IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S242034

CATHERINE A. BOLING; T.J. ZANE; and STEPHEN B. WILLIAMS;
Petitioners,
v.
PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent,
and
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.

After an Opinion by the Court of Appeal, Fourth Appellate District, Division One, Consolidated Case Nos. D069626 and D069630

APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, HOWARD JARVIS TAXPAYERS ASSOCIATION, AND NATIONAL TAX LIMITATION COMMITTEE IN SUPPORT OF REAL PARTY IN INTEREST CITY OF SAN DIEGO

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INTRODUCTION

APPLICATION TO FILE BRIEF AMICUS CURIAE

Pursuant to California Rules of Court Rule 8.520(f)(2), Pacific Legal Foundation, Howard Jarvis Taxpayers Association, and National Tax Limitation Committee request permission to file the accompanying brief in support of Real Party in Interest City of San Diego.

IDENTITY OF AMICI

Pacific Legal Foundation (PLF) is a nonprofit public interest legal organization that litigates for limited government, property rights, individual rights, and free enterprise. Founded in 1973 and headquartered in Sacramento, PLF has a long history of participating in legal actions to defend the electorate's use of the initiative and other constitutionally guaranteed instruments of direct democracy to enforce limits on government power, foster restraint in taxation, spending, and borrowing, and uphold principles of equal rights. For instance, in *Pension Obligation Bond Committee v. All Persons Interested*, 152 Cal. App. 4th 1386 (2007), PLF successfully defended voters' rights, under Cal. Const. art. XVI, § 1, to have the direct, final say on major long-term borrowing by the state. In *Perry v. Brown*, 52 Cal. 4th 1116 (2011), PLF submitted amicus arguments in support of the right of initiative sponsors to represent their measures against legal challenges. PLF has also been the leading litigator to defend and enforce

Proposition 209 (Cal. Const. art. I, § 31), the citizens' initiative that 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); *Hi-Voltage Wire Works, Inc. v. City of San Jose*, 24 Cal. 4th 537 (2000); *Connerly v. State Pers. Bd.*, 92 Cal. App. 4th 16 (2001). PLF has also represented initiatives' sponsors to defend their measures against direct legal challenge. *See, e.g., Coalition to Defend Affirmative Action v. Brown*, 674 F.3d 1128 (9th Cir. 2012) (representing Proposition 209 sponsor Ward Connerly and American Civil Rights Foundation to defend Proposition 209 against a federal Equal Protection challenge); *Coalition for Econ. Equity v. Wilson*, 946 F. Supp. 1480 (N.D. Cal. 1996), *vacated*, 122 F.3d 692 (9th Cir. 1997) (representing the political committee that led the electoral campaign for Proposition 209, against a federal challenge to the initiative); *and Legislature v. Eu*, 54 Cal. 3d 492 (1991) (representing sponsors of Proposition 140, the legislative term-limits initiative, against a constitutional challenge to the measure).

The National Tax Limitation Committee (NTLC) is one of the oldest and most strategically oriented pro-taxpayer/entrepreneur organizations in America. Established in 1975, and headquartered in Roseville, California, NTLC grew out of the work that Founder and President Lewis K. Uhler undertook with California Governor Ronald Reagan to devise strategies to control the size and growth of government. NTLC's mission is to make

structural changes in fiscal and governance practices at all levels of government, and to limit and control taxes and spending, so as to enhance the power and freedom of individuals and their enterprises. Of particular relevance to issues in this case, Mr. Uhler worked on Proposition 1, a spending-limitation initiative which, although generated by Governor Reagan, qualified for the statewide ballot in 1973 as a citizens' initiative through signature gathering. *See* Stephen Goode, *A Formula for Cutting Government Spending,* Insight on the News, Vol. 15, at 21, June 7, 1999. Mr. Uhler also worked with Los Angeles County Supervisor Pete Schabarum to promote Proposition 140, the citizens' initiative that established term limits for state legislators. Steve Swatt, *Game Changers: Twelve Elections That Transformed California* 197 (2015).

The Howard Jarvis Taxpayers Association (HJTA), is a nonprofit public benefit corporation, comprised of over 200,000 individual and corporate California taxpaying members. HJTA was founded by Howard Jarvis shortly after California voters approved his property tax limitation measure, Proposition 13, in 1978. Since that time, HJTA 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. HJTA 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).

With expertise derived from their history of applying and defending initiative rights, Amici will assist this Court by examining the importance of those rights and detailing how the Public Employment Relations Board acted, unconstitutionally, to subvert them.

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, HOWARD JARVIS TAXPAYERS ASSOCIATION, AND NATIONAL TAX LIMITATION COMMITTEE IN SUPPORT OF REAL PARTY IN INTEREST CITY OF SAN DIEGO

INTRODUCTION AND SUMMARY OF ARGUMENT

In the ruling below, the Fourth District Court of Appeal upheld the people's right to engage in direct democracy, by voiding an edict by the Public Employment Relations Board (PERB) that made the exercise of that right, in some cases, contingent on pre-approval by public officials and special interests. *Boling v. Public Employment Relations Board*, 10 Cal. App. 5th 853, 876 (2017). Amici submit this brief to urge the Court to likewise reject PERB's edict and affirm the integrity of the citizens' initiative process.

The right of the people of California to propose legislation by citizens' initiative is "one of the most precious rights of our democratic process." *Associated Home Builders of The Greater Eastbay, Inc. v. City of Livermore*, 18 Cal. 3d 582, 591 (1976). As set forth in the Constitution, the initiative process gives practical, dynamic expression to the foundational principle of California's governmental system, that "[a]ll political power is inherent in the people." Cal. Const. art. II, § 1. It is a core legislative power that is not granted to the people, but one that they "reserve" to themselves. Cal. Const. art. IV, § 1.

PERB subverted that constitutionally protected right by subjecting and subordinating it to a statutory scheme that has no application to the initiative process. PERB nullified the reforms implemented by a validly enacted citizens' initiative—San Diego's Comprehensive Pension Reform Initiative (CPRI)—by declaring that it should have been run through "meet and confer" negotiations between public officials and labor leaders, as if it were a piece of formal government legislation, not a proposal by the people. Allowing political officials and special interests to vet, and perhaps veto, an initiative proposal does violence to the whole purpose of the initiative process—to be an instrument of direct, unmediated, unimpeded citizen lawmaking. Moreover, PERB imposed the meet and confer system on the initiative process even though the statute establishing that system, the Meyers-Milias-Brown Act (MMBA, Gov't Code § 3500, *et seq.*), makes no

mention of the initiative. PERB's action contradicted the principle underlying *California Cannabis Coalition v. Upland* (hereafter, *Upland*), where this Court held that even a separate, voter-enacted constitutional provision cannot be read as limiting the initiative power unless it includes a "clear statement" to that effect. 3 Cal. 5th 924, 946 (2017).

PERB rationalizes this grafting of statutory procedural requirements onto the constitutional framework by asserting that a city official—San Diego's mayor, supposedly acting in some kind of city-sanctioned capacity—took a leading role in formulating and promoting CPRI, so it should be deprived of the respect due a "pure" citizens' initiative. PERB's Reply Brief at 29. But the nature and extent of the mayor's involvement is not relevant from the perspective of the Constitution. Just as there is no provision in the MMBA that makes any reference to the initiative process, there is no provision in the Constitution that is concerned with who might have inspired, conceived of, campaigned for, or even underwritten a proposed initiative. What defines a proposal as a citizens' initiative—legislation proposed by the public, not the public sector—is that it receives support from the required number of voters ("electors"). Cal. Const. art. II, § 8(a). CPRI met that test, qualifying for the ballot with at least 94,346 valid signatures, and subsequently winning a 65.81 percent majority at the polls. City's Answer Brief at 12, 13.

Those voters were exercising "precious" constitutional rights. Amici respectfully urge that PERB's assault on those rights be rejected and the Fourth District's vindication of them be upheld.

ARGUMENT

PERB SUBVERTED THE PEOPLE'S RIGHTS BY BURDENING THE CONSTITUTIONALLY GUARANTEED INITIATIVE PROCESS WITH STATUTORY RESTRICTIONS THAT HAVE NO APPLICATION

PERB subverted the people's reserved legislative rights by introducing a vetting process for at least some citizens' initiatives, giving public officials and special interest a potential power of pre-clearance over measures proposed by the public. It did so by grafting onto the constitutional framework for the initiative process part of the statutory scheme laid out in the MMBA. Yet that statute has no explicit or implicit application to initiatives. Indeed, just the opposite: Not only does its text make no mention of the initiative process, its provisions for "meeting and conferring" by government and labor leaders are in direct conflict with the initiative's purpose of allowing the people to legislate directly, without pre-approval by the politically powerful.

I. The Citizens' Initiative Allows the People To Exercise Their Reserved Legislative Powers by Engaging In Direct Participatory Democracy Without Interference by Government or Special Interests

The local and statewide initiative processes are interpreted in a parallel way. *See, e.g., Rossi v. Brown*, 9 Cal. 4th 688, 695 (1995). At both levels, the initiative serves as a "legislative battering ram," allowing voters to "tear through the exasperating tangle of the traditional legislative procedure and strike directly toward the desired end." *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 228 (1978). In other words, the initiative is an instrument of direct democracy, allowing exercise of the people's "inherent political power." *See, e.g., Spencer v. City of Alhambra*, 44 Cal. App. 2d 75, 77 (1941).

At the local level, this power of the people to take the helm and chart their own governmental future has antecedents dating to Colonial New England's town meetings. Tracy M. Gordon, *The Local Initiative in California*, p. 7, Public Policy Institute of California (2004). In California, the assertion of local initiative rights by some communities predates the 1911 constitutional amendments that ensured them for all. "[B]y 1910, 20 charter cities in California—including . . . San Diego . . . —had implemented the initiative, the referendum, or both." *Id.* p. 8.

The Constitution defines the initiative process with elegant concision: It is the "power of the electors to propose statutes and amendments . . . and

to adopt or reject them." Cal. Const. art. II, § 8. It reflects "the theory that all power of government ultimately resides in the people" *Associated Home Builders*, 18 Cal. 3d at 591. Therefore, the Constitution neither establishes nor permits any bureaucratic gatekeeping authority that could dictate to the people the proposals they are allowed to bring forward.

In ruling on the legislative term limit initiative, this Court emphasized how it would violate the spirit and purpose of the initiative process to subject a proposal from the public to preclearance by the powerful:

> 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.

The Constitution's protection of voters' initiative rights from outside interference extends even beyond the point of a measure's enactment. Unique among the states that have initiative processes, the California Constitution allows only the voters themselves to amend an initiative after its implementation, unless the initiative explicitly grants the Legislature the power to do so. Cal. Const. art. II, § 10(c). *See also*, Joseph R. Grodin, *The*

California State Constitution: A Reference Guide 69 (Greenwood Press, 1993).

In sum, the initiative right is a core power of the people, enshrined in and protected by the Constitution but preceding the Constitution itself in its origins and dignity. Not even elected legislators may abridge this fundamental right, let alone an unelected agency like PERB.

II. PERB Undermined the People's Right of Direct Democracy by Grafting the Statutory "Meet and Confer" System Onto the Initiative Process in Some Cases, Allowing Interference by Bureaucrats and Special Interests

Direct legislation plays a "near sacrosanct role . . . in the California governmental system as a safety valve for direct participatory democracy." Karl Manheim & Edward P. Hopper, *A Structural Theory of the Initiative Power in California*, 31 Loy. L.A. L. Rev. 1165, 1197 (June, 1998) (citing Cal. Const. art. II, § 10(c)).

PERB tampered with the Constitution's "near sacrosanct" constitutional provisions for direct democracy by introducing a bureaucratic checkpoint and review process, at least for some citizens' initiatives, in the form of the MMBA's "meet and confer" requirements. This statutory overlay on the constitutional framework would give government and labor officials a pre-clearance power over the proposed initiative or its subject matter. PERB's ruling would rob the initiative of its role as a "legislative battering ram . . . tear[ing] through the exasperating tangle of the traditional legislative

procedure." *Amador Valley Joint Union High Sch. Dist.*, 22 Cal. 3d at 228. Instead, it would enmesh a citizens' initiative and its sponsors in precisely that "traditional legislative procedure," holding the proposal hostage to the very administrative authorities that the initiative process is designed to skirt. PERB's ruling in effect amounts to a unilateral *amendment* that turns the constitutional scheme on its head, substituting a direct route for citizen legislation with an uncertain path obstructed by bureaucratic obstacles.

In contrast to PERB's rash willingness to transfer restrictions and procedures from the arena of government legislation to the process for citizen lawmaking, the courts have been hesitant to introduce new impediments to the people's initiative rights. In *Building Industry Association of Southern California v. City of Camarillo*, the court considered a requirement that government legislation on zoning changes include "findings" on their impact for housing. It was held that importing this requirement to citizens' initiatives would be inappropriate, because it would "place an insurmountable obstacle" in their path. 41 Cal. 3d 810, 824 (1986).

The unions in this case respond that the requirements rejected by the courts in cases like *Camarillo* were merely "procedural," while the "meet and confer" process that PERB has imposed for at least some initiatives deals with important "matters of statewide concern." Unions' Reply Brief at 36. But the MMBA additions to the initiative process should be rejected *precisely* because they are more than slight procedural adjustments, altering

the very structure of the process by introducing a vetting process with the power to derail direct democracy before it gets started.

Indeed, when it was proposed to introduce a requirement of undeniable "statewide concern" to the citizens' initiative, by requiring that voter initiatives for new taxes receive the same two-thirds majority required of tax measures in the Legislature, this Court said no. It rejected what amounted to an amendment of the initiative process that would have imposed a steep new hurdle on its exercise. *Kennedy Wholesale, Inc. v. State Bd. of Equalization*, 53 Cal. 3d 245, 251 (1991).

PERB's imposing of the statutory "meet and confer" scheme on the initiative process violated its purpose and spirit, and constituted at least as much of an impediment to the exercise of initiative rights as the additional requirements that were rejected in cases like *Camarillo* and *Kennedy Wholesale.*

III. PERB Grafted the "Meet and Confer" System Onto the Initiative Process Even Though There Was No Statutory Warrant for Doing So, as Required by the Rule Articulated In *Upland*

PERB imposed the MMBA's "meet and confer" scheme onto the initiative process, at least for some types of initiatives, even though the text of the MMBA is devoid of any mention of the initiative process, let alone any statement of intent to introduce political roadblocks, governmental checkpoints, or bureaucratic reviews into the Constitution's system for

citizen lawmaking. In taking this audacious step, PERB violated the "clear statement" rule recently enunciated by this Court in *Upland*—namely, that a legal provision will not be read "to constrain [the] exercise of the initiative power" if it does not include a "clear statement" of that purpose. 3 Cal. 5th at 946.

MMBA includes no reference to the initiative whatsoever, much less a statement of intent to constrain its exercise. In effect, PERB was amending both the MMBA and the constitutional framework for the initiative process by applying the one to the other. Indeed, it may have been acting even more aggressively than that: Two commentators on the *Upland* ruling suggest that a change to weaken the local initiative process would require a full-scale constitutional *revision*, so integral is the local citizens' initiative to the structure of rights guaranteed by the Constitution. David A. Carrillo & Darien Shanske, *California Constitutional Law: Interpreting Restrictions on the Initiative Power,* 31 U.C. Davis L. Rev. 65, 71 (2017).

The unions cite two cases where MMBA provisions have been read into the process of local legislative action involving the voters. Unions' Reply Brief at 28-30. But neither case concerned the citizens' initiative process and the broad-based legislative authority that it guarantees for the people. Instead, *People ex rel. Seal Beach Police Officers Ass'n v. City of Seal Beach* dealt with city council-sponsored charter amendments— i.e., a power to propose legislation exercised by political officials, not members of

the public. 36 Cal. 3d 591 (1984). And *Voters for Responsible Retirement v. Bd. of Supervisors of Trinity County* dealt with the power to repeal recently enacted laws—i.e., the referendum power—a more limited, context-specific exercise of direct democracy than the citizens' initiative. 8 Cal. 4th 765 (1994). As an example of the way in which the referendum's scope is more limited than the citizens' initiative, the former may not address taxation (Cal. Const. art. II, § 9), while taxation is an allowable, indeed a prime, subject matter for the initiative power. *Rossi v. Brown*, 9 Cal. 4th 688, 699 (1995).

One of the most cogent summaries of the principle that PERB violated, but that the *Upland* ruling upheld, is found in *Associated Home Builders*:

> [I]t has long been our judicial policy to apply a liberal construction to [the initiative] 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.

18 Cal. 3d at 591 (citations omitted).

However, there is no ambiguity or doubt to resolve here. PERB's importation of a "meet and confer" system to the initiative process is without any citation or other grounding in the text of the MMBA. As this Court emphasized in *Upland*, "[w]hen voters exercise the initiative power, they do so subject to precious few limits on that power." 3 Cal. 5th at 935 (citations omitted). PERB's imposition of "limits on that power" was not just

unprecedented—it violated the rich tapestry of precedents underlying the *Upland* ruling

IV. PERB Violated the Constitution—and the Rights of San Diego Voters—By Refusing To Treat the CPRI as a Citizens' Initiative Merely Because the Mayor Actively Supported It

PERB rationalizes its edict that there needed to be "meet and confer" discussions over CPRI—or at least over its subject matter—citing the mayor's "extensive actions in support" of the measure. PERB Reply Brief at 29. But the mayor's actions are not relevant from the standpoint of the Constitution. According to the Constitution, there is only one criterion that defines a measure as a citizens' initiative—that it has been proposed by "the electors"—the *voters*—in sufficient numbers to qualify for the ballot. Cal. Const. art. II, § 8(a). The electors' exercise of their constitutional right of direct democracy is what classifies a measure as a citizens' initiative. It cannot be stripped of that status based on who did or did not engage in "extensive actions in [its] support." Indeed, San Diego's mayor broke no ground in this case. There is a significant tradition of officeholders undertaking "extensive actions" in support of citizens' initiatives. In 1973, for instance, Gov. Ronald Reagan sponsored Proposition 1, a citizens' initiative to limit taxes. He was joined by Lewis K. Uhler, who later formed amicus organization on this brief, National Tax Limitation Committee. Goode, *Formula for Cutting Government Spending* at 21. And in 1990, Los Angeles County Supervisor Pete Schabarum, also joined by Lewis K. Uhler,

sponsored the term limit measure, Proposition 140. Swatt, *Game Changers* at 197. Notably, Schabarum's sponsorship—i.e., his "extensive actions in support" of Prop. 140—did not keep this Court from recognizing it as an exercise of the *people's* "reserve[d] ... power[] of initiative." *Eu*, 54 Cal. 3d at 501.

Apparently realizing it is on shaky constitutional grounds, to put it mildly, PERB protests that it did not formally "find" that the mayor's actions explicitly turned CPRI into "a City-Council sponsored measure, rather than a citizens' initiative." PERB Reply brief at 30. This amounts to semantic gamesmanship. The salient fact is that PERB *treated* CPRI as government sponsored legislation that had not complied with MMBA's requirements for government sponsored legislation. The sanction PERB imposed was targeted entirely at the initiative, branding it as invalid and "not pure," because the mayor had championed it without conducting "meet and confer" negotiations. PERB Reply Brief at 29. PERB's edict nullified the reforms implemented by CPRI, ordering the city to make employees "whole" for the compensation and benefits of which CPRI deprived them. *Boling v. Public Employment Relations Board*, 10 Cal. App. 5th 853, 866, 867 (2017). PERB protests that it was not trying to interfere with the initiative process, but merely responding to the city's failure to bargain on the pension reform agenda promoted by the mayor. PERB Reply Brief at 34. But the sanction it issued— directed so clearly at invalidating CPRI— gives the lie to that claim

and shows that PERB's agenda was to impose the MMBA regulations onto a citizens' initiative.

The tangible victims of PERB's assault on the initiative process were the tens of thousands of San Diegans who, in supporting CPRI, had exercised the reserved legislative rights that the Constitution guarantees them. The initiative's three named "proponents" were victims as well. As this Court has recognized, "in the pre-election setting," the "official proponents" who launch a citizens' initiative possess "their own personal rights and interests" in the measure. *Perry v. Brown*, 52 Cal. 4th at, 1141 (citations omitted). PERB disregarded the proponents' interests and rights, by ruling that government and union officials should have been allowed to "meet and confer" on their initiative or its subject matter—a process that could have derailed it outright or subverted it by introducing a competing measure. PERB Reply Brief at 34.

To compound its audacity, PERB insists its nullification of the reforms approved by two-thirds of the San Diego electorate deserves deferential review, because of PERB's "expertise" on issues relating to the MMBA. PERB's Reply Brief at 12. But PERB interpreted—or rather, distorted— MMBA in a way that diluted fundamental constitutional rights and disenfranchised tens of thousands of voters. Whatever its "expertise" on the MMBA, PERB's interpretation of that statute in this context cannot be given deference.

Indeed, the judiciary is the ultimate oracle on the meaning and scope of constitutional provisions and the rights they protect. *See, e.g.*, *Pension Obligation Bond Committee v. All Persons Interested*, 152 Cal. App. 4th at, 1404 (citations omitted). In the context of constitutionally protected initiative rights, that role obviously includes authority to construe other provisions—whether constitutional or statutory—that might impact those rights. Thus, this Court's burden in *Upland* was to determine whether a constitutional amendment—Proposition 218—constrained the use of the citizens' initiative. 3 Cal. 5th at 946. In sum, the courts cannot defer to PERB's misuse and misreading of the MMBA without forsaking their role as interpreter, defender, and enforcer of the Constitution and their duty to "jealously guard" the people's initiative rights. *Associated Home Builders*, 18 Cal. 3d at 591.

CONCLUSION

Amici submit that the court below was correct in ruling against PERB's edict and its subversion of the initiative process, and urge this Court to rule likewise.

DATED: November 16, 2017.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing **APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, HOWARD JARVIS TAXPAYERS ASSOCIATION, AND NATIONAL TAX LIMITATION COMMITTEE IN SUPPORT OF REAL PARTY IN INTEREST CITY OF SAN DIEGO** is proportionately spaced, has a typeface of 13 points or more, and contains 4146 words.

DATED: November 16, 2017.

s/ Harold E. Johnson

HAROLD E. JOHNSON