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August 8, 2014

The Honorable Chief Justice Tani Cantil-Sakauye
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Re: *Howard Jarvis Taxpayers Ass'n v. Bowen*, S220289

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, Citizens in Charge ("CIC") submits this *amicus curiae* letter encouraging the Court to grant the relief requested by Petitioners Howard Jarvis Taxpayers Association and Jon Coupal.

CIC is a non-profit, 501(c)(4) advocacy group dedicated to protecting and expanding citizens' initiative, referendum, and recall rights throughout America. CIC promotes these rights without regard to partisanship or politics. CIC collaborates with a broad coalition of legislators, media, opinion leaders, and voter groups from across the political spectrum to protect the initiative, referendum, and recall process in the 26 states where it currently exists, and to expand the process to the 24 states where voters currently lack these rights. While CIC never takes stands on specific ballot issues (unless those issues relate to the initiative and referendum process), it commonly assists local organizations and individuals who pursue the initiative process.

CIC is alarmed at the increasing tendency of government agencies and powerful political forces to resist and actively undermine citizens' use of the initiative process. In state after state, powerful political forces have caused local governments to grow increasingly hostile to the use of the initiative power. Direct democracy is often the only avenue remaining for concerned citizens to enact laws that such forces might oppose. CIC has an interest in ensuring that these groups continue to have access to the initiative right. CIC thus regularly appears as an amicus in state and federal courts to emphasize the importance of preserving the right of initiative and to aid citizens in resisting improper efforts to interfere with such right.

CIC is particularly interested in this case because the Legislature's placement of purely advisory measures on the ballot threatens to undermine the citizens' ability to enact policies through the initiative process. As this Court has emphasized on several occasions, the initiative is "one of the most precious rights of our democratic process," and it is "the duty of the courts to jealously guard this right of the people." *Perry v. Brown*, 52 Cal.4th 1116, 1140 (2011) (citation omitted); accord *Tuolumne Jobs & Small Business Alliance v. Super. Ct.*, No. S207173 (Aug. 7, 2014) slip op. at 4.

By definition, "advisory" measures do not themselves create substantive law. As such, they are inherently strategic devices. Opening the door to advisory measures would significantly alter the political landscape. It is common political knowledge that putting competing measures on a particular subject muddies the waters at the polls, increasing the likelihood of voter confusion and defeat:

> [V]oter confusion often results from the appearance on the ballot of competing ballot initiatives on the same subject, a tactic often used by opponents of the first initiative. Because savvy political actors know that voters frequently react to confusion by voting 'no' on both measures, opponents of a particular initiative may work to qualify a competing measure in the hope that it will result in both being defeated . . . .

Daniel A. Farber & Anne Joseph O'Connell, Research Handbook on Public Choice and Public Law 155 (Edward Elgar Publishing 2010).

Allowing such advisory measures on the ballot invites innumerable opportunities for mischief. Say, for example, that a group of citizens qualified an initiative that shortens term limits and reduces pay for state officers. Sensing what's coming down the pike, the Legislature decides to place an advisory measure on the ballot asking citizens to weigh in on whether the state should establish a commission studying the long-term effect of term limits. The possibilities for manipulation are limited only by the political consultants' imaginations.[1]

To be sure, this sort of abuse is not limited to matters in which legislators have a direct occupational interest. A more subtle form of interference poses an equally ominous threat. Imagine instead that voters have qualified a measure to lower gasoline taxes throughout the state. At the urging of a lobby opposed to the reduction, the Legislature places a package of advisory measures on the ballot—"Should the state expand funding to public parks?" "Do you favor additional funding for public transportation?"—all designed to rig the ballot against the voter-sponsored initiative. If the Legislature has the power to put an advisory measure on the ballot, why stop at one? The presence of additional measures does not just invite confusion, it increases the likelihood of voter fatigue and "roll-off": Weary voters will simply abstain from voting on measures as they move further down the ballot. *See* Ned Augenblick and Scott

[1] This move follows the Legislature's controversial decision in 2012 to change the law so that Proposition 30 would appear at the top of the ballot – a gambit obviously aimed at promoting its passage.

Nicholson, Working Paper, *Ballot Position, Choice Fatigue, and Voter Behavior* (University of California, Berkeley, Haas School of Business 2012).[2]

Allowing the Legislature to manipulate the ballot through advisory measures is a perversion of the Legislature's power that threatens to imperil the right of California's citizens to exercise their initiative power.

Respectfully submitted,

Bradley A. Benbrook

[2] Online at http://faculty.haas.berkeley.edu/ned/choice_fatigue.pdf.

PROOF OF SERVICE
Case No. S220289

The undersigned hereby certifies as follows:

I am an employee of the law firm of Benbrook Law Group, PC, 400 Capitol Mall, Suite 1610, Sacramento, California. I am over 18 years of age and am not a party to the within action.

On August 08, 2014, I served a true copy of the following document:

1. Amicus Curiae letter to Supreme Court of California regarding *Howard Jarvis Taxpayers Ass'n v. Bowen*, S220289

on the party(ies) in this action by placing a true copy thereof in a sealed envelope(s), addressed as follows:

Charles H. Bell, Jr. Thomas W. Hiltachk Bell, McAndrews & Hiltachk, LLP 455 Capitol Mall, Suite 600 Sacramento, CA 95814 Petitioners Howard Jarvis Taxpayers Association and Jon Coupal	Diane Boyer-Vine, Esq. Fred Woocher, Esq. Jeff DeLand, Esq. State Capitol, Room 3021 Sacramento, CA 95814 Diane.boyer@legislativecounsel.ca.gov fwoocher@strumwooch.com jeff.deland@legislativecounsel.ca.gov Legislature of the State of California
Robbie Anderson, Esq. 1500 11th Street, 5th Floor Sacramento, CA 95814 randerson@sos.ca.gov Attorneys for Debra Bowen, California Secretary of State	

XX (BY EMAIL) I caused an email to be sent to the above listed email address (es).

_____(BY HAND-DELIVERY) I am familiar with Benbrook Law Group PC's practice for causing documents to be served by hand-delivery. Following that practice, I caused the aforementioned document(s) to be hand-delivered to the addressee(s) specified above

State of California that the foregoing is true and correct.

Dated: August 8, 2014

Kelly McConnen