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Jorge Navarrete Clerk

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Deputy

IN THE  
SUPREME COURT OF CALIFORNIA

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MANNY VILLANUEVA ET AL.,  
*Plaintiffs and Appellants,*

v.

FIDELITY NATIONAL TITLE COMPANY,  
*Defendant and Respondent.*

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AFTER A DECISION BY THE COURT OF APPEAL, SIXTH APPELLATE DISTRICT  
COURT OF APPEAL NO. H041870 | SANTA CLARA COUNTY SUPERIOR COURT NO. CV173356

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REQUEST FOR JUDICIAL NOTICE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
PROPOSED ORDER

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ATTORNEYS FOR DEFENDANT AND RESPONDENT

FIDELITY NATIONAL TITLE COMPANY

**REQUEST FOR JUDICIAL NOTICE**

Pursuant to California Rules of Court, rule 8.252,  
respondent Fidelity National Title Company (Fidelity) requests  
that this court take judicial notice of the attached documents:

1. Dept. of Finance, Analysis of Sen. Bill No. 1293  
(1973-1974 Reg. Sess.)
2. Ballot Pamp., Gen. Elec. (Nov. 8, 1988) argument in  
favor of Prop. 103

This motion is based on the accompanying supporting  
memorandum of points and authorities.

Respectfully Submitted,

Dated: July 12, 2019

**California Appellate Law Group LLP**

Ben Feuer

Julia Partridge

**Hahn Loeser & Parks LLP**

Steven A. Goldfarb

Michael J. Gleason

By /s/ Ben Feuer

Ben Feuer

Attorneys for Respondent

**Fidelity National Title Company**

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. Procedural requirements

The documents to be judicially noticed were not presented to the trial court and, consequently, judicial notice was not taken by that court. (Cal. Rules of Court, rule 8.252(a)(2)(B).)

The matter to be judicially noticed does *not* relate to proceedings occurring after the order that is the subject of the appeal. (Cal. Rules of Court, rule 8.252(a)(2)(D).)

A proposed order is attached to this request. (Cal. Rules of Court, rule 8.252(a)(1).)

### II. Statutory grounds for judicial notice

The attached documents are subject to judicial notice under Evidence Code, section 452. (Cal. Rules of Court, rule 8.252(a)(2)(C).) A “reviewing court may take judicial notice of any matter specified in Section 452.” (Evid. Code, § 459, subd. (a).) This court may take judicial notice of legislative history materials in connection with an appeal when the materials aid in ascertaining the meaning of ambiguous statutory language. (*San Bernardino County v. Superior Court* (2015) 239 Cal.App.4th 679, 686, fn. 6; Evid. Code, § 452, subd. (c).) Judicial notice may be taken of legislative committee reports and analyses (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31-32),

and also of summaries and arguments set forth in ballot pamphlets (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903; *Kaufman, supra*, at p. 31).

### **III. The matters to be judicially noticed are relevant to this appeal**

The court has directed the parties to discuss the meaning and extent of the immunity set forth in Insurance Code section 12414.26 and the question of whether the Insurance Commissioner's jurisdiction over consumer grievances about a title insurance company's rates or ratemaking activity is exclusive. Both issues require the interpretation of provisions of the Insurance Code.

#### **A. Legislative History of California Statutes 1973, Chapter 1130, Senate Bill 1293, including Dept. of Finance, Legis. Analysis of Sen. Bill No. 1293 (1973-1974 Reg. Sess.) (Exhibit 1)**

The legislative history is relevant because it confirms that the 1973 amendments to the Insurance Code provisions governing title insurance, at issue here, were enacted to create uniformity between title insurance and other forms of insurance with respect to the regulation of rates and ratemaking activity. This means that it is appropriate to consider the purpose for and meaning of the statutes governing other forms of insurance when interpreting the title insurance provisions at issue here.

Plaintiffs have already requested that this court take

judicial notice of the legislative history of the 1973 amendments, which includes the specific portion of the history identified here. Respondent Fidelity National Title Company (Fidelity) joins in that request. The Department of Finance's legislative analysis specifically explains that the purpose for the amendments is to make title insurance subject to the same rate regulation provisions applicable to other forms of insurance.

**B. Ballot Pamp., Gen. Elec. (Nov. 8, 1988),  
argument in favor of Prop. 103 (Exhibit 2)**

As this material shows, Proposition 103 was passed, in part, to make affected forms of insurance subject to other state law, such as the Unfair Competition Law (Bus. & Prof. Code §§ 17200 et seq.). (See Ins. Code, § 1861.03.) It also created a means by which consumers could directly challenge an affected insurer's rates or ratemaking activity. (Ins. Code, § 1861.10.) The material is relevant because Proposition 103's reforms, which altered the statutes and statutory scheme that served as the model for the 1973 amendments to the law governing title insurance, did not extend to title insurance. It therefore provides evidence of what the unaltered law governing title insurance does not do, supporting Fidelity's argument that the business of title insurance, unaffected by Proposition 103's reforms, is not subject to other state law and that the exclusive means for resolving consumer grievances about title insurance rates or ratemaking

activity is through the administrative process set out in article 6.7 of Insurance Code chapter 1, part 6, division 2.

Respectfully Submitted,

Dated: July 12, 2019

**California Appellate Law Group LLP**

Ben Feuer

Julia Partridge

**Hahn Loeser & Parks LLP**

Steven A. Goldfarb

Michael J. Gleason

By /s/ Ben Feuer

Ben Feuer

Attorneys for Respondent

**Fidelity National Title Company**

**PROPOSED ORDER**

Respondent's Request for Judicial Notice is GRANTED. The court takes judicial notice of the following:

1. Dept. of Finance, Analysis of Sen. Bill No. 1293 (1973-1974 Reg. Sess.)
2. Ballot Pamp., Gen. Elec. (Nov. 8, 1988) argument in favor of Prop. 103

Dated: \_\_\_\_\_

\_\_\_\_\_  
Presiding Justice

# **Exhibit 1**



1150

# ENROLLED BILL REPORT

Form BD-44 (Rev. 2-72 4M)

AGENCY DEPARTMENT OF FINANCE	AUTHOR Zenovich	BILL NUMBER SB 1293
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SUBJECT: *amended 9/10*

Makes various changes in statutes concerning title insurance, principally involving rate regulations.

RELATED BILLS

SB 851/72; SB 293/73

ANALYSIS

A. Specific Findings

Present law exempts title insurance from the rate regulation provisions of the Insurance Code. It requires only that the rates which are used by title insurers be filed with the Insurance Commissioner.

This bill makes title insurance subject to the same rate regulation provisions applicable to property and casualty insurers with the exception that title insurers' rates are to be filed with the Insurance Commissioner, whereas property and casualty rates generally are not required to be filed.

B. Fiscal Effect

Costs of rate regulation will be reimbursed by the industry. Fee changes will increase revenue to the Department by approximately \$6,000 per year.

~~SUMMARY OF REASONS FOR SIGNATURE/VIDEO~~

This bill will provide rate regulation for an industry where there is none. It is in the public interest.

RECOMMENDATION

Sign the bill.

DEPARTMENT REPRESENTATIVE <i>[Signature]</i>	DATE	DIRECTOR <i>[Signature]</i>	<i>[Signature]</i> 8/25/73
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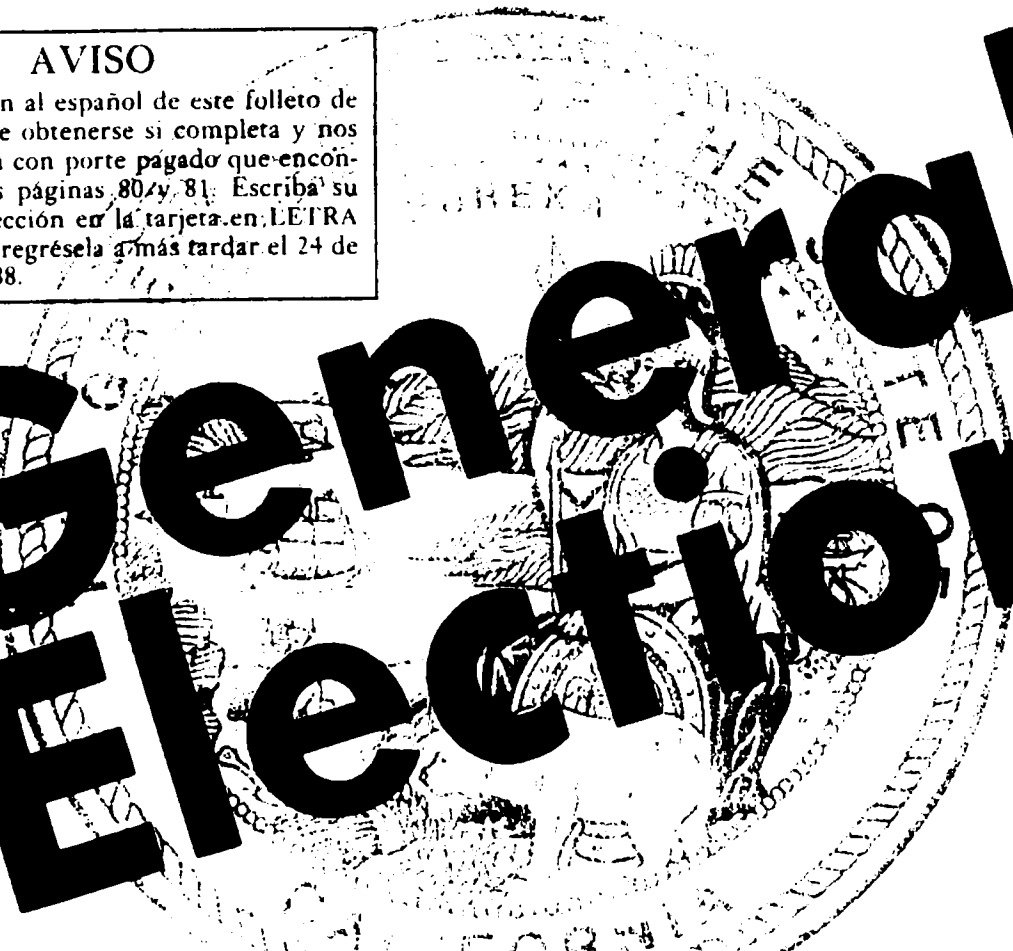
# **Exhibit 2**

# California

## BALLOT PAMPHLET

### AVISO

Una traducción al español de este folleto de la balota puede obtenerse si completa y nos envía la tarjeta con porte pagado que encontrará entre las páginas 80 y 81. Escriba su nombre y dirección en la tarjeta en LETRA DE MOLDE y regrésela a más tardar el 24 de octubre de 1988.



# General Election

## NOVEMBER 8, 1988

### CERTIFICATE OF SECRETARY OF STATE

I, March Fong Eu, Secretary of State of the State of California, do hereby certify that the foregoing measures will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 8, 1988, and that this pamphlet has been correctly prepared in accordance with law.



Witness my hand and the Great Seal of the State in Sacramento, California, this 18th day of August 1988.

*March Fong Eu*

MARCH FONG EU  
Secretary of State



## Secretary of State

SACRAMENTO 95814

Dear Fellow Californians:

This is your California Ballot Pamphlet for the November 8, 1988, General Election. It contains the ballot title, a short summary, the Legislative Analyst's analysis, the pro and con arguments and rebuttals, and the complete text of each proposition. It also contains the legislative vote cast for and against each measure proposed by the Legislature.

This pamphlet also contains a statement from each of California's five qualified political parties, summarizing its policies and principles. These are provided in the extra space available in this pamphlet to give you, the voters, a clearer understanding of the philosophies of the parties and the candidates who represent them.

Many rights and responsibilities go along with citizenship. Voting is one of the most important, as it is the foundation on which our democratic system is built. Read carefully all of the measures and information about them contained in this pamphlet. Legislative propositions and citizen-sponsored initiatives are designed specifically to give you, the electorate, the opportunity to influence the laws which regulate us all.

Take advantage of this opportunity and exercise your rights by voting on November 8, 1988.

SECRETARY OF STATE

Please note that Proposition 78 is the first proposition for this election. To avoid confusion with past measures Legislature passed a law which requires propositions to be numbered consecutively starting with the next number after those used in the November 1982 General Election. This numbering scheme runs in twenty-year cycles.

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## Argument in Favor of Proposition 103

There are important differences between the five insurance initiatives on the November ballot which you should be aware of before voting.

Proposition 103—Voter Revolt to Cut Insurance Rates—is the only insurance initiative written and paid for exclusively by consumers. It alone reduces all of your automobile, home and business insurance premiums to November 1987 prices. Then, it alone cuts them another 20%.

Proposition 103 will also end the insurers' exemption from the antimonopoly laws, allow people to elect the Insurance Commissioner, require a special 20% discount for good drivers, and stop unfair price increases in the future. It specifies that a permanent, independent consumer watchdog system will champion the interests of insurance consumers.

Proposition 103 is written in plain language. There are no loopholes or fine print. Unlike the other propositions, nonlawyers can read it.

Because the polls showed that the insurance industry could not defeat Voter Revolt's 103 directly, the insurance companies came up with a plan to defeat it indirectly. They are pushing Proposition 104—the so-called "no-fault" proposition—and are spending tens of millions of dollars to advertise that it is better for consumers than Proposition 103.

Privately, insurance executives have admitted that their Proposition 104 would actually raise auto insurance premiums for many drivers. Worse, Proposition 104 rewrites the entire California Insurance Code to benefit insurance companies. The 24,000 words of obscure legalese in Proposition 104 turn the law into a "your fault" system. Their fine print cancels out every consumer reform in Voter Revolt's Proposition 103.

Some insurance companies disagree with "no fault," so they're financing Proposition 101, which claims to make the biggest cut in auto insurance. But the big cut they boast about affects only one portion of your auto insurance—they could raise premiums for the rest of your coverage as much as they want. In return, Proposition 101 allows insurance companies to avoid full payment for accidents. It, too, cancels many of the auto insurance reforms in Proposition 103.

Insurance companies are also financing Proposition 106, which restricts your right to quality legal counsel. The insurance companies claim Proposition 106 will cut their costs. In fact, it will limit your ability to make the insurance companies pay up.

Proposition 100, which is paid for by trial lawyers and bankers, simply does not go far enough to protect consumers' interests. Unlike Proposition 103, it does not automatically and immediately cut insurance rates. Nor does it enable consumers to permanently unite to fight against insurance abuse, as Voter Revolt's Proposition 103 does.

Proposition 103 is the only initiative written and paid for exclusively by consumers. It will save you the most money.

To guarantee that every reform in Voter Revolt's Proposition 103 becomes law, it must get more "Y" votes than any other proposition. Every vote in favor of another insurance proposition cancels your vote for Proposition 103. That's why we advise you to vote "Yes" *only* on Proposition 103.

**RALPH NADER**

*Consumer Advocate*

**HARVEY ROSENFELD**

*Chair, Voter Revolt to Cut Insurance Rates/  
Proposition 103*

## Rebuttal to Argument in Favor of Proposition 103

Proponents of PROP 103 claim that their initiative includes no "fine print," but IT'S FULL OF UNINTENDED CONSEQUENCES THAT WILL WIPE OUT ANY BENEFITS IT PROMISES YOU. VOTE NO ON PROP 103.

The most glaring example of this "fine print" allows for massive government intervention into the insurance industry. A GOVERNMENT-RUN INSURANCE SYSTEM IS NOT THE ANSWER.

In New Jersey, where the government intervened in the insurance business under circumstances similar to those mandated in PROP 103, every driver is paying a surcharge to help foot a \$2.5-billion deficit racked up by the state-run insurance system.

PROP 103 advocates also tell you their initiative contains no loopholes. Look again. It's loaded with them.

- **RATES WILL INCREASE** by an average 22% for two-thirds of the state's drivers, according to the State Department of Insurance, because PROP 103

eliminates rating based on the driving safety record of your neighborhood and forces suburban and rural drivers to subsidize motorists in high-risk areas.

- **DRUNK DRIVERS** who haven't lost their licenses can qualify for "good driver" discounts.

A MASSIVE BUREAUCRACY IS NOT THE SOLUTION. Only fundamental reform of our auto insurance system will hold down insurance premiums. We need to reduce the cost of litigation, fraud and subsidizing uninsured motorists.

PROP 103 DOES NOT REFORM OUR SYSTEM. IT DOES NOT GUARANTEE YOU LONG-TERM RATE REDUCTIONS.

Vote NO on PROP 103.

**ALISTER MCALISTER**

*Former Chair, Assembly Finance and Insurance Committee*

**ED DAVIS**

*State Senator, 19th District*

**KIRK WEST**

*President, California Chamber of Commerce*