in the ballot
3 pamphlet is calculated not to inform, but only to further the prospects for passage.

4 The style of the ballot label and title and summary for Proposition 1A are markedly more
5 argumentative and far less neutral than materials prepared for similar measures in the past by the
6 Attorney General. This fact is aptly illustrated by comparing the language used in the ballot materials
7 for Proposition 1A with the title and summary prepared by the Attorney General only a few years ago
8 for Proposition 58, *the ballot measure that created the very state budget reserve fund into which*
9 *Proposition 1A would increase contributions*. The title and summary for Proposition 58 was stated in
10 neutral, matter-of-fact terms, explaining that voters’ approval of that measure would, among other
11 things, establish “a budget reserve.” (RJN, Ex. L.) The *only place* in the ballot materials for Proposition
12 58 where the phrase “rainy day fund” appeared is the *Argument* in Favor of Proposition 58. By
13 contrast, the ballot label and title and summary for Proposition 1A repeatedly refer to the state “rainy
14 day” fund, while eschewing the neutral description state “budget reserve” entirely. (RJN, Exs. G & H.)
15 In fact, use of the term “rainy day’ fund” throughout the ballot label and title and summary tracks the
16 language used in the *argument* in favor of Proposition 1E and rebuttal to argument against submitted by
17 individual legislators, making the former virtually indistinguishable in style and tenor from the latter.
18 (Compare Exs. G & H with Ex. I, pp. 2-4.)

19 The precise wording and phraseology employed by the Legislature in the label and title and
20 summary for Proposition 1A is not merely a matter of semantics. Petitioners have submitted the
21 declaration of Professor George Lakoff, a founder of the field of Cognitive Linguistics and one of the
22 country’s leading experts on the framing of political discourse, in support of their petition. Professor
23 Lakoff explains that the words we use to describe things in our daily lives, including in political
24 discourse, all carry values – some favorable, some unfavorable. (Lakoff Decl., ¶ 11.) The choice of
25 which words are used to describe the purpose and effects of a ballot measure submitted to the voters
26 therefore matters in terms of the voters’ likely reaction to that measure. (*Id.* at ¶ 12.) Having reviewed
27 the ballot label and title and summary for Proposition 1A, Professor Lakoff opines that the Legislature
28 has included several words and phrases in those materials that are not neutral and instead reflect classic

1 cognitive framing techniques used in political campaigns to elicit voter support.

2 For instance, Professor Lakoff explains that use of the term “rainy day” in the ballot label and
3 title and summary for Proposition 1A is misleading because it is being used to describe something that is
4 not consistent with how people generally understand that phrase. People generally understand the idea
5 of ‘putting something away for a rainy day’ in a positive way and to refer to a situation in which an
6 individual household puts away “extra” income – i.e., income beyond what is needed to pay for critical
7 household expenses – to offset future situations in which household expenses exceed household income.
8 (Lakoff Decl., ¶ 13.) Used in the context of Proposition 1A though, that term is prejudicial and
9 misleading because it gives voters the impression that the additional monies deposited into the state
10 budget reserve are “extra” – i.e., unnecessary for payment of other critical state expenses. (Lakoff Decl,
11 ¶ 16.) It also implies that the money will be saved for emergencies when in fact up to half of it will be
12 spent without an emergency. The real question being asked of voters in regards to Proposition 1A,
13 however, is whether monies currently appropriated for various state programs or services should be
14 eliminated and instead placed in a reserve account. (Lakoff Decl., ¶ 17.) The “rainy day” phraseology
15 thus at once disarms voters and obfuscates the true impact of adoption of Proposition 1A.

16 Professor Lakoff identifies several other words and phrases used in the ballot label and title and
17 summary that appear designed to elicit a favorable response from voters. For example, these materials
18 refer several times to Proposition 1A as a means to “stabilize” the state budget. (Exs. G & H.) But
19 stability is not a neutral term; people generally understand “stability” as a good thing, the opposite of
20 random fluctuations or chaos. (Lakoff Decl., ¶ 19.) Likewise, the word “reform” reflects a value
21 judgment that previous practices have been illegal, immoral, or unethical. (Lakoff, ¶ 22.) So too does
22 the word “overspending,” which reflects a value judgment that more money has been spent than is
23 necessary or prudent. (Lakoff, ¶ 24.) And, perhaps most blatantly, inclusion of the phrase “helps
24 balance the budget” clearly evokes the positive value judgment of “helpfulness.”

25 Use of these value-laden words and phrases to describe Proposition 1A does nothing to inform
26 voters about *what* the measure would do; rather, they are calculated to *persuade* voters that approval of
27 that measure is *a good thing*. Their inclusion in the ballot label and title and summary serves no
28 informational purpose whatsoever, and is nothing more than a blatant effort to inappropriately use

1 materials that are supposed to be fair and impartial to 'condition' voters to be favorably disposed
2 towards Proposition 1A.

3 Finally, the timing of these materials is particularly significant in terms of the likelihood that
4 they will impact voter response. The ballot label and the title and summary are the first – and for many
5 voters – the *only* information that will be read about Proposition 1A. These materials, as part of the
6 ballot pamphlet, will be taken by many voters into the voting booth. The current materials are nothing
7 less than government-sponsored electioneering at the ballot box.

8 The distorted presentation of the purpose and impact of Proposition 1A presented in the ballot
9 label and title and summary constitute a serious and direct threat to the integrity of the electoral process
10 that warrants judicial intervention. It is one thing for government to add its voice to the marketplace of
11 ideas on controversial issues – for example, by providing clearly identified “arguments” in favor or
12 against a measure, as several legislators have done with regard to Proposition 1A. But the Constitution
13 does not, indeed cannot, allow the government manipulate the electoral system by cloaking its views on
14 such matters in the guise of impartial information distributed to voters at public expense. Petitioners
15 there respectfully request that the court issue a writ prohibiting the Secretary of State from printing the
16 ballot label and title and summary for Proposition 1A, unless and until such time as they are corrected or
17 amended to ensure that they are fair and impartial.

18 **B. The Ballot Label and Title and Summary Omit Crucial Information**

19 A glaring omission in both the ballot label and title and summary is the absence of any reference
20 to the extension of tax increases which are currently tied to approval of Proposition 1A. Specifically,
21 there is no mention anywhere in those materials that Proposition 1A, if passed, would authorize the
22 extension of three tax increases totaling some *\$16 billion* which were adopted by the Legislature as part
23 of the “budget package” in late February of 2009. (See RJN, Exs. D & J.)

24 ABX3 3 (or AB 3) (RJN, Ex. D), passed on February 20, 2009 specifically to “address[] the fiscal
25 emergency declared by the Governor,” imposes three sets of tax increases: 1) a Personal Income Tax
26 increase coupled with a decrease in the dependent tax credit (RJN, Ex. D, §§ 9-10); 2) an increase of the
27 Vehicle License Fee from .65% to 1.0%, with an additional tax assessed equal to .15% of the market
28 value for specified vehicles (*Id.* at §§ 4-8); and 3) a “sales and use” tax increase from 6 1/4% to 7 1/4%.

1 (*Id.* at §§ 2, 3, & 11.)

2 Under the terms of AB 3, each of these provisions contains a “sunset clause” whereby the tax
3 increases will be automatically repealed, effective July 1, 2011, “unless the Director of Finance makes
4 the notification pursuant to Section 99040 of the Government Code,” which instead will extend each of
5 these proposals through January 1, 2012 or January 1, 2013 (depending on the tax). (See e.g. RJN, Ex.
6 D, § 2, subd. (b).) The “notification” required of the Director of the Department of Finance by
7 Government Code section 99040 requires the Director of Finance to inform various state agencies
8 affected by these tax increases:

9 when and if an amendment to the California Constitution is approved at a statewide
10 election held during the 2009 calendar year, that limits the total amount that, under
11 Section 20 of Article XVI of the California Constitution, may be transferred by statute,
12 from the Budget Stabilization Account, or any successor to that account, to the General
13 Fund.

14 (*Id.* at § 1.) Thus, should Proposition 1A pass during the May 19, 2009 Special Election, AB 3 would
15 *automatically* extend the 1 cent sales tax increase through January 1, 2012, the vehicle license fees
16 through June 30, 2013, and the personal income tax increases through January 1, 2013. The committee
17 reports related to AB 3 confirm this clear intent on the part of the Legislature to tie AB 3 to Proposition
18 1A. (RJN, Ex. M., pp. 1-2, 4.) In spite of this, the ballot label and title and summary completely fail to
19 mention any affect on the current tax increases that would result from the passage of Proposition 1A.

20 The main purpose of requiring that ballot title and summaries be true and accurate is “to avoid
21 misleading the public with inaccurate information.” (*Amador Valley v. State Bd. of Equalization* (1987)
22 22 Cal.3d 208, 243.) In order to meet this purpose, it is essential that a title and summary “reasonably
23 inform the voter of *the character and real purpose of the proposed measure.*” (*Brennan v. Bd. of*
24 *Supervisors of San Francisco* (1981) 125 Cal.App.3d 87, 93, emphasis added.) It has been held that
25 ballot materials are deficient where they “ignore major points” of proposals, while those matters which
26 were “subsidiary or auxiliary” to the measure were not required to be included. (*Id.* at 96; see also
27 *Zaremborg v. Superior Court* (2004) 115 Cal.App.4th 111, 118; *Amador Valley, supra*, 22 Cal.3d 208,
28 243.) Thus, the operative question becomes whether the tax increase extensions imposed by AB 3 can
be seen as part of the “chief purpose” or a “major point” of Proposition 1A. (*Amador Valley, supra*, at

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243.)

While the Legislature has attempted to obscure the fact that the adoption of Proposition 1A would result in an automatic extension of tax increases currently slated to expire at the end of the 2009-2010 fiscal year, this fact was not lost on the Legislative Analyst. The Yes/No Statement prepared by that office provides to the voter a short overview of the effect of voting either for or against a given measure. (Gov. Code, § 88002.5) These statements are not intended to provide “comprehensive information” but merely “concise summary of the general meaning and effect of ‘yes’ and ‘no’ votes...” (*Ibid.*) In the case of Proposition 1A, the Legislative Analyst found two effects of a “yes” vote important enough to warrant inclusion in the statement:

A YES vote on this measure means: Various state budgeting practices would be changed. In some cases, the State would set aside more money in one of its ‘rainy day’ reserve funds. *Higher state taxes recently passed would be extended for up to two years.*

(Ex. I, emphasis added.) Similarly, the Analyst’s description of the affect of a “no” vote reflects a similar emphasis:

A NO vote on this measure means: No changes would be made to the state’s current budgeting practices or its rainy day reserve funds. *Higher state taxes recently passed would end by 2010-11.*

(*Ibid.*) These two statements by the Legislative Analyst clearly demonstrate that of the various provisions and effects which flow from the passage of Proposition 1A, the two most vital to be brought to the attention a of the voters in “concise summary of the general meaning and effect” of Proposition 1A are the increase in size of the State’s reserve fund, and *the extension of the tax increases recently passed by the legislature.*

The Legislative Analyst’s more detailed report further underscores the importance of the tax increase to the overall purpose of Proposition 1A. Under a section labeled “Overview of the Proposal,” the Legislative Analyst again chose to focus on two major aspects of the measure, that the “Measure Changes the State’s Budgeting” and “Measure Results in Tax Increases.” (Ex. J, p. 1) A further review of the document shows that the recent tax increases, and their subsequent automatic extension with the passage of Proposition 1A, make up part of the measure’s “chief purpose.”

The Supreme Court has previously held that the failure to include the imposition of a tax within a

1 proposal's summary was "misleading." (*Clark v. Jordan* (1936) 7 Cal.2d 248 ("*Clark*") & *Boyd v.*
2 *Jordan* (1934) 1 Cal.2d 468.) *Clark* dealt with a petition for writ of mandate seeking to bar the
3 Secretary of State from placing on the ballot a measure prepared by the proponent of the proposal with
4 an allegedly deficient short ballot title. (*Clark, supra*, 7 Cal.2d at 250.) The short ballot title read,
5 "Certain Sales Taxes Forbidden-Certain Tax Limitations Rescinded-Certain Homestead Improvements
6 and Progressively, Improvement and Tangible Personal Property Taxes." (*Ibid.*) Although that proposal
7 did in fact "abolish certain types of taxes and ... rescind certain tax limitations," it also implemented a
8 land value taxation system as a substitution, a purpose not identified in the proposal's title. (*Id.* at 251.)
9 In evaluating the propriety of such an omission, the court explained:

The title is carefully worded to indicate to a prospective signer that sales taxes are
forbidden, that progressively taxation of personal property and improvements is
abolished and that certain tax limitations are removed, but it totally fails to indicate that
the proposal is also a taxing measure. *Everything that possibly could induce electors to*
sign the proposal is carefully included in the short title, but the one thing that would
cause them to hesitate-the imposition of new taxes on real property-was certainly
excluded ... [s]uch a title is clearly misleading....

(*Ibid*, emphasis added.) The court concluded that "for the purpose of protecting electors from confusing
or misleading situations," the proposal could not be placed on the ballot. (*Id.* at 252; see also *Boyd v.*
Jordan, supra, 1 Cal.2d at 475.)

At the time *Clark* was decided the short ballot label was prepared by the proponent of the
measure. Possibly in response to *Clark*, the Legislature subsequently assigned that task to the Attorney
General. (Elec. Code, § 9011.) It is not difficult to see the analogy between what the proponents in
Clark did with what the Legislature has done here with Proposition 1A. As the proponents of
Proposition 1A, the Legislature has written the ballot label and ballot title and summary. In doing so
they have left out the fact Proposition 1A would extend tax hikes—something the Supreme Court in
Clark found was the "one thing that would cause them (voters) to hesitate."

Clark thus clearly stands for the premise that the failure to inform voters through a ballot
measure's title and summary of the imposition of a tax is "misleading." The *Clark* holding has been
similarly cited in recent appellate court decisions. (See *Zaremborg, supra*, 115 Cal.App.4th 111, 118,
fn. 6; *Brennan, supra*, 125 Cal.App.3d at 96.)

1 California Constitution article II, section 4 imposes on the Legislature the duty to “prohibit
2 improper practices that affect elections.” Under that charge, the Legislature has enacted comprehensive
3 laws which dictate various aspects of the ballot measure initiative process, most notably the requirement
4 that when the Attorney General is himself a proponent of a ballot proposal, the Legislative Counsel is to
5 prepare the ballot labels and titles and summaries in his place. (Elec. Code, § 9003.) Presumably this is
6 to ensure that the ballot and title remain fair, impartial and not false or misleading by removing the task
7 of ballot drafting from the hands of the proponent of the measure – in that case, the Attorney General.
8 By that same token, article II section 4 by its plain language requires the Legislature to prohibit
9 “*improper practices that effect elections.*” (Emphasis added.) Under the holding in *Clark* this would
10 include the improper practice of permitting proponent-drafted ballot measures which omit information
11 central to the “chief purpose” of that proposal. As such, the imposition of a strict standard that the
12 proponent drafted label and title and summary omit none of its “chief points” is clearly mandated not
13 only by case law, but by the California Constitution as well.

14 At a minimum this court should give no deference to the Legislature. As the proponent of
15 Proposition 1A the Legislature has not only suspended the laws prohibiting “improper practices that
16 effect elections,” but has in effect engaged in the very conduct it is mandated by the Constitution to
17 prohibit.

18 There is no question an essential aspect of the “nature and character”— one of the “chief
19 purposes – of Proposition 1A is the extension of the tax increases. As part of the Legislature’s
20 comprehensive solution to the current fiscal crisis, it chose to take various actions which require the
21 voters’ approval. Indeed, even with passage of each of the six measures to be placed before the voters
22 during the May 19, 2009 Special Election, “it is expected that the state would face multibillion-dollar
23 budget shortfalls in the coming years.” (RJN, Ex. K, p. 3.) Thus, the need to extend these tax increases
24 may well be part of that comprehensive solution, but as it is subject to the approval of voters, it is
25 necessary that the voters *fully* comprehend the nature of the provisions they are approving.

26 The Legislature can no more mislead the voters by fashioning a summary of the measure that
27 deliberately omits the most critical facts – facts immediately identified by the Legislative Analyst’s
28 Office—than could the proponents in *Clark*. Just as in *Clark*, Proposition 1A’s label and title and

1 summary promise higher revenues and the “limitation on future deficits,” but fail to inform the voter that
2 as a direct consequence they will also be approving the extension of short-term tax increases. Only by
3 informing the voters of both the positives and negatives of a given measure may voters be truly said to
4 have been fully aware of the measure they are adopting.

5 Nor do the brief fiscal summaries included as part of the ballot label and ballot title and summary
6 cure the omission. The fiscal summary in both the ballot label and title and summary simply state:
7 “Higher state tax *revenues* of roughly \$16 billion from 2010-11 through 2012-13.” (RJN, Exs. G & H,
8 emphasis added.) This language simply does not convey to the average voter that the extension of
9 certain tax increases is contingent on their vote. For many voters, the reference to higher state revenues
10 may appear to be a positive thing, while disclosure of higher taxes or tax increases might well be
11 something that would cause the average voter “to hesitate.”

12 **C. The Ballot Label and Title and Summary Contain False and Misleading**
13 **Information**

14 In addition to omitting crucial information, the ballot materials crafted by the Legislature contain
15 several statements that are clearly inaccurate and misleading. Indeed, some of the statements are
16 demonstrably false.

17 **1. Ballot Label**

18 **‘RAINY DAY’ BUDGET STABLIZATION FUND.** Reforms the budget process.
19 Limits future deficits and **overspending** by increasing the size of the state **‘rainy day’**
20 fund and **requiring above-average revenues to be deposited into it, for use during**
21 **economic downturns.**

22 **“Higher state tax revenues of roughly \$16 billion from 2010-11 through 2012-13. Over**
23 **time, increased amounts of money in state rainy day reserve and potentially less ups and**
24 **downs in state spending.”**

25 (RJN, Ex. H.)

26 The following phrases or statements are false and/or misleading and need to be amended:

27 **“‘RAINY DAY’ BUDGET STABLIZATION FUND”**

28 **“RAINY DAY.”** Although the Legislature repeatedly refers to the “rainy day” fund in
quotation marks – as if this term is actually used somewhere in Proposition 1A or has some
defined meaning – it appears nowhere in the terms of the measure. Nor would it be accurate to

1 describe the use of the deposits into the BSF in that manner. As the LAO analysis explains, and
2 the Declaration of Jean Ross elaborates, Proposition 1A actually creates *multiple* accounts. Only
3 one-half of the 3% of revenues that are diverted from the General Fund go into a reserve account
4 to be used for possible future budget assistance. (RJN, Ex. J, p. 4-5; Ross Decl., ¶ 7.) Fully half
5 of the deposits will be used for other purposes, including use in paying education debt,
6 infrastructure projects, debt service, and other one time purposes. (*Id.*) This, while it may be
7 correct to call both “reserve” accounts, it is not accurate to suggest that all accounts are available
8 for future budget use (i.e., “rainy day” use). This wording should be changed to “RESERVE.”

9 Use of the term “**STABILIZATION FUND**” is misleading. Although this is the title of the
10 measure chosen by the Legislature for political purposes, there is no objective evidence to support the
11 assertion that Proposition 1A will “stabilize” the budget process. The LAO analysis is very clear that
12 the actual fiscal impact of this measure will “depend on a variety of factors that will change over time
13 and cannot be accurately predicted” and “the measure’s effects may be very different from one year to
14 the next.” (RJN, Ex. J, pp. 5-6.) Future legislative actions and revenue trends and volatility will play a
15 significant role, and the actual impact on the budget process will include increased tax revenues; the
16 Governor’s use of his authority to reduce spending; increased payments to education; whether bond debt
17 is reduced more quickly or more slowly; and whether BSF funds are transferred to the General Fund or
18 whether additional General Fund revenues are transferred to the BSF. (*Id.*) The LAO concludes:

19 ***Net Result of These Factors.*** Some of these factors—such as the higher tax revenues—would
20 make it easier to balance the state budget in the coming years. Other factors—such as the limited
21 ability to suspend the annual transfers to the BSF—could make it more difficult. The net result of
22 these factors is difficult to determine in any particular year. In 2011-12, the size of the tax
23 increases connected to this measure would likely make that year’s budget easier to balance. In
24 other years, however, the effect of the measure on the ability of the state to balance the budget is
25 unknown. (*Id.* at 6-7.)

26 Further on, the LAO candidly concludes that, in terms of the “effect of state budgeting,” “[t]he
27 *precise effect of having more rainy day funds is unknown.*” (*Id.* at p. 8.) The Legislature may not use a
28 politically advantageous, but unsubstantiated, claim as part of the ballot label and title and summary. It
should be deleted.

1 **Proposition 1A “[l]imits. . . overspending”**

2 The assertion that Proposition 1A will “limit. . . overspending” is also false and/or misleading
3 inasmuch as it creates an inference that Proposition 1A will *only* limit *overspending* – as opposed to
4 spending *generally*. The key concept that is missing here is the requirement that “unanticipated
5 revenues” be deposited in the BSF and the definition of “unanticipated revenues” as amounts in excess
6 of what is needed to support prior year’s spending adjusted for CPI and population.³ (RJN, Ex. J, p.3;
7 Ross Decl. ¶ 8.) This is the essence of the spending “cap” imposed by Proposition 1A. In most years,
8 “baseline” (i.e., spending required by current law) spending increases at a rate that exceeds the growth in
9 CPI. This is because the CPI is designed to measure inflation in goods purchased by households, not
10 government, and government typically spends more of its money on things whose cost is increasing at a
11 rate in excess of CPI. (Ross Decl., ¶ 9.) Health care is the most obvious current example. (*Id.*)
12 Moreover, the overall percentage change in the population misses the fact that the elderly are the fastest
13 growing segment of the population and growth in the elderly population drives costs for health care,
14 IHSS, SSI/SSP, and other programs that disproportionately serve the elderly. (*Id.*)

15 As a result, in many years, Proposition 1A may require cuts in spending for *current* programs
16 and services. (*Id.*) Whether one believes that increased spending required simply by increased costs
17 (e.g., health care) or changing demographics (e.g., an aging population) constitutes “overspending” is a
18 value judgment. It is not neutral, and to the extent it fails to inform that spending *generally* will be
19 limited, it is misleading and should be stricken and simply state that the measure would limit
20 “spending.”

21 **Proposition 1A “require[es] above-average revenues to be deposited into [the
22 Budget Stabilization Fund] for use during economic downturns”**

23 This statement is false and/or misleading. Proposition 1A has specific formulas for determining
24 which revenues must be deposited into the BSF and none of these provisions has anything to do with
25 “average” revenues – i.e., none of the formulas include an average. The ten-year projection is arrived at
26 using linear regression and projects a future number based on the trend in the prior ten years. (RJN, Ex.

27 _____
28 ³ While there is a second test, based on a 10-year linear regression projection, the California Budget Project’s analysis using the Proposition 1A tests over the past 20 years indicates that the second test will be used less frequently than the test based on prior year expenditures.

1 J, p. 3.) How this number would compare to the “average” for the same period may vary tremendously
2 depending on revenue variations and revenue growth (or lack of growth) in a given period. Moreover,
3 even if the ten-year projection approximated the concept of “average” revenues, this formula is likely to
4 be replaced in most years by the alternative definition of unanticipated revenues – those revenues in
5 excess of prior year spending adjusted for population and inflation (CPI). (Ross Decl.. ¶ 8-9.) In
6 addition, the deposits of 1.5% required to repay the \$9 billion in cuts to education are required to be
7 made despite economic conditions and cannot be suspended even if revenues fall below adjusted prior
8 year spending. (RJN, Ex. J, p. 4; Ross Decl., ¶ 8.) The statement in the ballot label is misleading
9 because it implies that the only amounts that go into the reserve are those that are “above-average,” i.e.,
10 somehow greater than the amount needed to support a “baseline” budget. This is simply inaccurate, as
11 many years are likely to require revenues to be deposited into the BSF even though they are colloquially
12 considered “average.”

13 The second part of the statement – the assertion that funds will be available for use in “economic
14 downturns” – is also false and/or misleading in two respects. First, the money in the reserve can’t be
15 spent in *any* economic downturn – it can only be used under very limited circumstances. As the LAO
16 observes: “If revenues were not high enough to cover state spending equal to the prior year’s level of
17 expenses (grown for population and inflation), *then* BSF funds could be used to meet that level of
18 spending.” (RJN, Ex. J, p. 5, emphasis added.) As Jean Ross explains, there may – in fact, likely will –
19 be some years where there’s an “economic downturn,” as that term is commonly understood, but the
20 State won’t legally be able to tap into the reserve. (Ross Decl.. ¶ 8.) Petitioners request that the word
21 “possibly” be added to modify the claim that the funds will be available in an economic downturn.

22 Second, the statements omits the fact that fully half of the BSF funds will be transferred to the
23 Supplemental Accounts for use in paying education debt, infrastructure projects, debt service, and other
24 one time purposes. (RJN, Ex. J, p. 4; Ross Decl.. ¶ 7.) Those funds will therefore not be available for
25 assisting in difficult economic times, and it is misleading to tell the voters that the entire reserve fund
26 will be available for that purpose. Proposition 1A essentially creates multiple reserve funds with
27 different purposes and this fact should be revealed. Petitioners request that the phrase “*and other*
28 *purposes*” be added to this statement to make it accurate.

1 **“Higher state tax revenues** of roughly \$16 billion from 2010-11 through 2012-13.” This
2 statement is misleading for what t fails to say. Revenues are not simply “generated.” The *reason* for the
3 increased revenues must be disclosed – and the reason is that certain tax increases will be extended for
4 several additional years. Petitioners request that this language be amended to read: “State tax increases
5 of roughly \$ 16 billion...”

6 The inference that increased revenues will lead to **“potentially less ups and downs”** is
7 argumentative and misleading. As the LAO has indicated, the changes wrought by Proposition
8 1A on the budget process and the money available through the reserve fund are difficult to
9 predict and depend on many factors. (RJN, Ex. J, p. 5-7.) The budget may or may not be
10 positively impacted. (*Ibid.*) Petitioners request that this phrase be deleted and that the statement
11 tell voters that the amount of money in the reserve fund may increase “depending on future
12 legislative actions.”

13 **2. Title and Summary**

14 **STABILIZES STATE BUDGET. REFORMS CALIFORNIA BUDGET PROCESS.**
15 **LIMITS STATE SPENDING. INCREASES ‘RAINY DAY’ BUDGET**
16 **STABILIZATION FUND.**

17 Increases size of state **‘rainy day’** fund from 5% to 12.5% of the General Fund. A
18 portion of the annual deposits into that fund would be dedicated to savings for future
19 economic downturns, and the remainder would be available to **fund** education,
20 infrastructure, and debt repayment, or for use in a declared emergency. Requires
21 additional revenue above historic trends to be deposited into state **‘rainy day’** fund,
22 limiting **unsustainable spending of one-time spikes in revenue.**

23 • **Higher state tax revenues** of roughly \$16 billion from 2010-11 through 2012-13 to
24 help
25 balance the state budget.

26 • In many years, increased amounts of money in state **“rainy day”** reserve fund.

27 • **Potentially less ups and downs in state spending** over time.

28 • Possible greater state spending on repaying budgetary borrowing and debt,
infrastructure projects, and temporary tax relief. In some cases, this would mean less
money available to spend on ongoing spending **increases.**

(RJN, Ex. H.)

1 The following words or phrases require amendment:

2 **Proposition 1A “[i]ncreases size of state ‘rainy day’ fund”**

3 The phrase “rainy day” fund should be changed to “reserve” fund for the reasons discussed
4 above.

5 **“T[he] remainder would be available to fund education, [etc.]**

6 The ballot materials prepared by the Legislature consistently refer to “spending” when talking
7 about expenditures that will be limited by Proposition 1A, but use the terms “fund” or “funding” when
8 describing expenditures required by Proposition 1A itself. Petitioners request that the language be
9 amended to be consistent, and that the reference to monies to “fund education” be changed to “spend on
10 education.”

11 **Proposition 1A “[r]equires additional revenue. . . to be deposited into state ‘rainy day’
12 fund, limiting unsustainable spending of one-time spikes in revenue”**

13 Again, “rainy day” fund should be changed to “reserve” fund.

14 Also, for reasons discussed above, Proposition 1A is not limited to “one-time spikes” in
15 revenues; it will require of 3% of General Fund revenues to be transferred to the BSF but, in addition,
16 will require “unanticipated revenues” to be transferred to the BSF, which the exact amount to be
17 determined by the lesser of two calculations: First, revenues must be transferred that are “above-trend”
18 (based on ten-year projections), which can occur as the economy grows its way out of a downturn.
19 Second, revenues must be transferred that exceed prior year expenditures adjusted for population and
20 inflation. (RJN, Ex. J, p. 3; Ross Decl. ¶8.) Neither is limited to one-time spikes. In addition, the term
21 “unsustainable” is little more than a value judgment. Whether particular spending is sustainable or
22 unsustainable depends on assumptions made about not only spending but spending priorities, tax
23 decisions, etc. Petitioners request that this phrase be limited to stating that Proposition 1A will “limit
24 spending.”

25 Petitioners therefore respectfully request that the court issue a writ prohibiting the Secretary of
26 State from printing the ballot label and title and summary for Proposition 1A, unless and until such time
27 as they are corrected or amended to remove all false and misleading statements and ensure that they are
28 fair and impartial.

1 The additional references to “higher state tax revenues,” the “rainy day” fund, and
2 potentially less ups and downs in state spending should be amended for reasons discussed in
3 connection with the same language in the label.

4 **Proposition 1A “would mean less money available to spend on ongoing spending
5 increases.”**

6 This sentence is misleading for the same reasons that “overspending” is misleading.
7 While Proposition 1A may well mean that less money is available for spending *generally*,
8 nothing in the language limits its constraints to spending increases. Under a number of
9 scenarios, it may well limit baseline spending, which would not be considered “spending
10 increases” by most people. Petitioners request that the word “increases” simply be deleted.

11 **III. PETITIONERS’ PROPOSED REVISIONS**

12 Even if the court finds that the ballot label and title and summary do not, in their entirety,
13 constitute one-sided political advocacy that cannot be provided to the voters at public expense,
14 petitioners request that certain portions of those materials that are false or misleading be revised or
15 deleted.

16 **A. Ballot Label**

17 For the reasons discussed above, the ballot label for Proposition 1A is not fair and impartial and
18 contains statements that are false and misleading. It should be corrected or amended as follows:

19 ~~‘RAINY DAY’ BUDGET STABILIZATION RESERVE FUND. Reforms~~ Changes the
20 budget process. ~~Could~~ Limits future deficits and overspending by increasing the size of
21 the state ‘rainy day’ reserve fund and requiring above-average revenues to be deposited
22 into it, for use during economic downturns, and other purposes.

23 Fiscal Impact: Higher State tax revenues increases of roughly \$16 billion from 2010-11
24 through 2012-13. Over time, increased amounts of money in state rainy day reserve fund
25 and potentially less ups and downs in state spending, depending on future legislative
26 actions.

27 **B. Title and Summary**

28 For the reasons discussed above, the title and summary for Proposition 1A is not fair and
impartial and contains statements that are false and misleading. It should be corrected or amended as
follows:

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TITLE & SUMMARY FOR PROPOSITION 1A

~~STABILIZES STATE BUDGET. REFORMS~~ *CHANGES CALIFORNIA BUDGET PROCESS. LIMITS STATE SPENDING. INCREASES "RAINY-DAY" BUDGET STABILIZATION RESERVE FUND. EXTENDS TAX INCREASES.*

- Increases size of state ~~"rainy-day"~~ *reserve* fund from 5% to 12.5% of the General Fund.
- A portion of the annual deposits into that fund would be dedicated to savings for future economic downturns, and the remainder would be available to ~~fund spend on~~ *education, infrastructure, and debt repayment, or for use in a declared emergency.*
- Requires ~~additional~~ *revenue above historic trends to be deposited into state "rainy-day" reserve fund, limiting unsustainable spending, of one-time spikes in revenue.*

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- ~~Higher~~ *State tax revenues increases* of roughly \$16 billion from 2010-11 through 2012-13 ~~to help balance the state budget. to address immediate fiscal concerns.~~
- In many years, increased amounts of money in state ~~"rainy-day"~~ *reserve fund.*
- ~~Potentially less ups and downs in state spending over time.~~
- Possible greater state spending on repaying budgetary borrowing and debt, infrastructure projects, and temporary tax relief. In some cases, this would mean less money available to spend on ongoing spending ~~increases.~~

CONCLUSION

For the foregoing reasons, petitioners ask that this court order the above-requested deletions and corrections to the ballot label and title and summary for Proposition 1A.


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Dated: March 2, 2009

Respectfully submitted,

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