COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S189476

KRISTIN M. PERRY, et al.,
Plaintiffs and Respondents,

v.

EDMUND G. BROWN, et al.,
Defendants,

and

DENNIS HOLLINGSWORTH, et al.,
Defendants and Appellants.

After a Request to Answer a Question of State Law by the United States Court of Appeals for the Ninth Circuit
(Case No. 10-16696)

On Appeal from the
United States District Court for the Northern District of California
(Case No. 3:09-cv-02292-VRW, Honorable Vaughn R. Walker, Judge)

APPLICATION FOR PERMISSION TO FILE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, WARD CONNERLY, GLYNN CUSTRED, RON UNZ, AND THE HOWARD JARVIS TAXPAYERS ASSOCIATION IN SUPPORT OF DEFENDANTS, INTERVENORS, AND APPELLANTS

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APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND BRIEF AMICUS CURIAE

Pursuant to Rule of Court 8.520(f)(1), Pacific Legal Foundation (PLF), Ward Connerly, Glynn Custred, Ron Unz, and the Howard Jarvis Taxpayers Association (HJTA) respectfully apply for permission of the Chief Justice to file this amicus brief in support of Defendants, Intervenors, and Appellants.

IDENTITY AND INTEREST OF APPLICANTS

Pacific Legal Foundation (PLF) is the oldest public interest legal foundation that litigates for limited government, private property rights, free enterprise, and equal treatment by government of all people regardless of their race or ethnicity. PLF attorneys have frequently been called upon to enforce and defend ballot measures that have been approved by California voters. For instance, PLF is the leading litigator to defend and enforce Proposition 209 (Article I, section 31, of the California Constitution), which bars discrimination and preferences in government contracting, employment, and education on the basis of race, ethnicity, or sex. *See, e.g., Coral Constr., Inc. v. City & County of San Francisco*, 50 Cal. 4th 315 (2010); *C&C Constr., Inc. v. Sacramento Mun. Util. Dist.*, 122 Cal. App. 4th 284 (2004); *Crawford v. Huntington Beach Union High Sch. Dist.*, 98 Cal. App. 4th 1275 (2002); *Connerly v. State Pers. Bd.*, 92 Cal. App. 4th 16 (2001); and *Hi-Voltage Wire Works, Inc. v. City of San Jose*, 24 Cal. 4th 537 (2000). On some occasions,

PLF has represented the sponsors of the measures themselves in actions to defend initiatives from legal challenge. *See, e.g., Coal. to Defend Affirmative Action v. Schwarzenegger*, No. 10-641 SC, 2010 U.S. Dist. LEXIS 129736 (N.D. Cal. Dec. 8, 2010), *appeal filed, Coal. to Defend Affirmative Action v. Brown*, No. 11-15100 (9th Cir. docketed Jan. 13, 2011) (representing Proposition 209 sponsor Ward Connerly and American Civil Rights Foundation to defend Proposition 209 against a federal Equal Protection Clause challenge); *Coal. for Econ. Equity v. Wilson*, 946 F. Supp. 1480 (N.D. Cal. 1996), *vacated*, 122 F.3d 692 (9th Cir. 1997) (representing Californians Against Discrimination and Preferences—the political committee that led the electoral campaign for Proposition 209—against a federal challenge to the initiative); *Legislature v. Eu*, 54 Cal. 3d 492 (1991) (representing sponsors of Proposition 140, the legislative term-limits initiative, to defend it against a constitutional challenge); and *Valeria G. v. Wilson*, 12 F. Supp. 2d 1007, 1011 n.3 (N.D. Cal. 1998), *aff'd, G. Valeria v. Davis*, 307 F.3d 1036 (9th Cir. 2002) (representing the State Board of Education in defending Proposition 227, the citizen initiative that replaced bilingual education with sheltered English immersion).

Ward Connerly is founder and president of the American Civil Rights Institute and was chief sponsor of Proposition 209. Because of the frequent refusal of various local and state officials to abide by Proposition 209's

mandates, Mr. Connerly in his individual capacity and through the American Civil Rights Foundation has often been required to litigate against violations of the initiative. *See, e.g., Connerly v. State*, No. 34-2010-80000412 (Sacramento County Super. Ct. filed Jan. 6, 2010); *American Civil Rights Foundation v. Berkeley Unified Sch. Dist.*, 172 Cal. App. 4th 207 (2009); *American Civil Rights Foundation v. L.A. Unified Sch. Dist.*, 169 Cal. App. 4th 436 (2008); and *Connerly*, 92 Cal. App. 4th 16. Through Proposition 209's sponsorship committee, Mr. Connerly intervened to defend the measure from a constitutional challenge. *Coal. for Econ. Equity*, 946 F. Supp. 1480. Recently, Mr. Connerly and the American Civil Rights Foundation intervened to defend Proposition 209 in another federal challenge where, to this point at least, the state defendants have failed to defend Proposition 209. *See Coal. to Defend Affirmative Action v. Schwarzenegger*, No. 10-641 SC, 2010 U.S. Dist. LEXIS 129736 (N.D. Cal. Dec. 8, 2010), *appeal filed, Coal. to Defend Affirmative Action v. Brown*, No. 11-15100 (9th Cir. docketed Jan. 13, 2011).

Glynn Custred was one of the authors and principal sponsors of Proposition 209. He joined Mr. Connerly, as part of Proposition 209's sponsorship committee, in intervening permissively to defend the measure in *Coal. for Econ. Equity*, 946 F. Supp. 1480.

Ron Unz was the author and co-sponsor of Proposition 227, the "English for the Children" initiative, adopted by the California electorate in 1998. Proposition 227 replaced California's bilingual education programs in public schools with a system of sheltered English immersion. Through his organization One Nation/One California, Mr. Unz intervened to defend his initiative against a constitutional challenge. *See Valeria G.*, 12 F. Supp. 2d at 1011 n.3.

Howard Jarvis Taxpayers Association was founded by Howard Jarvis shortly after California voters approved his property tax limitation measure, Proposition 13, in 1978. Since that time, the Howard Jarvis Taxpayers Association has repeatedly sponsored and supported successful ballot initiatives, including, in 1986, Proposition 62, which provides that general taxes must receive a majority vote from local voters to be effective, and, in 1996, Proposition 218, which requires local governments to obtain voter approval to impose various fees and assessments. The Howard Jarvis Taxpayers Association has regularly sued government officials and agencies to enforce these measures. *See, e.g., Howard Jarvis Taxpayers Ass'n v. City of Fresno*, 127 Cal. App. 4th 914 (2005); *Howard Jarvis Taxpayers Ass'n v. County of Orange*, 110 Cal. App. 4th 1375 (2003); *Howard Jarvis Taxpayers Ass'n v. City of Salinas*, 98 Cal. App. 4th 1351 (2002); *Howard Jarvis Taxpayers Ass'n v. City of La Habra*, 25 Cal. 4th 809 (2001); and *Howard*

Jarvis Taxpayers' Ass'n v. State Bd. of Equalization, 20 Cal. App. 4th 1598 (1993). Recently, it has acted as an intervenor to defend Proposition 13 from legal attack. *See Young v. Schmidt*, No. BC422770 (L.A. County Super. Ct. filed Sept. 29, 2009). In *Santa Clara County Local Transp. Auth. v. Guardino*, 11 Cal. 4th 220 (1995), Howard Jarvis Taxpayers Association appealed as the real party in interest successfully to defend Proposition 62 against a local government's constitutional attack. 11 Cal. 4th at 239-61.

Because of its extensive background representing sponsors of initiatives in challenges to their handiwork, PLF has a direct interest in the issue at hand: Whether sponsors have standing under California law to defend their initiatives from post-approval attacks. PLF's experience litigating in defense of challenged initiatives will also aid this Court in assessing key issues of this case.

Amici Connerly, Custred, Unz, and HJTA bring to this case an interest as sponsors of initiatives, and a hard-won understanding of the importance of allowing sponsors to defend voter-enacted initiatives—and, by extension, the initiative process itself—when government officials decline to do so.

As Appellants demonstrate, well-settled California case law recognizes the authority of ballot member proponents to defend their measures against challenges. Amici will assist the Court by underscoring that this legal

principle is consistent with the intent of the authors of California's initiative process and the courts' duty to safeguard that process.

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, WARD CONNERLY, GLYNN CUSTRED, RON UNZ, AND THE HOWARD JARVIS TAXPAYERS ASSOCIATION IN SUPPORT OF DEFENDANTS, INTERVENORS, AND APPELLANTS

INTRODUCTION

For 100 years, the California Constitution has granted voters the power to enact laws and constitutional amendments through the exercise of direct democracy. This Court has long acknowledged the importance of the initiative process for the vitality of California democracy and as a means of holding the elected branches accountable.

> The amendment of the California Constitution in 1911 to provide for the initiative and referendum signifies one of the outstanding achievements of the progressive movement of the early 1900's. [It rests on] the theory that all power of government ultimately resides in the people . . . . The courts have described the initiative and referendum as articulating "one of the most precious rights of our democratic process."

Fair Political Practices Comm'n v. Superior Court, 25 Cal. 3d 33, 41 (1979) (citations omitted). Often, citizens invoke this "precious right" precisely because the elected branches have declined to act in accordance with the popular will. *See, e.g.*, K.K. DuVivier, *The United States as a Democratic*

Ideal? International Lessons in Referendum Democracy, 79 Temp. L. Rev. 821, 833 (2006).

At issue here is whether elected officials can short-circuit the constitutionally prescribed mechanisms of direct democracy if they don't want to be second-guessed or held accountable by the voters. Specifically, if elected officials oppose a ballot measure, and carry their opposition to the point of refusing to defend it in court, can those officials effectively *veto* an initiative that has been approved by the people? The answer is no. It is a well-settled principle of California law that initiative sponsors should be permitted to defend their duly-enacted measures in court when necessary "to guard the people's right to exercise initiative power." *Bldg. Indus. Ass'n of S. Cal., Inc. v. City of Camarillo*, 41 Cal. 3d 810, 822 (1986). Examples of the practice of allowing sponsors to defend their initiatives in court are many. *See, e.g., Citizens for Jobs & the Economy v. County of Orange*, 94 Cal. App. 4th 1311, 1316 (2002); *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216, 243 (1994); *Amwest Surety Ins. Co. v. Wilson*, 11 Cal. 4th 1243, 1251 (1995); *Eu*, 54 Cal. 3d at 499; and *Cmty. Health Ass'n v. Bd. of Supervisors*, 146 Cal. App. 3d 990, 992 (1983).

This principle is consistent with—indeed, demanded by—the concept and purpose of the initiative process. In recognizing sponsors' standing, courts

fulfill their duty to "jealously" protect the vitality of the initiative process and the peoples' rights that it embodies.

ARGUMENT

I

SPONSORS' STANDING TO DEFEND THEIR INITIATIVES IS CONSISTENT WITH THE CONCEPT UNDERLYING THE INITIATIVE PROCESS: THE SOVEREIGNTY OF THE PEOPLE

The well-settled principle that sponsors may defend ballot measures reflects the importance that the California Constitution attaches to the initiative process and the concept that underlies it—the sovereignty of the people. Ultimate political authority in California does not lie with any one of the elected branches, but with the public as a whole. Cal. Const. art. II, § 1 ("All political power is inherent in the people.").

The sovereignty of the people is articulated in the very opening lines of the 1849 and 1879 California Constitutions. The preamble of the former states: "WE the people of California, grateful to Almighty God for our freedom: in order to secure its blessings, do establish this Constitution." Cal. Const. preamble (1849). The preamble of the latter states: "We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution." Cal. Const. preamble (1879). Both sentences make clear that it is the people who

precede—and "establish"—the Constitution and *all the offices instituted through the Constitution.*

The initiative process is an institutional expression of the sovereignty of the people. Advocating adoption of the process, in his first inaugural address in 1911, Governor Hiram Johnson tied it explicitly to the principle of popular rule: "A successful and permanent government must rest primarily upon the recognition of the rights of men and the absolute sovereignty of the people." *Quoted* in George E. Mowry, *The California Progressives* 139 (1951).

The California Constitution unambiguously links the voters' sovereignty and the voters' power of initiative: "The legislative power of this State is vested in the California Legislature . . ., but the people *reserve to themselves* the powers of initiative and referendum." Cal. Const. art. IV, § 1 (emphasis added). Indeed, such is the deference to the initiative process that the Legislature may not amend or repeal a law so adopted without voter approval, unless the ballot measure itself provides otherwise. Cal. Const. art. II, § 10(c).

By definition, therefore, the initiative power cannot be made dependent on elected officials. Allowing elected officials to interfere with this process—by allowing them effectively to veto a ballot measure by refusing to defend it—would amount to a denial of the people's "absolute sovereignty."

"[W]hen state officials block initiatives by surreptitiously undermining them," they assault the sovereignty of the people because "they follow their own preferences rather than those of the voters, and they do so in ways designed to reduce accountability." Elizabeth Garrett & Mathew D. McCubbins, *The Dual Path Initiative Framework*, 80 S. Cal. L. Rev. 299, 309 (2007).

Unfortunately, examples of elected officials "follow[ing] their own preferences" to the detriment of voters' rights, are not hard to find. Perhaps most flagrant have been the attempts to undermine Proposition 209 by two successive attorneys general. In a case before this Court, Attorney General Bill Lockyer sided with the City of San Jose in arguing for a much diluted interpretation of Proposition 209, so that its explicit prohibition on race- and sex-based preferences would have no teeth. *Hi-Voltage*, 24 Cal. 4th at 540. Even after losing that effort to water down the initiative, Mr. Lockyer indicated he would not enforce it against government jurisdictions that were in violation. *See* Kevin Yamamura, *Group: Lockyer 'Shirked Duty' on 209*, The Sacramento Bee, Nov. 6, 2001. Lockyer's successor continued the battle against a rigorous interpretation and application of Proposition 209. In 2009, then-Attorney General Jerry Brown urged this Court to hold that Proposition 209 is unconstitutional to the extent it goes beyond federal Equal Protection decisions in outlawing preferences and discrimination. *See*

Attorney General Brown's April 22, 2009 Letter Brief to this Court at 1, *Coral Constr., Inc. v. City & County of San Francisco*, 50 Cal. 4th 315 (2010) (No. S152934).

In a similar vein, in *Eu*, the secretary of state argued that Proposition 140's term limits should be construed as a limit on consecutive terms, rather than on cumulative time served in a specific office, as argued by the sponsor-intervenor Californians for a Citizen Government; the Court ruled in favor of the sponsor's interpretation. 54 Cal. 3d at 503.

Assaults on the initiative process by elected officials are contrary to the sovereignty of the people, and they underscore the need for safeguarding both. The courts, in recognizing that initiative sponsors may defend their handiwork if elected officials fail to do so, are upholding the core constitutional principle that "all political power" in this state "is inherent in the people."

II

SPONSORS' STANDING TO DEFEND THEIR INITIATIVES IS CONSISTENT WITH THE PURPOSE OF THE INITIATIVE PROCESS: TO FACILITATE DIRECT DEMOCRACY, UNMEDIATED BY ELECTED OFFICIALS

The well-settled principle of California case law that sponsors have standing to defend their initiatives, particularly if elected officials choose not to do so, is consistent with the fundamental purpose of the initiative process. That purpose is to give the people a route around the elected branches of

government, to enact laws and constitutional amendments, a route that would be especially useful when elected officials are obstructing the popular will.

In creating the initiative process, the authors demonstrated they "did not like intermediaries" between voters and the enactment of popularly supported measures. Jim Moroney, *The Initiative in Theory and Practice* 7 (1980) (unpublished M.P.A. thesis, California State University, Sacramento) (on file with California State University, Sacramento Library) (citations omitted). Governor Hiram Johnson articulated this concern in his 1911 inaugural address—arguing, in essence, that the initiative was needed so the people, when necessary, could govern *directly*, and pull rank on the elected branches of government:

> How can we best arm the People to protect themselves hereafter? If we can give to The People the means by which they may accomplish such other reforms as they desire, the means as well by which they may prevent the misuse of the power temporarily centralized in the Legislature and an admonitory and precautionary measure which will ever be present before weak officials, ... This means for accomplishing other reforms has been designated the "Initiative and the Referendum," and the precautionary measure the "Recall." And while I do not by any means believe [they] are the panacea for all our political ills, yet *they do give to the electorate the power of action when desired, and they do place in the hands of The People the means by which they may protect themselves*. [They represent] the first step in our design to preserve and perpetuate popular government.

Quoted in V.O. Key, Jr. & Winston W. Crouch, *The Initiative and the Referendum in California* 435 (1939) (emphasis added).

Giving the people "the means [to] protect themselves" from misuse of the legislative process by elected officials meant keeping those officials well clear of the machinery of the initiative. For instance, the governor has no authority either to ratify an initiative proposal, or to veto one. *See* Cal. Const. art. II, § 10(a); *Kennedy Wholesale, Inc. v. State Bd. of Equalization*, 53 Cal. 3d 245, 252 n.5 (1991). Likewise, as noted above, the legislative branch may not modify a successful initiative unless the measure so authorizes. Cal. Const. art. II, § 10(c). *See also* Joseph R. Grodin, *The California State Constitution: A Reference Guide* 69 (1993). In fact, California is the only state with an initiative process that denies legislators this power. *Id.*

Excluding elected officials from the process is entirely appropriate, because it was designed to allow action by the people when elected officials fail to act. Time and again, voters have taken the reins in their hands and used the initiative for precisely this purpose. *See, e.g., Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208 (1978) (voters limited property taxes); *Eu*, 54 Cal. 3d 492 (voters approved term limits for state legislators); *Hi-Voltage*, 24 Cal. 4th 537 (voters outlawed race- and sex-based discrimination in public employment, contracting, and education); *Valeria G.*, 12 F. Supp. 2d at 1011 n.3, *aff'd, G. Valeria*, 307 F.3d 1036 (voters replaced California's bilingual education programs in public schools with a system of sheltered English immersion); and *Kwikset Corp. v. Superior*

Court, 51 Cal. 4th 310 (2011) (voters acted to curb "shakedown lawsuits" being filed under a state consumer-protection law).

In litigation over Proposition 140, the initiative that imposed term limits on members of the Legislature, this Court acknowledged that the initiative process cannot be interfered with by elected officials, because that would dilute its power to provide voters an independent means of implementing change, including reforms directed at the elected branches themselves:

> To hold that reform measures such as Proposition 140, which are directed at reforming the Legislature itself, can be initiated only with the Legislature's own consent and approval, could eliminate the only practical means the people possess to achieve reform of that branch. Such a result seems inconsistent with the fundamental provision of our Constitution placing "[a]ll political power" in the people. (*Id.*, art. II, § 1.) As that latter provision also states, "Government is instituted for [the people's] protection, security, and benefit, *and they have the right to alter or reform it* when the public good may require."

Eu, 54 Cal. 3d at 511.

By the same token, to hold that a ballot measure can take effect only with the consent of the governor or the attorney general—through their agreement to defend it if challenged in court—would deal a blow to the initiative as a vehicle of direct democracy.

Indeed, the question of whether the fate of initiatives can be entrusted to elected officials, and their choices as to whether a measure should be defended, is of high interest to all Californians, not just to the Appellants in this particular case. The frequency with which ballot sponsors have had to

resort to the courts just to enforce their measures shows that state officials cannot be automatically relied on to guard the integrity of the initiative process.

For instance, because of the refusal of successive California Attorneys General to enforce Proposition 209, Amicus Ward Connerly has had to take it upon himself to ensure that all levels of California government abide by the state constitution's colorblind command. *See, e.g., Connerly v. State*, No. 34-2010-80000412 (Sacramento County Super. Ct. filed Jan. 6, 2010) (challenging an attempt by the California Legislature to ignore Proposition 209's commands); *Connerly*, 92 Cal. App. 4th 16 (successfully challenging several state statutes as violating Proposition 209). *See also American Civil Rights Foundation v. City of Oakland*, No. RG07334277 (Alameda County Super. Ct. filed July 6, 2007) (challenging the constitutionality of Oakland's Airport Concession Disadvantaged Business Enterprise Program on the grounds that it violates Section 31); and *Coal. to Defend Affirmative Action v. Schwarzenegger*, No. 10-641 SC, 2010 U.S. Dist. LEXIS 129736 (N.D. Cal. Dec. 8, 2010), *appeal filed, Coal. to Defend Affirmative Action v. Brown*, No. 11-15100 (9th Cir. docketed Jan. 13, 2011) (intervening to defend Proposition 209 in a case where, to this point at least, state defendants have yet to defend Proposition 209 on the merits).

Similarly, Amicus Howard Jarvis Taxpayers Association has found it necessary to enforce its sponsored initiatives against recalcitrant government jurisdictions. *See, e.g., City of Fresno*, 127 Cal. App. 4th 914 (challenge to city's utility fee under Proposition 218); *County of Orange*, 110 Cal. App. 4th 1375 (challenge to city's excess taxes for retirement benefits under Proposition 13); *City of Salinas*, 98 Cal. App. 4th 1351 (challenge to city's utility fee under Proposition 218); *City of La Habra*, 25 Cal. 4th 809 (2001) (challenge to city's utility tax under Proposition 62); and *State Bd. of Equalization*, 20 Cal. App. 4th 1598 (challenge to county's ad valorem taxes under Proposition 13).

Likewise, attorneys with Amicus Pacific Legal Foundation have frequently been called upon to enforce and defend ballot measures, often on behalf of those measures' sponsors. *See, e.g., Coral Constr.*, 50 Cal. 4th 315 (successfully arguing to this Court that Proposition 209 does not conflict with the United States Constitution); *C&C Constr.*, 122 Cal. App. 4th 284 (challenging a city's race- and sex-based public contracting preferences as violating Proposition 209); *Crawford*, 98 Cal. App. 4th 1275 (challenging a school district's race-conscious student-transfer policy and an enabling state statute as violating Proposition 209); *Hi-Voltage*, 24 Cal. 4th 537 (challenging a city's race- and sex-based public contracting preferences as violating Proposition 209); *Coal. for Econ. Equity*, 946 F. Supp. 1480, *vacated*,

122 F.3d. 692 (representing sponsors in the district court against a federal challenge to Proposition 209); and *Eu*, 54 Cal. 3d 492 (representing sponsors of Proposition 140 against a constitutional challenge).

The initiative process is of the people, by the people, and for the people. The Constitution does not entrust elected officials with a role in the process of enacting measure through this process—and for good reason, as is shown by the many examples, above, of enforcement falling to sponsors because elected officials stood back. Therefore, the well-settled principle of case law that gives sponsors standing to defend their initiatives from legal challenges when office-holders fail to do so, is consistent with the fundamental purpose of the initiative process, because it prevents the subversion of that process through the back-door introduction of a veto power by elected officials. It would be a travesty to allow elected officials to seize, unilaterally, a decisionmaking power over initiatives that the constitution denies them.

III

STANDING FOR SPONSORS IS A DOCTRINE THAT REFLECTS THE COURTS' DUTY TO "JEALOUSLY" PROTECT THE INITIATIVE PROCESS

The well-settled principle of California case law that sponsors have standing to defend their initiatives, particularly if elected officials choose not to do so, is consistent with the duty of courts to guard the integrity of the initiative process.

This Court has long acknowledged the judiciary's responsibility in this regard.

> Declaring it "the duty of the courts to jealously guard this right of the people," the courts have described the initiative and referendum as articulating "one of the most precious rights of our democratic process." "[It] has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it."

Fair Political Practices Comm'n, 25 Cal. 3d at 41 (citations omitted). *See, e.g.*, *Senate of the State of Cal. v. Jones*, 21 Cal. 4th 1142, 1157 (1999); *Raven v. Deukmejian*, 52 Cal. 3d 336, 341 (1990) ("[I]t is [the courts'] solemn duty jealously to guard the sovereign people's initiative power.") (citation omitted); *AFL-CIO v. Eu*, 36 Cal. 3d 687, 722 (1984) ("[Courts must] resolve all doubts in favor of the exercise of the initiative power, especially where the subject matter of the measure is of public interest and concern."). *Amador Valley*, 22 Cal. 3d at 248 (The initiative power is "one of the most precious rights of our democratic process.") (citation omitted).

The authority of sponsors to defend their ballot measures, when elected officials decline to do so, provides a vital protection for California's institutions of direct democracy. Therefore, the courts have been discharging their protective duty to the initiative process by recognizing that right.

CONCLUSION

The settled principle of California case law that sponsors have standing to defend initiatives when elected officials fail to do so is consistent with the purpose and underlying concept of that process, and reflective of the courts' duty to defend it. Therefore, Amici respectfully request that the Court take this occasion to reaffirm the principle.

DATED: April 29, 2011.

Respectfully submitted,

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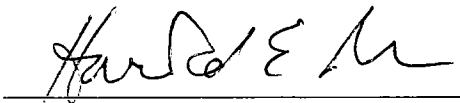
By 
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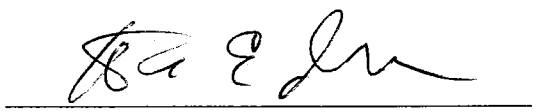
CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION FOR PERMISSION TO FILE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, WARD CONNERLY, GLYNN CUSTRED, RON UNZ, AND THE HOWARD JARVIS TAXPAYERS ASSOCIATION IN SUPPORT OF DEFENDANTS, INTERVENORS, AND APPELLANTS is proportionately spaced, has a typeface of 13 points or more, and contains 4,170 words.

DATED: April 29, 2011.



HAROLD E. JOHNSON

DECLARATION OF SERVICE BY MAIL

I, Barbara A. Siebert, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 3900 Lennane Drive, Suite 200, Sacramento, California 95834.

On April 29, 2011, true copies of APPLICATION FOR PERMISSION TO FILE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, WARD CONNERLY, GLYNN CUSTRED, RON UNZ, AND THE HOWARD JARVIS TAXPAYERS ASSOCIATION IN SUPPORT OF DEFENDANTS, INTERVENORS, AND APPELLANTS were placed in envelopes addressed to:

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which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 29th day of April, 2011, at Sacramento, California.

Barbara A. Siebert
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