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SUPREME COURT  
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IN THE SUPREME COURT FOR  
THE STATE OF CALIFORNIA

Jorge Navarrete Clerk

CATHERINE A. BOLING, T.J. ZANE and  
STEPHEN B. WILLIAMS  
*Petitioners*

Deputy

v.

CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD,  
*Respondent*

CITY OF SAN DIEGO; SAN DIEGO MUNICIPAL EMPLOYEES  
ASSOCIATION; DEPUTY CITY ATTORNEYS ASSOCIATION;  
AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES, AFL-CIO LOCAL 127; and SAN  
DIEGO CITY FIREFIGHTERS LOCAL 145  
*Real Parties in Interest*

PETITION FOR REVIEW

OF THE ORDER REJECTING PETITIONERS' MOTION FOR  
ATTORNEYS' FEES

of the

Court of Appeal, Fourth Appellate District, Division One,  
Case No. D069626 Consolidated With  
Case No. D069630

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**PETITION FOR REVIEW**

**TO THE HONORABLE CHIEF JUSTICE TANI G. CANTIL-  
SAKAUYE AND TO THE HONORABLE ASSOCIATE JUSTICES  
OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:**

Petitioners, Catherine A. Boling, T.J. Zane and Stephen B. Williams (“Proponents/Petitioners”) respectfully submit this Petition for Review seeking a disposition by this Court, pursuant to California Rules of Court, Rule 8.528(a) granting Petitioners’ Motion for Attorneys’ Fees, pursuant to Code of Civil Procedure section 1021.5, or in the alternative a disposition ordering remand or transfer to the Court of Appeal, pursuant to Rules 8.500(b)(4), 8.528(c) or 8.528(d) to hear, and/or grant, Petitioners’ Motion for Attorneys’ Fees, against Respondent California Public Employment Relations Board (“PERB”) and Real Parties in Interest San Diego Municipal Employees Association (“SDMEA”), Deputy City Attorneys Association (“DCAA”), American Federation of State, County and Municipal Employees, AFL-CIO, Local 127 (“AFSCME”), and San Diego City Firefighters Local 145 (“Local 145”) (collectively “Charging Parties”).

This Petition for Review, filed pursuant to California Rules of Court, Rule 8.500(b)(2) and (b)(4), follows the Court of Appeal’s May 12, 2017 decision to reject Petitioners’ Motion for Attorneys’ Fees, submitted to the Court of Appeal on May 10, 2017, on the basis of no longer having jurisdiction. A true and correct copy of the May 12, 2017 letter from the Court of Appeal is attached hereto as Exhibit A, in accordance with California Rules of Court, Rule 8.504(b)(5) and (e)(1)(A).



Petitioners timely submitted their Motion for Attorneys' Fees, and supporting documents, on May 10, 2017<sup>1</sup>, less than thirty-days after the April 11, 2017 decision of the Court of Appeal, Fourth Appellate District, Division One, was published in Case No. D069626 (consolidated with D069630), hereinafter referred to as *Boling v. Public Employment Relations Bd.* (2017) 10 Cal.App.5th 853 ("Opinion"). The Court of Appeal confirmed receipt of the Motion on May 10, 2017, and should have accepted the Motion as filed on that date. (Cal. Rules of Court, Rules 8.25(b)(1) and 8.77(a).)

Petitioners do not challenge the Opinion, in which the Court of Appeal decided in favor of Petitioners and the City of San Diego. Petitioners challenge the Court's May 12, 2017 decision to reject Petitioners' timely Motion for Attorneys' Fees, and supporting papers, submitted on May 10, 2017, for reason of no longer having jurisdiction, at a time when the Opinion was not yet final under California Rules of Court, Rules 8.499(c)(2) and 8.264(b)(1). (See, Exhibit A: Court of Appeal, Fourth Appellate District, Division One Letter, dated May 12, 2017 – Rejection due to Court no longer having jurisdiction, attached hereto.)

The Court of Appeal was the only forum available to Petitioners to bring a Motion for Attorneys' Fees because Petitioners' Writ to the Court of Appeal challenged a PERB decision, so no trial court is involved in this

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<sup>1</sup> True and correct copies of the Truefiling e-mail confirmations, dated May 10, 2017, showing that the Motion for Attorneys' Fees, and accompanying papers, were received by the Court on May 10, 2017, before the April 11, 2017 Opinion became final, are attached hereto as Exhibit B, pursuant to California Rules of Court, Rule 8.504(e)(1)(B). (See, Declaration of Kathleen Day in Support of Application for Leave to File Oversized Exhibits to Petition for Review.)

action. (*Boling, supra.*) Code of Civil Procedure section 1021.5 requires that a “private attorney general” make its request to a “court”. (Code Civ. Proc. § 1021.5.) The Court of Appeal’s rejection of Petitioners’ Motion without consideration, for the sole reason of having no jurisdiction, deprives Petitioners of that only forum they had available to bring the Motion.

Petitioners seek attorneys’ fees for opposing a series of related actions in which PERB and the Charging Parties sought to keep Proponents’ Charter Proposition B off the June 2012 ballot and ultimately invalidate its adoption in contravention of Proponents’ reserved rights guaranteed by the California Constitution. At each stage of the multiple proceedings culminating in this Court’s judgment vindicating the right of the citizens to propose legislation, PERB and the Charging Parties have failed and refused to recognize the constitutional, statutory and Charter rights of Proponents and the people. Proponents have conferred a significant benefit, both pecuniary and nonpecuniary, on the citizens of the City of San Diego and the State of California by defending the public’s right to vote and to control public employee compensation. The necessity and financial burden of private enforcement placed on Proponents, as the representatives of the electorate, are such as to make the award appropriate. The interests of justice require that the fees be borne by the governmental entity, PERB, and those Charging Parties who made false claims of a “sham” initiative while providing no evidence of a sham or any legal connection between Proponents and the City Council of the City of San Diego.

Specifically, Petitioners successfully provided the following substantial benefits to the citizens and voters of San Diego and the State of California:

- 1) Affirmation that a state administrative body cannot take away the right of Proponents of a citizen-circulated measure to defend their measure in the judicial system.
- 2) Affirmation that the reserved power of the People to propose legislation cannot be limited by an administrative body in contravention of constitutional rights.
- 3) Affirmation that an administrative body cannot delay placement of a citizen-circulated measure on the ballot while procedural steps only applicable to a “governing body” are exhausted.
- 4) Affirmation that an administrative body cannot create an “agency” relationship between elected officials who politically support a citizen-circulated ballot measure and the proponents of the measure.
- 5) Proponents, through their legal and administrative actions, before and after the June 2012 election, ensured that the City of San Diego defended the ballot placement and enforced a validly adopted Charter measure with vigor.
- 6) Proponents, through their legal and administrative actions, before and after the June 2012 election, ensured that the City of San Diego allowed the election to not be delayed and, upon approval, fully implemented a validly adopted Charter measure instead of settling the matter through compromise with PERB and/or the Charging Parties.

#### **I. TIMELINESS.**

This Petition is timely pursuant to California Rules of Court, Rule 8.500 (a)(1) and (e)(1), because it was submitted within 10 days of May 11, 2017, the date on which the Court’s April 11, 2017 opinion became final (California Rules of Court, Rules 8.499(c)(2) and 8.264(b)(1)), and within 10 days of the Court’s May 12, 2017 rejection of Proponents/Petitioners’ Motion for Attorneys’ Fees.

## **II. ISSUES PRESENTED.**

1. Did the Court of Appeal err in failing to accept Petitioners' Motion for Attorneys' Fees which was submitted a day before the Opinion became final?

2. Are Petitioners prevailing parties entitled to attorneys' fees under common law or Code of Civil Procedure section 1021.5?

## **III. NECESSITY FOR REVIEW.**

Petitioners bring this Petition for Review pursuant to California Rules of Court, Rule 8.500(b)(2), on the grounds that the Court of Appeal wrongfully asserted lack of jurisdiction as the basis for rejecting Proponents' timely submitted Motion for Attorneys' Fees. Petitioners further bring this Petition pursuant to Rule 8.500(b)(4), for the purposes of transferring and/or remanding the matter to the Appellate Court for hearing. (Cal. Rules of Court, Rule 8.500(b)(2) and (4); 8.528(a), (c), (d).)

This case presents grounds for review by this Court because Petitioners, as a successful party in this matter who enforced an important right affecting the public interest and conferred a significant benefit on the general public, properly and timely submitted their Motion for Attorneys' Fees with the Court of Appeal, on May 10, 2017, before the Opinion became final. However, due to clerical error, the Court of Appeals did not process the Motion until May 12, 2017, after its jurisdiction expired. (See, Exhibit A.) Once the Court of Appeal's Opinion became final, it no longer had jurisdiction to hear the timely Motion. (Cal. Rules of Court, Rules 8.499(c)(2) and 8.264(b)(1).)

The Motion was brought before the Court of Appeal based on the unavailability of any other forum for Proponents to make this "private attorney general" request to a "court" as required by Code of Civil Procedure

section 1021.5. This matter is a case of first impression in that there was no Trial Court to remand this matter for final disposition. Code of Civil Procedure section 1021.5 requires that a “court” hear an attorney’ fee motion. Since this case falls under Government Code section 3509.5(b), it was remanded directly back to an administrative body, PERB, rather than a Trial Court. (*Boling, supra*, at 95.)

#### **IV. REQUESTED DISPOSITION**

Petitioners request one of three potential remedies, as provided under the California Rules of Court. First, this Court can accept review of this request and issue a Normal Disposition determining whether Petitioners’ Motion for Attorneys’ Fees should be granted because Petitioners were a prevailing party on an election issue that was the subject of multiple proceedings over the last five years. (Cal. Rules of Court, Rule 8.528(a).) Second, in the event the Court disposes of a portion of the issues presented in this Petition, Petitioners request that the Court remand this matter back to the Court of Appeal to hear any remaining issues. (Cal. Rules of Court Rules 8.500(b)(4) and 8.528(c).) Third, this Court could transfer the matter to the Court of Appeal, with directions, for resolution of Petitioners’ Motion for Attorneys’ Fees, submitted on May 10, 2017. (Cal. Rules of Court, Rules 8.500(b)(4) and 8.528(d); Exhibit C: Petitioners’ Motion for Attorney’s Fees and Memorandum of Points and Authorities in Support thereof; Exhibit D: Declaration of Kenneth H. Lounsbery in Support of Petitioners’ Motion Exhibit E: Declaration of James P. Lough in Support of Petitioners Motion for Attorneys’ Fees; and Exhibit F: Petitioners Motion for Judicial Notice; Memorandum of Points and Authorities; Declaration of Yana L. Ridge; and [Proposed] Order in Support of Petitioners’ Motion for Attorneys’ Fees .)

## V. ARGUMENT

### A. ISSUE 1: DID THE COURT OF APPEAL ERR IN FAILING TO ACCEPT PETITIONERS' MOTION FOR ATTORNEYS' FEES WHICH WAS SUBMITTED A DAY BEFORE THE OPINION BECAME FINAL?

#### 1) THIS COURT HAS THE POWER TO REVIEW ANY ORDER ISSUED BY THE COURT OF APPEAL.

This Court's "review" power is broad. It is the power to review in the Court's discretion **any** decision or order rendered by the Court of Appeal. (See, Cal. Const., art. VI, § 12(b); Cal. Rules of Court, Rule 8.500 [emphasis added].) This Court's power of review extends to any or all issues in the case, whether or not raised in the court below, if this Court deems it appropriate. (*Cedars-Sinai v. Sup. Ct.* (1998) 18 Cal.4th 1, 5-7 n.2.) This Court should extend its review power to the Court of Appeal's rejection of Petitioners' timely Motion for Attorneys' Fees due to the Court's lack of jurisdiction because it is appropriate for this Court to review the rejection and/or the Motion in light of unavailability of any other forum in which Petitioners can seek redress.

The Court of Appeal's error of failing to process Petitioners' Motion substantially affects Petitioners' rights by depriving Petitioners of an opportunity to be heard on their Motion. Without review by this Court, Petitioners will bear the disproportionate financial burden of protecting the rights of the voters of San Diego in a case ridden with unreasonable and harassing litigation tactics by PERB and the unions. Petitioners' Motion for Attorneys' Fees in an election case is a significant issue of widespread importance, and it is in the public interest to decide the issue at this time. (See, *Cedars-Sinai, supra.*)

#### 2) THE MOTION FOR ATTORNEYS' FEES WAS TIMELY.

Petitioners received written confirmation of receipt by the Court on May 10, 2017. (See, Exhibit B hereto.) In addition, the staff at the

Court of Appeal acknowledged that the Motion was timely received on May 10, 2017, and that as a result of clerical error, the Court failed to consider it before it lost jurisdiction at 5:00 pm on May 11, 2017<sup>2</sup>. This Petition for Review is Proponents' only remaining remedy.

Petitioners filed the underlying Writ of Review in the Court of Appeal, seeking review of a Public Employment Relations Board decision, pursuant to Chapter 8 of the California Rules of Court, "Miscellaneous Writs" and more specifically Rule 8.498. Thus, pursuant to California Rules of Court, Rule 8.499(c)(2) the Opinion in that writ proceeding "is final in that court 30 days after the decision is filed." (Cal. Rules of Court, Rules 8.499(c)(2) and 8.264(b)(1).)

The Court of Appeal filed and published the Opinion on April 11, 2017. (See, *Boling, supra.*) Thus, the Opinion became final 30 days later, at close of business on May 11, 2017.

Proponents submitted the Motion for Attorneys' Fees, and supporting papers, on May 10, 2017 before the Opinion was final, and while the Court had jurisdiction to hear the matter. (See, Exhibit B hereto- May 10, 2017 Truefiling email notices: Fourth District Court of Appeal, First Division – Document Received – Case No. D069626.)

Upon receiving the Motion, on May 10, 2017, the Court of Appeal confirmed receipt and provided no indication that the Motion submittal was defective. (See, Exhibit B hereto.) The Court of Appeal was therefore required to accept the Motion as filed on that date. (Cal. Rules

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<sup>2</sup> On May 15, 2017, Counsel for Petitioners spoke with the Court of Appeal Deputy Clerk, and the Clerk informed Counsel that the Motion "fell through the cracks and was not brought to the clerk's attention until Friday morning on May 12" and that the appropriate remedy is a Petition for Review. (See, Declaration of Yana Ridge in support of Application for Leave To File Oversized Exhibits To Petition For Review.)

of Court, Rule 8.25(b)(1)[“A document is deemed filed on the date the clerk receives it.”]; see also Rule 8.77(a.) The Appellate Court’s failure to timely accept the Motion on May 10, 2017, and its subsequent delay, resulted in the improper rejection of the Motion on May 12, 2017. The Court’s delay also extinguished any opportunity for Petitioners to apply to have the Motion deemed timely filed (see, Cal. Rules of Court, Rule 8.77(d)), as the Appellate Court no longer had jurisdiction. Court of Appeal staff subsequently confirmed that a Petition for Review was the only available remedy.

The Motion was timely submitted, and would have been considered but for clerical error on the part of the Appellate Court. *Proponents must not be penalized by such error.* Their constitutional rights need to be restored by this Court.

**3) THE MOTION WAS PROPERLY BEFORE THE COURT OF APPEAL.**

Normally, a motion for attorney’s fees to a prevailing party is decided by a trial court on remand. (See Cal. Rules of Court, Rule 3.1702.) Here, the procedural posture of this case is such that there was no trial court proceeding. The Charging Parties initiated an unfair practice charge with PERB after Petitioners, the proponents of Proposition B, submitted Proposition B with the sufficient number of signatures to the City and before the voters of San Diego approved Proposition B on June 5, 2012. PERB held an administrative hearing, at which Proponents were excluded, and ultimately issued its decision. Petitioners, and the City, then petitioned to the Court of Appeal for Writ of Extraordinary Relief from PERB’s decision. The Court heard the oral arguments on March 17, 2017 and issued its decision on April 11, 2017. (*Boling, supra.*)

Code of Civil Procedure section 1021.5 provides that upon motion a court may award attorneys’ fees. The Court of Appeal and this Court are the



only courts that can hear this Motion. While the Court of Appeal remanded the case to PERB to nullify its orders, this Motion cannot be heard by PERB for several reasons. First, PERB is not a court and has no jurisdiction over the Motion. Second, PERB has no expertise in motions for attorneys' fees under Code of Civil Procedure section 1021.5. Third, at every stage of administrative and writ proceedings, PERB sought to exclude Petitioners claiming Petitioners had no standing.

Further, despite the Court of Appeal's directive that each party shall bear its own costs of this proceeding, this Motion for Attorneys' Fees was properly before the Court of Appeal because attorneys' fees are treated as separate from and not included in costs. (*Butler-Rupp v. Lourdeaux* (2007) 154 Cal.App.4th 918, 923; see also Cal. Rules of Court, Rule 8.278(d)(2).)

**B. ISSUE 2: ARE PETITIONERS PREVAILING PARTIES ENTITLED TO ATTORNEYS' FEES UNDER COMMON LAW OR CODE OF CIVIL PROCEDURE SEC. 1021.5?**

Code of Civil Procedure section 1021.5 provides in pertinent part:

Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if:

- (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons,
- (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and
- (c) such fees should not in the interest of justice be paid out of the recovery, if any.

With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed

therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor . . . .

This section is also known as “private attorney general doctrine,” the purpose of which is to encourage private enforcement of important rights affecting the public interest. (*Woodland Hills Residents Ass’n, Inc. v. City Council* (1979) 23 Cal.3d 917, 933-42.) Attorneys’ fees should be awarded if the statutory criteria of section 1021.5 are met, unless the award would be unjust. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 623-33 and n.17.)

**1) PETITIONERS ARE SUCCESSFUL PARTIES IN THIS ACTION.**

Petitioners are successful parties in this action because they were a catalyst in the Court’s award, successfully defending the citizens’ right of initiative in their writ action, and because the Court of Appeal ruled that Petitioners had a real party status in the City’s writ action, which was successful.

First, Petitioners’ writ action was successful because as proponents, Petitioners successfully defended the right of the people to legislate directly without procedural hurdles when the Court ruled that the City was not obligated to meet and confer prior to placing Proposition B, a citizen’s initiative, on the ballot. Petitioners’ writ action was successful with respect to this key dispositive argument, which entitles Petitioners to attorney’s fees in their writ proceeding.

Second, Petitioners are also entitled to attorney’s fees as real parties in interest in the City’s successful writ proceeding. A real party in interest in a mandamus proceeding is properly considered a party to the litigation. (*Mejia v. Los Angeles* (2007) 156 Cal.App.4th 151, 160.) As a real party in interest, Petitioners are entitled to attorneys’ fees under Section 1021.5

because the City prevailed in its action. (See *Wal-Mart Real Estate Business Trust v. City Council of San Marcos* (2005) 132 Cal.App.4th 614.)

**2) PETITIONERS' VICTORY ENFORCED AN IMPORTANT RIGHT AFFECTING THE PUBLIC INTEREST AND CONFERRED SIGNIFICANT BENEFITS ON THE PUBLIC.**

Under Code of Civil Procedure section 1021.5, Petitioners may recover attorneys' fees because they enforced an important right of the public – the right to legislate by initiative without procedural hurdles such as the meet and confer requirement, and conferred a significant benefit on the public – judicial affirmation that the reserved power of the People to propose legislation cannot be limited by an administrative body in contravention of constitutional rights. (See *Wal-Mart, supra*; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311; *Rich v. Benicia* (1979) 98 Cal.App.3d 428.) The published appellate decision in this case provides strong evidence that this case vindicated an important public right. (*Los Angeles Police Protective League v. City of Los Angeles* (1986) 188 Cal.App.3d 1, 12.)

Courts have repeatedly held that the state constitutional right of initiative is “one of the most precious rights of our democratic process,” reserved to the people, and which the courts have a duty to “jealously guard.” (*Walmart, supra.*) Just like the constitutional right to a referendum vote, the right of initiative is an important right under section 1021.5, vindication of which entitles Petitioners to an award of attorneys' fees. (See *Id.*; see also *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499; *Adoption of Joshua S.* (2008) 42 Cal.4th 945, 957 n.4 [“[E]lection law litigation inherently implicates public rights.”].)

In this case, Petitioners' successful defense of this action and the people's right of initiative prevented the City of San Diego from settling or negotiating with the Charging Parties, delaying the defense of Proposition B,

or defending the measure less than vigorously. This case is of benefit to all citizens of California because it preserved the citizens' right to defend their initiative even if the State uses the administrative process to review their measure. Petitioners' active defense of Proposition B conferred numerous benefits upon the citizens and voters of San Diego and the residents of cities and counties statewide. The benefits that flowed specifically from the Petitioners' instrumental participation in this action include, but are not limited to:

- 1) The terms of a citizen's initiative measure, amending a City's pension fund obligations, are not subject to the meet and confer process of the MMBA.
- 2) An administrative agency, such as PERB, cannot impose limitations on, or in any way interfere with, the opportunity of citizens to exercise their Constitutional right to enact legislation through the initiative process.
- 3) An administrative agency, such as PERB, cannot delay the placement on the ballot of a citizen's initiative measure.
- 4) An elected official has the right to exercise his/her First amendment freedoms, in the course of an election, without his/her actions being imputed, based upon an agency theory, to the public agency which he/she serves.
- 5) A public agency's decisions cannot be inferred, either by imputation or supposed acquiescence by silence, as a result of the political activities of one of its elected officials.

Petitioners achieved significant success in protecting the right of citizens and voters, statewide, to draft, circulate, submit, and later defend their initiatives. Without their participation, the Court would not have seen

this case from the perspective of the private citizens who receive no pecuniary benefit except that experienced by all other taxpayers.

**3) THE NECESSITY AND FINANCIAL BURDEN OF PRIVATE ENFORCEMENT MAKE THE AWARD APPROPRIATE.**

Petitioners' participation in the administrative and judicial proceedings in this case were necessary for several reasons. Their actions "enhance[d] both the substantive fairness and completeness of the judicial evaluation of the initiative's validity and the appearance of procedural fairness that is essential if a court decision adjudicating the validity of a voter-approved initiative measure is to be perceived as legitimate by the initiative's supporters." (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1151.) Further, the risk that the City would not proceed with the defense is too great: The Petitioners could not sit back and hope their constitutional and reserved rights would be protected without their participation. Lastly, Petitioners contributed significantly to the defense of Proposition B throughout this action by presenting, highlighting and defending key dispositive arguments.

***i. Through their participation, Petitioners were vindicating a different right than the City.***

Petitioners have always been necessary to the prosecution of this matter. Despite the City's defense of Proposition B, through their actions Petitioners were vindicating a different right than the City. Necessity in an election case differs from other cases where the private party enters a case on the same side as the government. (*See, c.f. San Diego Municipal Employees Association v. City of San Diego* (2016) 244 Cal.App.4th 906.) Election cases are unique because of the reserved power and constitutional interests at stake. (*Perry, supra*, at 1148-49; *Building Industry Association v. City of Camarillo* (1986) 41 Cal.3d 810, 822.)

In the pre-election context, Petitioners' role was to vindicate their own right, and the right of all citizens, under the California Constitution and statutory provisions, to have their measure submitted, circulated, and put to a vote of the people. (*Perry, supra*, at 1146-47, citing *Building Industry Ass'n, supra*.) The City had no interest or duty to defend the validity of a law that had not been enacted. (*Id.*) In post-election cases, although public officials ordinarily have the obligation to defend a challenged law, there is a realistic risk that the public officials may not defend the approved initiative measure with vigor. According to this Court in *Perry*, "this enhanced risk is attributable to the unique nature and purpose of the initiative power, which gives the people the right to adopt into law measures that their elected officials have not adopted and may often oppose." (*Id.* at 1149.) Petitioners here were acting "in an analogous and complementary capacity to those public officials" and participated in this action on behalf of the people's interests. (*Id.*)

Any claim that the City defended Proposition B, making Petitioners' defense unnecessary, would be an attempt to re-write history. Petitioners could not sit back and wait to see how the City would handle the defense. The record and the Court of Appeal's decision are replete with references to the fact that a majority of the San Diego City Council did not support Proposition B. At the PERB administrative hearing, there was no precedent on whether the City's "duty to defend" an adopted initiative extends to administrative proceedings. There was always a risk that the City could settle with the Charging Parties as was done in the City of San Jose Pension *Quo Warranto* litigation, jeopardizing the citizens' right of initiative. (Declaration of James P. Lough in Support of Petitioners' Motion for Attorney's Fees (Exh. E: "Lough Decl." p. 10 ¶ 24); Declaration of Kenneth H. Lounsbery in Support of Proponents' Motion for Attorney's Fees (Exh.