Case No.

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL,
Petitioners,

v.

DEBRA BOWEN, in her official capacity as the Secretary of State of the State of California,
Respondent.

LEGISLATURE OF THE STATE OF CALIFORNIA,
Real Party In Interest.

ORIGINAL WRIT PROCEEDING
IMMEDIATE RELIEF REQUESTED

PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF – IMMEDIATE STAY REQUESTED ELECTION MATTER PRIORITY AUGUST 11, 2014 PRINTING DEADLINE

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Supreme Court of the
State of California

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
California Rules of Court, rules 8.208, 8.490(i), 8.494(c), 8.496(c), or 8.498(d)

Supreme Court Case Caption:

HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL,
v.
DEBRA BOWEN, in her official capacity as Secretary of State of the State of California

Please check here if applicable:

☒ There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.

Name of Interested Entity or Person (Alphabetical order, please.)	Nature of Interest
1.	
2.	
3.	

Please attach additional sheets with Entity or Person Information, if necessary.

Date: July31, 2014

Signature of Attorney or Unrepresented Party

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT

Petitioners HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL ("Petitioners") hereby respectfully ask this Court to issue a writ of mandate or, an alternative writ/order to show cause, or such other extraordinary relief it deems appropriate until such time as this Court can hear and decide the present writ, against Respondent, DEBRA BOWEN ("Bowen"), to prohibit the unlawful inclusion of Proposition 49 in the State "Voter Information Guide" and on ballots in connection with the forthcoming statewide general election.

Petitioners filed a nearly identical petition with the Third District Court of Appeal on July 22, 2014. On July 31, 2014, the Court of Appeal denied the writ citing this Court's decision in *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1030. Presiding Justice Raye, dissented stating:

> I would issue an alternative writ. In my view, Proposition 49 is clearly invalid and thus review prior to the election is required. The adoption of a resolution by initiative is unconstitutional under article II, section 8, subdivision (a) of the California Constitution. (*American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 707-715.) The Legislature has no authority to authorize the voters to adopt a resolution in violation of the California Constitution.

As indicated more fully below, *Independent Energy Producers Assn. v. McPherson* does not preclude pre-election review in this instance.

Immediate action is required. The "public inspection period" for the Voter Information Guide commenced on Tuesday, July 22, 2014, and concludes twenty (20) days later on Monday, August 11, 2014. (Gov. Code § 88006; Elec. Code §§ 9082, 9092, 13282.) Bowen's General Election Calendar states that she will transmit the Voter Information Guide to the State Printer on August 11, 2014. The next critical deadline for conducting the general election is August 28, 2014, the last day for Bowen to certify the final list of candidates for the ballot, thereby allowing counties the opportunity to commence the printing of actual ballots shortly thereafter. Thus, Petitioners respectfully request this Court's intervention on or before August 11, 2014, but in no event later than August 28, 2014.[1]

PETITION FOR WRIT OF MANDATE AND SUCH OTHER EXTRAORDINARY RELIEF AS THE COURT DEEMS JUST AND PROPER

INTRODUCTION

1. Proposition 49 was unlawfully ordered on the ballot by the Legislature when it enacted SB 1272 on July 3, 2014. Its directive to Bowen became operative twelve (12) days thereafter when Governor

[1] Even if this Court is unable or unwilling to consider this petition in time to prohibit the inclusion of Proposition 49 on the November 2014 ballot, Petitioners, nonetheless, would request the Court consider the legal issues presented to prevent future occurrences.

Brown neither signed nor vetoed the bill. (Cal. Const. Art. IV, § 10(b)(3).)

2. Proposition 49 proposes no law. Rather, it simply asks the voters to agree or disagree with the following question:

> Shall the Congress of the United States propose, and the California Legislature ratify, an amendment or amendments to the United States Constitution to overturn *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that the rights protected by the United States Constitution are the rights of natural persons only?

3. As indicated more fully below, even if the voters agree, the result is of no legal consequence since Article V of the United States Constitution only authorizes "the Legislature" to propose a Constitutional Convention to recommend Constitutional amendments. Moreover, this Legislature has already enacted such a request of Congress on this very topic. (AJR1 (Chapter 77) was filed with Bowen on June 27, 2014.)

4. If Proposition 49 serves any purpose, it is that of a glorified "public opinion poll" which this Court has stated is not a lawful use of the ballot. Its present danger is that it "steals attention, time, and money from the numerous valid propositions on the same ballot," will also "confuse some voters and frustrate others," and "tends to denigrate the legitimate use of the initiative procedure." (*American Federation of Labor-Congress of*

Industrial Organizations v. Eu (1984) 36 Cal.3d 687, 697.) Its long-term danger is that it may lead to more "advisory measures" in the future. Indeed, at least one other such bill is currently pending in the Legislature. (See SB 1402, de Leon.)

5. A partisan majority of the Legislature has acted unlawfully, unfairly and unnecessarily to alter the makeup of the ballot for the transparent purpose of attempting to influence the voter turnout in a year in which low voter turnout is expected. The Legislature appears to be using this "advisory measure" to affect the election despite the court's admonition that such election tampering is improper. (See *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110, 127. See also Gov. Code § 81001(b) [public officials "should perform their duties in an impartial manner"].) The right to vote depends on fair elections. "Other rights, even the most basic, are illusory if the right to vote is undermined." (*Castro v. State of California* (1970) 2 Cal.3d 223, 234.). For this reason, courts have a solemn duty to "preserv[e] the integrity of the election process." (*Fair v. Hernandez* (1981) 116 Cal.App.3d 868, 881.)

6. Elections Code section 13314 authorizes this Court to take action by issuing a writ of mandate to prohibit a violation of the Elections Code or the Constitution. This unprecedented and extraordinary act of the Legislature is what brings the parties before this Court.

RELEVANT FACTS

7. The California General Election is scheduled to be held on November 4, 2014. Its date is fixed by statute (Elec. Code §§ 324, 1001.) In addition to the state candidates that will be elected on that date, there are several ballot measures (i.e., "propositions") that will appear on the same ballot. These measures include "legislative measures" placed on the ballot by the Legislature pursuant to its authority derived from the State Constitution. For example, Proposition 43 is a statewide bond measure relating to water. (Cal. Const. Art. XVI, section 2 (a).) Proposition 44 is a proposed constitutional amendment relating to the state budget (Cal. Const. Art. XVIII, sections 1 and 4.) The other measures are initiative or referendum measures qualified for the ballot by the voters under Article II of the Constitution. These include: (1) Proposition 45, relating to health insurance rates; (2) Proposition 46, relating to medical malpractice lawsuits; (3) Proposition 47, relating to criminal penalties for certain offenses; and (4) Proposition 48, relating to an Indian gaming compact.

8. All of these measures qualified for the ballot prior to the 131-day deadline provided for in Elections Code section 9040.[2] The 131-day deadline is based on the date of the election and requires a measure to qualify for the ballot on or before the 131st day before the election. In this case, the deadline to qualify was June 26, 2014.

[2] For initiative measures, the Constitution also includes the same 131-day deadline to qualify for the ballot. (Cal. Const. Art. II, § 8(c).)

9. Assembly Joint Resolution 1 ("AJR 1") was introduced in the Assembly on December 12, 2012, more than two years ago. As introduced, the Resolution urges Congress to call a Constitutional Convention to propose amendments to the Constitution, pursuant to Article V of the United States Constitution, in response to the Supreme Court's decision in *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310. AJR 1 was finally adopted by the Assembly on January 30, 2014, and then by the Senate on June 23, 2014.

10. SB 1272 was introduced in the Senate on February 21, 2014. As introduced, it proposed to amend an Elections Code provision relating to write-in candidates. It was amended on March 28, 2014, in the Senate to propose an "advisory measure" to be placed on the ballot in November of 2016. The question posed to the voters in that version of SB 1272 is the same as Proposition 49. On April 8, 2014, the bill was amended again, but this time to pose the question in connection with the November 2014 General Election Ballot. Inexplicably, the Legislature was unable to approve SB 1272 until July 3, 2014.

11. The final version of SB 1272 purports to "call an election" within the meaning of Article IV. Section 3 of the bill provides:

> A special election is hereby called to be held throughout the state on November 4, 2014. The special election shall be consolidated with the statewide general election to be held on that date. The consolidated election shall be held

> and conducted in all respects as if there were only one election and only one form of ballot shall be used.

12. The Governor did not sign SB 1272. Rather, the Governor issued a letter to the Senate on July 15, 2014, which noted: "To be clear, this bill and the advisory vote it requires has no legal effect whatsoever.... But we should not make it a habit to clutter our ballots with nonbinding measures as citizens rightfully assume that their votes are meant to have legal effect." However, the Governor did not veto SB 1272 either. Thus, it became operative on July 15, 2014 (12 days after presentment), pursuant to Article IV, Section 10(b)(3) of the California Constitution.

13. Thereafter, Bowen designated the ballot question as "Proposition 49." Ballot materials, including a ballot title and summary, ballot label, analysis and ballot arguments are all being prepared now for Proposition 49 in great haste and at great taxpayer expense.

THE PETITION IS TIMELY

14. Petitioners brought their original petition in the Third District Court of Appeal on the very first day of the public inspection period for the Voter Information Guide. Upon receipt of notice of denial of its petition, the instant writ was filed and served as soon as practicable. Therefore, this petition is timely.

THE PARTIES

15. Petitioner, HOWARD JARVIS TAXPAYERS ASSOCIATION ("HJTA"), is a duly organized California nonprofit corporation. HJTA represents the interests of taxpayers against waste, fraud, and abuse and has represented the public interest in this Court, the other appellate districts, the California Supreme Court and the United States Supreme Court.

16. Petitioner, JON COUPAL, ("Coupal") is and at all times mentioned in this petition was a resident, citizen, taxpayer, and a voter in the State of California. As a voter, Coupal has standing to bring this action pursuant to Elections Code section 13314(a)(1).

17. Respondent DEBRA BOWEN ("Bowen") is the California Secretary of State. As the Secretary of State, Bowen has a ministerial non-discretionary duty to administer the provisions of the Elections Code, to see that elections are efficiently conducted and that state election laws are enforced, and not to violate the laws of the State of California. (See Gov. Code § 12172.5.)

18. Real Party In Interest, LEGISLATURE OF THE STATE CALIFORNIA, ("the Legislature") is the constitutionally authorized legislative body of the State of California that passed SB 1272 by majority vote, in each House, in effect placing Proposition 49 on the November 4, 2014, ballot.

JURISDICTION

19. Pursuant to Elections Code section 13314(a)(l), "Any elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter ...." An "elector" means any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least fifteen (15) days prior to an election." (Elec. Code § 321.) Any voter or taxpayer may seek a writ of mandate pursuant to Code of Civil Procedure sections 1085 - 1086, and Elections Code section 13314, alleging that a public official has violated, or is about to violate, a present and ministerial duty.

20. The California Constitution, Code of Civil Procedure and case law authority provide that original writs of mandate may be taken by the Supreme Court. (Cal. Const. Art. VI, § 10; Code Civ. Proc. §§ 1085, 1086; and see *Vandermost v.* Bowen (2012) 53 Cal.4th 421, at pp. 451-452.)

21. The relief sought in this petition is within the jurisdiction of this Court.

NEED FOR WRIT RELIEF

22. Petitioners have no plain, speedy and adequate remedy at law, other than the relief sought in this petition. As a matter of law, the Legislature has unlawfully enacted SB 1272, and ordered Bowen to take

action to place its "advisory measure" on a special election ballot, consolidated in all respects with the upcoming general election ballot. Bowen has already assigned proposition numbers, requested ballot arguments and rebuttal arguments, asked the Attorney General to prepare a ballot title and summary and ballot label, and asked for an analysis of the "advisory measure" of the Office of the Independent Legislative Analyst. Bowen will, thereafter, cause these ballot materials to be printed in the official "Voter Information Guide" mailed to all registered voters in the State of California, and counties will print ballots including Proposition 49.

IRREPARABLE INJURY IS MANIFEST

23. If a writ is not issued, the Petitioners and all voters will suffer irreparable injury to their constitutional rights and statutory rights with all the attendant harm to the electoral process described by this Court.

24. Therefore, this petition serves a pressing and vital public interest, which if not addressed presently, will recur, and foreseeably so, countless times in the future. That is: the Legislature will be licensed to continue to place similar "advisory measures" on the ballot for purposes that may or may not be truly "advisory" but may be for illegitimate purposes, like attempting to influence the make-up of the voting electorate at a particular election.

25. This Court may grant a temporary stay pending review of the

writ, whether it requests oral argument or not. The Legislature will not suffer any harm, since Proposition 49 has no legal or practical effect. Indeed, the Legislature has already lawfully expressed its desire to Congress regarding *Citizens United* with its adoption of AJR 1.

26. This case meets the procedural prerequisites for issuance of a peremptory writ of mandate in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Andal v. Miller* (1994) 28 Cal.App.4th 358 at p. 368.)

27. Dealing with these issues now, as pressing as they are for the parties here, are even more so for the public given the impact on our election process and the exercise of legislative power within the confines of the United States Constitution and the State Constitution.

28. The Court's efforts here will have immediate impact and will, in actuality, preserve the ballot as it was meant to be presented to voters at the forthcoming election.

29. A stay until this instant Court can hear and decide the present writ, preferably by August 11, 2014, and in any event not later than August 28, 2014, is practical and reasonable.

PRAYER FOR RELIEF

Wherefore, Petitioners hereby request:

1) That a writ of mandate and extraordinary stay issue under seal

of this Court commanding Bowen, and her officers, agents and all other persons acting on her behalf to desist and refrain from taking any further action relative to the placing of Proposition 49 on the November 4, 2014, statewide ballot, and further directing Bowen and the Legislature to show cause before this Court, at a time and place then or thereafter specified by Court order, why an order should not be entered invalidating SB 1272;

2) An award of attorney's fees and costs; and

3) Such other relief that the Court deems just and proper.

Dated: July 31, 2014

Respectfully Submitted,

BELL, McANDREWS & HILTACHK, LLP

By: _____
THOMAS W. HILTACHK

Attorneys for Petitioners
HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE

I.

INTRODUCTION

This case has nothing to do with the United States Supreme Court decision in *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310. Indeed, the issues decided in that Supreme Court case have no relevance to California law or California state elections.[3] Rather, this case concerns the unprecedented and unlawful attempt by real party, the Legislature, to ask the California electorate a question. As indicated more fully below, the Legislature has "legislative power." It may only exercise that power and any power incidental to the exercise of legislative power under our state Constitution.

Proposition 49 is not the exercise of legislative power. Indeed, this Court has held that a nearly identical "advisory measure" was not lawful when proposed by the people exercising their reserved legislative power under the initiative. That same analysis applies to the Legislature.

---

[3] At issue in *Citizens United,* was whether the corporate and union ban on "contributions" under federal law which had been previously upheld by the Supreme Court in *Austin v. Michigan Chamber of Commerce* (1990) 494 U.S. 652, could constitutionally apply to corporate and union "independent expenditures" and "issue advocacy/electioneering communications." The Court held that the First Amendment protected such activity even if conducted by corporations and labor unions. However, in California, state law had long provided and still does provide for unlimited and largely uninhibited "independent expenditures" and "issue advocacy" by corporations and labor unions. (Gov. Code §§ 85303(c); 85310; 85312). In fact, voters narrowly rejected a "contribution" ban on corporations and labor unions in 2012 when Proposition 32 was defeated.

Petitioners respectfully request this Court's immediate intervention to protect the integrity of our statewide elections.

II.

FACTS

The California General Election is scheduled to be held on November 4, 2014. Its date is fixed by statute (Elec. Code §§ 324, 1001). In addition to the candidates who will stand for election on that date, there are a number of ballot measures that have qualified for the ballot. All of these measures qualified for the ballot prior to the 131-day deadline provided for in Elections Code section 9040.[4] In this case, the deadline to qualify a measure for the November 4, 2014, ballot was June 26, 2014.

Assembly Joint Resolution 1 ("AJR 1") was introduced in the Assembly on December 12, 2012; over two years ago. As introduced, the resolution "speaking for the people of the State of California" calls upon Congress to call a Constitutional Convention to propose amendments to the Constitution, pursuant to Article V of the United States Constitution, in response to the United States Supreme Court's decision in *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310. 1 was finally adopted by the Assembly on January 30, 2014, and then by the Senate on

[4] For initiative measures, the constitution also includes the same 131-day deadline to qualify for the ballot. (Cal. Const. Art. II § 8(c).)

June 23, 2014. It was designated as Chapter 77 and filed with Bowen on June 27, 2014.

SB 1272 was introduced in the Senate on February 21, 2014. As introduced, it proposed to amend an Elections Code provision relating to write-in candidates. It was amended on March 28, 2014, in the Senate to propose an "advisory measure" to be placed on the ballot in November of 2016. The question posed to the voters in that version of SB 1272 is the same as Proposition 49. On April 8, 2014, the bill was amended again, but this time to pose the question in connection with the November 2014 general election ballot. Inexplicably, the Legislature was unable to approve SB 1272 until July 3, 2014.

The Governor did not sign SB 1272. Rather, the Governor issued a letter to the state Senate on July 15, 2014, which noted: "To be clear, this bill and the advisory vote it requires has no legal effect whatsoever.... But we should not make it a habit to clutter our ballots with nonbinding measures as citizens rightfully assume that their votes are meant to have legal effect." However, the Governor did not veto SB 1272 either. Thus, it became operative on July 15, 2014 (12 days after presentment) pursuant to Article IV, Section 10(b)(3) of the California Constitution.

Thereafter, Bowen designated SR 1272 as "Proposition 49." Ballot materials, including a ballot title and summary and ballot label, impartial

analysis, and ballot arguments are all being prepared now for Proposition 49 in great haste and at great taxpayer expense.

III.

ARGUMENT

A. THE BALLOT IS RESERVED FOR THE ENACTMENT OF "LEGISLATION" AND IS NOT TO BE USED AS A PUBLIC OPINION POLL.

The desire to use the ballot box as a vehicle to provide direction to Congress regarding a matter of national importance is not new. In 1984, a petition was circulated among the voters to place a proposed initiative on the ballot. Among other things, the petition "urged" Congress to propose and submit to the several states an amendment to the United States Constitution to require that the federal budget be balanced, and included a proposed "application" to the Congress for a Constitutional Convention pursuant to Article V of the United States Constitution.

The Secretary of State had certified that the petition included enough valid signatures of registered voters to qualify for the November 1984 general election ballot. This Court issued a peremptory writ of mandate "commanding respondents not to take any action, including the expenditure of public funds, to place the proposed Balanced Budget Initiative on the November 6, 1984, general election ballot." (*American Federation of Labor-Congress of Industrial Organizations v. Eu* (1984) 36 Cal.3d 687, 716.)

The court based its holding on the resolution of two issues of law relevant here.

> We have concluded that the initiative, to the extent that it applies for a constitutional convention or requires the Legislature to do so, does not conform to Article V of the United States Constitution. Article V provides for applications by the "Legislatures of two-thirds of the several States," not by the people through the initiative; it envisions legislators free to vote their best judgment, responsible to their constituents through the electoral process, not puppet legislators coerced or compelled by loss of salary or otherwise to vote in favor of a proposal they may believe unwise.
>
> We also conclude that the measure exceeds the scope of the initiative power under the controlling provisions of the California constitution (Art. II, § 8 and Art. IV, § 1). The initiative power is the power to adopt "statutes" - to enact laws - but the crucial provisions of the balanced budget initiative do not adopt a *statute* or enact a law. They adopt, and mandate the Legislature to adopt, a *resolution* which does not change California law and constitutes only one step in a process which might eventually amend the federal Constitution. Such a resolution is not an exercise of legislative power reserved to the people under the California Constitution (emphasis in original).

(*Id.* at 694.)

The real party (the initiative proponent) argued that even if the proposed initiative did not enact law, the Court should "let the people's voice be heard" so that the voters could "express their views" and perhaps

provide instruction to the Legislature who might respond by proposing its own resolution to Congress. (*Id.* at 695.) The Court stated:

> This argument misunderstands the purpose of the initiative in California. It is not a public opinion poll. It is a method of enacting legislation, and if the proposed measure does not enact legislation, or if it seeks to compel legislative action which the electorate has no power to compel, it should not be on the ballot.

(*Id.*)

B. PROPOSITION 49 ENACTS NO LAW. IT HAS NO LEGAL AFFECT UNDER ARTICLE V OF THE UNITED STATES CONSTITUTION.

Proposition 49 is even less "law" than the initiative rejected in *American Federation of Labor- Congress of Industrial Organizations v. Eu.* The initiative included proposed statutes to implement and enforce its attempt to apply to Congress for a Constitutional Convention (*Id.* at 693.) Proposition 49 simply asks the voters a question:

> Shall the Congress of the United States propose, and the California Legislature ratify, an amendment or amendments to the United States Constitution to overturn *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that the rights protected by the United States Constitution are the rights of natural persons only?

Thus, it is undeniable that the people could not have placed Proposition 49 on the ballot. As indicated more fully below, neither can the Legislature.

C. THE LEGISLATURE HAS "LEGISLATIVE" POWER INCLUDING ALL POWER INCIDENTAL TO THE EXERCISE OF "LEGISLATIVE" POWER. IT DOES NOT HAVE POWER TO ASK THE VOTERS A QUESTION ON A STATEWIDE BALLOT.

Under the California Constitution all "political power" is inherent in the people. (Cal. Const. Art. II, § 1.) The Constitution vests "legislative power" in the Legislature, (Cal. Const. Art. IV, § 1) but "reserves" such power to the people through the exercise of initiative and referendum. (*Id.*; Cal. Const. Art. II, §§ 8, 9.) In this regard, the people's exercise of "legislative power" and the Legislature's exercise of "legislative power" is deemed to be coextensive. (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 675 ["[T]he power of the people through the statutory initiative is coextensive with the power of the Legislature."].) That is, the people and the Legislature possess the same power. Indeed, the Constitution provides that "the Legislature may make no law except by statute, and may enact no statute except by bill." (Cal. Const. Art. IV, § 8(b).) It seems axiomatic that if the people do not have the power to place Proposition 49 on the ballot, than neither does the Legislature.

The Legislature will, undoubtedly, argue that it possesses more than just the power to make law, and that is true. Courts have acknowledged

that the Legislature also has power "incidental or ancillary" to its lawmaking function. Most cases analyzing the extent of legislative power occur in the context of a challenge based on "separation of powers" under Section 3 of Article III of the Constitution.

For example, in *Zumbrun Law Firm v. California Legislature,* the appellate court upheld the Legislature's power to enter into a contract for the protection and security of the Capitol building and its members, holding that: "the Legislature has the power to engage in activity that is incidental or ancillary to its lawmaking functions. (*Parker v. Riley, supra,* 18 Cal.2d at p. 89 [upholding the creation of a Commission made up of members of the Legislature].)" (*Zumbrun Law Firm v. California Legislature* (2008) 165 Cal.App.4th 1603, 1614).

In *People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 322, the appellate court instructed that "we look to the history of the parliamentary common law against which the fundamental charter of our state government was enacted" to determine whether a specific action is incidental to the Legislature's appropriate legislative function (*Id.*)

Petitioners are unaware of any common law history suggesting that the Legislature is empowered to use the ballot as a method of asking the electorate a question. Such would seemingly be an anathema to the idea that elected legislators serve as representatives of the electorate, empowered to act on their behalf and in their stead. Indeed, the initiative

and referendum powers were created, not as an adjunct to representative democracy, but as means of going around the legislative process. (*Amador Valley Joint Unified Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228.)

Even if the Legislature were to suggest that "taking the temperature" of the electorate is incidental to or somehow furthers the Legislature's decision-making process, it cannot do so here. The Legislature has already passed a resolution requesting Congress to call a Constitutional Convention to consider amending the First Amendment, in the form of AJR 1.[5]

D. THE CONSTITUTION EMPOWERS THE LEGISLATURE TO PROPOSE CERTAIN "LEGISLATIVE MEASURES" TO THE PEOPLE INCLUDING THE CONSTITUTIONAL AMENDMENTS, BOND MEASURES, AND AMENDMENTS TO PRIOR ENACTED INITIATIVE AND REFERENDUM.

The Constitution does empower the Legislature to place its own measures on the ballot. In each instance, the enumerated measure is legislative in character. First, the Legislature may propose amendments to the California Constitution. (Cal. Const. Art. XVIII, §§ 1 and 4.)

---

[5] Petitioners are aware of two Propositions (9 & 10) in 1933 (a special election called to deal with the Great Depression). The Propositions were styled as questions seeking the voters consent to divert gas tax funds to pay off previously voter-approved transportation bonds. It is not clear if the Propositions were "legislative" in character or merely "advisory." Because the subject matter was the expenditure of public funds and those funds were proposed to be used to pay down voter-approved bond debt, it appears that the measures were "legislative." However, even if "advisory," the measures were at least "incidental" to the legislative function, as the Legislature was attempting to deal with the financial fallout from the Great Depression and was seeking permission to use tax proceeds in a particular way.

Proposition 44 on the upcoming general election ballot is a lawful example of this type of legislative measure. Second, the Legislature may propose a statute authorizing the issuance of bond debt. (Cal. Const. Art. XVI, § 2 (a).) Proposition 43 is a lawful example of this type of legislative measure. Lastly, the Legislature can propose repeal or amendment of previously enacted initiative and referendum measures. (Cal. Const. Art. II, § 10(c).)

The Elections Code is consistent with and implements the Legislature's constitutional power to place these types of legislative measures on the ballot. Article 4 of Chapter 1 of Division 9 of the Elections Code is dedicated to legislative measures. For example, section 9040 provides:

> Every constitutional amendment, bond measure, or other legislative measure submitted to the people by the Legislature shall appear on the ballot of the first statewide election occurring at least 131 days after the adopted of the proposal by the Legislature.

The term "measure" as used in section 9040 is also used throughout the Elections Code. For example, the Code uses the same term in the same context regarding initiative "measures." (Elec. Code § 9016(b) ["an initiative measure shall not be submitted to the voters at a statewide election held less than 131 days after the date the measure is certified for the ballot"].)

The word "measure" is also defined in section 329 to mean "any constitutional amendment or other proposition submitted to a popular vote at any election." Thus, the Elections Code is consistent with the notion that the Legislature and people have coextensive power to propose "measures" and as we know from the holding in *American Federation of Labor-Congress of Industrial Organizations v. Eu*, such "measures" must propose a law.

The ballot question authorized by Proposition 49 does not propose "legislation." It is not a constitutional amendment, bond measure, or repeal or amend a prior enacted initiative or referendum (i.e., a "legislative measure") and thus, it may not be placed on the ballot. In the words of Governor Brown, it is nothing but "clutter." However, its appearance on the ballot is more harmful than messy. As this Court has warned on more than one occasion, the presence of unlawful measures on the ballot "steals attention, time, and money from the numerous valid propositions on the same ballot," will also "confuse some voters and frustrate others," and "tends to denigrate the legitimate use of the initiative procedure." (*American Federation of Labor- Congress of Industrial Organizations v. Eu* (1984) 36 Cal.3d 687, 697; *Senate v. Jones* (1999) 21 Cal. 4th 1142, 1154.

The Court should not assume that SB 1272 is a one-time occurrence. Leaving it on the ballot could result in a flood of "advisory measures" in

the future. Indeed, at least one other such bill is currently pending in the Legislature. (See SB 1402, de Leon.) It is easy to imagine the Legislature placing an "advisory measure" on the ballot to "compete" with a voter-sponsored initiative on the same subject. Such an act would create voter-confusion and could negatively impact the enactment of valid voter-sponsored initiative measures.

E. THIS COURT'S DECISION IN *INDEPENDENT ENERGY PRODUCERS* DOES NOT PROHIBIT PRE-ELECTION REVIEW OF PROPOSITION 45 OR PREVENT THE COURT FROM REMOVING IT FROM THE BALLOT.

In 2006, this Court issued two opinions on the same day that provide its current view of when a pre-election challenge to an initiative or legislative measure will be entertained and when post-election review is more appropriate. As indicated more fully below, not only is pre-election review appropriate here, but it is clear that post-election review would be a meaningless exercise since the harm to the electoral process will have already occurred.

In *Costa v. Superior Court* (2006) 37 Cal.4th 986, 1006, the Court stated:

> Past cases establish that, at least as a general matter, this type of procedural challenge—that is, a challenge based upon an allegation that a proposed initiative measure has failed to comply with the essential procedural requirements necessary to qualify an initiative measure for the ballot (for example, an initiative petition's alleged failure to have obtained the

> requisite number of qualified signatures)—may be brought and resolved prior to an election. [citations omitted]

Not all procedural defects are fatal. In order to preserve the exercise of initiative power, the Court has also stated that "substantial compliance" with the technical requirements of the Elections Code is all that can be demanded. (*Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 652.)[6]

In *Independent Energy Producers Ass'n v. McPherson* (2006) 38 Cal.4th 1020, this Court explained when another type of pre-election challenge is appropriate. The Court stated:

> As noted above, our order granting review cited and relied upon the general statement in *Brosnahan I, supra,* 31 Cal.3d 1, 4, that "it is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people's franchise, in the absence of some clear showing of invalidity." As we pointed out in our recent decision in *Costa, supra,* 37 Cal.4th, 986, 1005, however, "in *Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142 (*Senate v. Jones*), we noted that decisions after *Brosnahan I* 'have explained that this general rule applies primarily when a challenge rests upon the alleged unconstitutionality of the substance of the proposed initiative, and that

[6] Petitioners believe that the Legislature's attempt to "call an election" on the same date that the State's General Election is established by statute to evade the 131-day requirement of Elections Code section 9040 is unlawful and that only an "urgency statute" requiring a two-thirds vote of the Legislature can properly override existing law. This argument was made more fully to the Third District Court of Appeal and is summarized here for the purpose of brevity and to focus the Court's attention on the more important issue presented herein.

> the rule does not preclude preelection review when the challenge is based upon a claim, for example, that the proposed measure may not properly be submitted to the voters because the measure is not legislative in character or because it amounts to a constitutional revision rather than an amendment. [Citations.]' (21 Cal.4th at p. 1153.)" Under the authorities cited in *Senate v. Jones,* preelection review of an initiative measure may be appropriate when the challenge is not based on a claim that the substantive provisions of the measure are unconstitutional, but rests instead on a contention that the measure is not one that properly may be enacted *by initiative.* (See, e.g., *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687 [initiative may not be used to apply for the convening of a federal constitutional convention]; *McFadden v. Jordan* (1948) 32 Cal.2d 330, 196 P.2d 787 [initiative may not be used to revise, rather than to amend, California Constitution].) Because the claim raised here is that the California Constitution permits only the Legislature, and not the people through the initiative process, to confer additional authority upon the PUC, the decisions noted in *Senate v. Jones* establish that preelection review of such a claim is not necessarily or presumptively improper.

Thus, this Court has held that when the claim is that the measure is not "legislative" in character, it is not appropriate to allow the measure to appear on the ballot. Note that the case cited in *Independent Energy Producers* as a proper example when pre-election review is appropriate is the case primarily relied on by petitioners in the instant proceeding. Thus, the Third District Court of Appeal's reluctance to intervene pre-election

under the authority of this Court's decision in *Independent Energy Producers* was misguided.

F. THIS COURT HAS ORIGINAL JURISDICTION TO DECIDE THIS MATTER.

This Court has original jurisdiction to consider election writ matters under Article VI, section 10 of the Constitution, Code of Civil Procedure §1085 and Elections Code § 13314. Extraordinary relief is available in these circumstances notwithstanding the pendency or absence of a superior court proceeding. (*Andal v. Miller* (1994) 28 Cal.App.4th 358, 360, citing *Farley v. Healey* (1967) 67 Cal.2d 325, 326–327; *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, fns. 1–2.)

> In past cases, this court has repeatedly exercised authority to entertain and decide petitions for original writs of mandate related to the referendum, initiative, and redistricting process in circumstances in which an expeditious ruling was necessary to the orderly functioning of the electoral system. (See, e.g., *Senate v. Jones* (1999) 21 Cal.4th 1142; *Wilson v. Eu* (1991) 54 Cal.3d 546; *Wilson v. Eu, supra,* 1 Cal.4th 707; *Assembly v. Deukmejian, supra,* 30 Cal.3d 638; *Legislature v. Reinecke, supra,* 10 Cal.3d 396; *Silver v. Brown* (1965) 63 Cal.2d 270.)

(*Vandermost v. Bowen* (2012) 53 Cal. 4th 421, 451-52.)

The Elections Code provides judicial authority to correct errors made in the preparation of official election/voter materials as a result of unlawful conduct. Elections Code section 13314 provides in part:

> (a)(1) Any elector may seek a writ of mandate

> alleging that an error or omission has occurred, or is about to occur, in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter, or that any neglect of duty has occurred, or is about to occur.
>
> (2) A peremptory writ of mandate shall issue only upon proof of both of the following: (A) *that the error, omission, or neglect is in violation of this code or the Constitution,* and (B) that issuance of the writ will not substantially interfere with the conduct of the election. (*Italics added.*)

Because Bowen is presently preparing the official Voter Information Guide (which will include Proposition 49), and will then transmit it to the State Printer on or shortly after August 11, 2014, thereafter certifying the final list of candidates for the ballot on August 28, 2014, which will signal the county elections officials that they can commence with the printing of ballots in their counties, an extraordinary stay is warranted to stay the matter until this Court can consider the matter. If a temporary stay is not issued, Petitioners, and all voters, will suffer irreparable injury to their constitutional rights and statutory rights with respect to the Legislature's manipulation of the upcoming election, in disregard of the constitution and statutes.

The Court may grant a temporary stay pending review of the writ, whether it requests oral argument or not. The Legislature will not suffer any harm until such time, as Proposition 49 is of no legal consequence and

the Legislature has already expressed to Congress its desire regarding the subject matter with the enactment of AJR 1. The case meets the procedural prerequisites for issuance of a peremptory writ of mandate in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Andal v. Miller*, *supra*, 28 Cal. App. 4th at p. 368.)

IV.

CONCLUSION

Petitioners respectfully request the Court's immediate action to preserve the integrity of the ballot.

Dated: July 31, 2014

Respectfully Submitted,

BELL, McANDREWS & HILTACHK, LLP

By: _____
THOMAS W. HILTACHK

Attorneys for Petitioners
HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) and 8.360(b)(1) of the California Rules of the Court, the enclosed brief of HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL is produced using 13-point Times New Roman type including footnotes and contain approximately 7,878 words, which is less than the total words permitted by the rules of the court. Counsel relies on the word count of the computer program, Microsoft Word 2010, used to prepare this brief.

Dated: July 31, 2014 BELL, McANDREWS & HILTACHK, LLP

By: _____
CHARLES H. BELL, JR.
THOMAS W. HILTACHK

Attorneys for Petitioners
HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL

VERIFICATION

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

I, JON COUPAL, am the President of HOWARD JARVIS TAXPAYERS ASSOCIATION, Petitioner in this action. I have read the foregoing **PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF – IMMEDIATE STAY REQUESTED ELECTION MATTER PRIORITY** and know its contents. The same is true of my own knowledge, except as to those mattes which are therein stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 31st day of July, 2014, at Sacramento, California.

HOWARD JARVIS TAXPAYERS ASSOCIATION

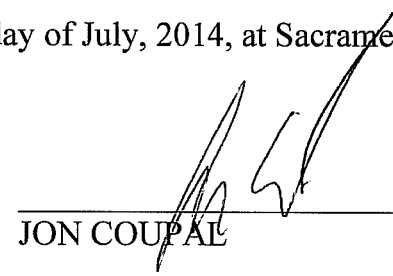
JON COUPAL, President

STATE OF CALIFORNIA)
)
COUNTY OF SACRAMENTO)

I, JON COUPAL, am a Petitioner in this action. I have read the foregoing **PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF – IMMEDIATE STAY REQUESTED ELECTION MATTER PRIORITY** and know its contents. The same is true of my own knowledge, except as to those mattes which are therein stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 31st day of July, 2014, at Sacramento, California.



JON COUPAL

APPENDIX

EXHIBIT A

CHAPTER _____

An act to submit an advisory question to the voters relating to campaign finance, calling an election, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1272, Lieu. Campaign finance: advisory election.

This bill would call a special election to be consolidated with the November 4, 2014, statewide general election. The bill would require the Secretary of State to submit to the voters at the November 4, 2014, consolidated election an advisory question asking whether the Congress of the United States should propose, and the California Legislature should ratify, an amendment or amendments to the United States Constitution to overturn Citizens United v. Federal Election Commission (2010) 558 U.S. 310, and other applicable judicial precedents, as specified. The bill would require the Secretary of State to communicate the results of this election to the Congress of the United States.

This bill would declare that it is to take effect immediately as an act calling an election.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Overturn Citizens United Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) The United States Constitution and the Bill of Rights are intended to protect the rights of individual human beings.

(b) Corporations are not mentioned in the United States Constitution and the people have never granted constitutional rights to corporations, nor have we decreed that corporations have authority that exceeds the authority of "We the People."

(c) In Connecticut General Life Insurance Company v. Johnson (1938) 303 U.S. 77, United States Supreme Court Justice Hugo Black stated in his dissent, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations."

(d) In Austin v. Michigan Chamber of Commerce (1990) 494 U.S. 652, the United States Supreme Court recognized the threat

to a republican form of government posed by "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."

(e) In Citizens United v. Federal Election Commission (2010) 558 U.S. 310, the United States Supreme Court struck down limits on electioneering communications that were upheld in McConnell v. Federal Election Commission (2003) 540 U.S. 93 and Austin v. Michigan Chamber of Commerce. This decision presents a serious threat to self-government by rolling back previous bans on corporate spending in the electoral process and allows unlimited corporate spending to influence elections, candidate selection, policy decisions, and public debate.

(f) In Citizens United v. Federal Election Commission, Justices John Paul Stevens, Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor noted in their dissent that corporations have special advantages not enjoyed by natural persons, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets, that allow them to spend huge sums on campaign messages that have little or no correlation with the beliefs held by natural persons.

(g) Corporations have used the artificial rights bestowed on them by the courts to overturn democratically enacted laws that municipal, state, and federal governments passed to curb corporate abuses, thereby impairing local governments' ability to protect their citizens against corporate harms to the environment, consumers, workers, independent businesses, and local and regional economies.

(h) In Buckley v. Valeo (1976) 424 U.S. 1, the United States Supreme Court held that the appearance of corruption justified some contribution limitations, but it wrongly rejected other fundamental interests that the citizens of California find compelling, such as creating a level playing field and ensuring that all citizens, regardless of wealth, have an opportunity to have their political views heard.

(i) In First National Bank of Boston v. Bellotti (1978) 435 U.S. 765 and Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley (1981) 454 U.S. 290, the United States Supreme Court rejected limits on contributions to ballot measure campaigns

because it concluded that these contributions posed no threat of candidate corruption.

(j) In Nixon v. Shrink Missouri Government PAC (2000) 528 U.S. 377, United States Supreme Court Justice John Paul Stevens observed in his concurrence that "money is property; it is not speech."

(k) A February 2010 Washington Post-ABC News poll found that 80 percent of Americans oppose the ruling in Citizens United.

(*l*) Article V of the United States Constitution empowers and obligates the people of the United States of America to use the constitutional amendment process to correct those egregiously wrong decisions of the United States Supreme Court that go to the heart of our democracy and the republican form of self-government.

(m) The people of California and of the United States have previously used ballot measures as a way of instructing their elected representatives about the express actions they want to see them take on their behalf, including provisions to amend the United States Constitution.

SEC. 3. A special election is hereby called to be held throughout the state on November 4, 2014. The special election shall be consolidated with the statewide general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election and only one form of ballot shall be used.

SEC. 4. (a) Notwithstanding Section 9040 of the Elections Code, the Secretary of State shall submit the following advisory question to the voters at the November 4, 2014, consolidated election:

"Shall the Congress of the United States propose, and the California Legislature ratify, an amendment or amendments to the United States Constitution to overturn Citizens United v. Federal Election Commission (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that the rights protected by the United States Constitution are the rights of natural persons only?"

(b) Upon certification of the election, the Secretary of State shall communicate to the Congress of the United States the results of the election asking the question set forth in subdivision (a).

(c) The provisions of the Elections Code that apply to the preparation of ballot measures and ballot materials at a statewide election apply to the measure submitted pursuant to this section.

SEC. 5. (a) Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, 9082, and 9094 of the Elections Code or any other law, the Secretary of State shall submit Section 4 of this act to the voters at the November 4, 2014, statewide general election.

(b) Notwithstanding Section 13115 of the Elections Code, Section 4 of this act and any other measure placed on the ballot by the Legislature for the November 4, 2014, statewide general election after the 131-day deadline set forth in Section 9040 of the Elections Code shall be placed on the ballot, following all other ballot measures, in the order in which they qualified as determined by chapter number.

(c) The Secretary of State shall include, in the ballot pamphlets mailed pursuant to Section 9094 of the Elections Code, the information specified in Section 9084 of the Elections Code regarding the ballot measure contained in Section 4 of this act.

SEC. 6. This act calls an election within the meaning of Article IV of the Constitution and shall go into immediate effect.

Senate Bill No. 1272

Passed the Senate July 3, 2014

_____

Secretary of the Senate

Passed the Assembly June 30, 2014

_____

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2014, at _____ o'clock ____M.

_____

Private Secretary of the Governor

Approved _____, 2014

_____

Governor

EXHIBIT B

OFFICE OF THE GOVERNOR

JUL 15 2014

To the Members of the California State Senate:

I am allowing Senate Bill 1272 to become law without my signature.

This bill places an advisory question on the November ballot to ask voters if Congress should amend the United States Constitution to overturn *Citizens United v. Federal Election Commission.*

To be clear, this bill and the advisory vote it requires has no legal effect whatsoever. The only way to overturn a Supreme Court decision such as *Citizens United* is by the process outlined in Article V of the United States Constitution. In fact, the California State Legislature recently took action in this regard by approving a joint resolution calling upon Congress to convene a Constitutional convention for this very purpose.

I understand the motivation behind the enthusiastic support of this bill. In fact, I too believe that *Citizens United* was wrongly decided and grossly underestimated the corrupting influence of unchecked money on our democratic institutions.

But we should not make it a habit to clutter our ballots with nonbinding measures as citizens rightfully assume that their votes are meant to have legal effect. Nevertheless, given the Legislature's commitment on this issue, even to the point of calling for an unprecedented Article V Constitutional Convention, I am willing to allow this question to be placed before the voters.

By allowing SB 1272 to become law without my signature, it is my intention to signal that I am not inclined to repeat this practice of seeking advisory opinions from the voters. Also, I am announcing my action on this bill today so that this advisory question will be included in the principal ballot pamphlet, avoiding the significant costs of a supplemental pamphlet.

Sincerely,

Edmund G. Brown Jr.

Edmund G. Brown Jr.

EXHIBIT C

Assembly Joint Resolution No. 1

RESOLUTION CHAPTER 77

Assembly Joint Resolution No. 1—Relative to a federal constitutional convention.

[Filed with Secretary of State June 27, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AJR 1, Gatto. Federal constitutional convention: application.

This measure would constitute an application to the United States Congress to call a constitutional convention pursuant to Article V of the United States Constitution for the sole purpose of proposing an amendment to the United States Constitution that would limit corporate personhood for purposes of campaign finance and political speech and would further declare that money does not constitute speech and may be legislatively limited.

This measure would state that it constitutes a continuing application to call a constitutional convention until at least ⅔ of the state legislatures apply to the United States Congress to call a constitutional convention for that sole purpose. This measure would also state that it is an application for a limited constitutional convention and does not grant Congress the authority to call a constitutional convention for any purpose other than for the sole purpose set forth in this measure.

WHEREAS, Corporations are legal entities that governments create and the rights that they enjoy under the United States Constitution should be more narrowly defined than the rights afforded to natural persons; and

WHEREAS, Corporations do not vote in elections and should not be categorized as persons for purposes related to elections for public office and ballot measures; and

WHEREAS, The United States Supreme Court, in Citizens United v. Federal Election Commission (2010) 130 S.Ct. 876, held that the government may not, under the First Amendment to the United States Constitution, suppress political speech on the basis of the speaker's corporate identity; and

WHEREAS, Article V of the United States Constitution requires the United States Congress to call a constitutional convention upon application of two-thirds of the legislatures of the several states for the purpose of proposing amendments to the United States Constitution; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California, speaking on behalf of the people of the State of California, hereby applies to the United States Congress to call a constitutional convention pursuant to Article V of the

United States Constitution for the sole purpose of proposing an amendment to the United States Constitution that would limit corporate personhood for purposes of campaign finance and political speech and would further declare that money does not constitute speech and may be legislatively limited; and be it further

Resolved, That this constitutes a continuing application to call a constitutional convention pursuant to Article V of the United States Constitution until at least two-thirds of the legislatures of the several states apply to the United States Congress to call a constitutional convention for the sole purpose of proposing an amendment to the United States Constitution that would limit corporate personhood for purposes of campaign finance and political speech and would further declare that money does not constitute speech and may be legislatively limited; and be it further

Resolved, That this application is for a limited constitutional convention and does not grant Congress the authority to call a constitutional convention for any purpose other than for the sole purpose set forth in this resolution; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the United States Senate, the Minority Leader of the United States Senate, and to each Senator and Representative from California in the Congress of the United States.

O

Assembly Joint Resolution No. 1

Adopted in Assembly January 30, 2014

_____

Chief Clerk of the Assembly

Adopted in Senate June 23, 2014

_____

Secretary of the Senate

This resolution was received by the Secretary of State this

____ day of _____, 2014, at ____

o'clock ____M.

_____

Deputy Secretary of State

EXHIBIT D

AMENDED IN ASSEMBLY JUNE 4, 2014

AMENDED IN SENATE APRIL 10, 2014

SENATE BILL No. 1402

Introduced by Senator De León

February 21, 2014

An act to ~~amend Section 84307.5 of the Government Code, relating to the Political Reform Act of 1974~~ *submit an advisory question to the voters relating to immigration reform, calling an election, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as amended, De León. ~~Political Reform Act of 1974: campaign funds.~~ *Immigration reform: advisory election.*

This bill would call a special election to be consolidated with the November 4, 2014, statewide general election. The bill would require the Secretary of State to submit to the voters at the November 4, 2014, consolidated election an advisory question asking whether the Congress of the United States should immediately reform our immigration laws and pass comprehensive immigration reform that includes a path to citizenship for immigrants meeting certain requirements, as specified, and whether the President of the United States should halt deportations of parents whose children were born in the United States until that new immigration law is passed. The bill would require the Secretary of State to communicate the results of this election to the Congress of the United States.

This bill would declare that it is to take effect immediately as an act calling an election.

~~Existing provisions of the Political Reform Act of 1974 prohibit a spouse or domestic partner of an elected officer or a candidate for~~

~~elective office from receiving compensation from campaign funds held by a controlled committee of the officer or candidate for services rendered in connection with fundraising, as specified.~~

~~This bill would instead prohibit a spouse or domestic partner of an elected officer or a candidate for elective office from receiving compensation, in exchange for any services rendered, from campaign funds held by a controlled committee of the officer or candidate.~~

~~A violation of the act's provisions is punishable as a misdemeanor. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a ⅔ vote of each house and compliance with specified procedural requirements.~~

~~This bill would declare that it furthers the purposes of the act.~~

Vote: ~~⅔~~ *majority*. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The United States of America was founded on principles of freedom and opportunity, and on the tenet that all men and women are created equal.

(b) The nation's history has been indelibly shaped by waves of immigration.

(c) The current immigration system in the United States is antiquated, riddled with inefficiencies, and incapable of meeting the challenges of the 21st century and our changing economy.

(d) Immigrants are a major engine for the state's economic growth. Approximately 1 in 10 workers in California is an undocumented immigrant, totaling 1.85 million workers. Immigrants are vital for California's industries, including technology, agriculture, hospitality, and services.

(e) The undocumented immigrant population in the United States is currently 11.7 million and is expected to continue growing in the absence of immigration and regulatory reform.

(f) Almost one-quarter (23 percent) of the nation's undocumented immigrants reside in California.

(g) Thousands of families have been separated because of the enforcement of immigration laws that do not recognize the complexities of mixed-status families. Each year, more than 350,000 immigrants face deportation proceedings.

(h) Nearly one-half of undocumented immigrants in the United States are parents of minor children, and 77 percent of these children are United States citizens.

(i) Since 1998, about 600,000 children who are United States citizens have had a parent detained or deported. Currently, there are at least 5,100 children in the child welfare system because their parents are under immigration custody or have been deported. This number is expected to rise to 15,000 in the next five years.

SEC. 2. A special election is hereby called to be held throughout the state on November 4, 2014. The special election shall be consolidated with the statewide general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election and only one form of ballot shall be used.

SEC. 3. (a) Notwithstanding Section 9040 of the Elections Code, the Secretary of State shall submit the following advisory question to the voters at the November 4, 2014, consolidated election:

"Shall the Congress of the United States reform our immigration laws and immediately pass comprehensive immigration reform that includes a path to citizenship to those immigrants who learn English, pass a background check, and pay back taxes, and shall the President of the United States halt the deportations of noncriminal mothers and fathers whose children were born in the United States, which separate families, until that new immigration law is passed?"

(b) Upon certification of the election, the Secretary of State shall communicate to the Congress of the United States the results of the election asking the question set forth in subdivision (a).

(c) The provisions of the Elections Code that apply to the preparation of ballot measures and ballot materials at a statewide election apply to the measure submitted pursuant to this section.

SEC. 4. This act calls an election within the meaning of Article IV of the Constitution and shall go into immediate effect.

~~SECTION 1. Section 84307.5 of the Government Code is amended to read:~~

~~84307.5. A spouse or domestic partner of an elected officer or a candidate for elective office shall not receive, in exchange for services rendered, compensation from campaign funds held by a controlled committee of the elected officer or candidate for elective office.~~

~~SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

~~SEC. 3. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.~~

O

EXHIBIT E

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

HOWARD JARVIS TAXPAYERS ASSOCIATION et al.,
Petitioners,
v.
DEBRA BOWEN, as Secretary of State, etc.,
Respondent;
LEGISLATURE OF THE STATE OF CALIFORNIA,
Real Party in Interest.

C076928

The "Petition for Writ of Mandate or Other Extraordinary Relief -- Immediate Stay Requested" is denied. (See *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1030.)

ROBIE, J.

MAURO, J.

I would issue an alternative writ. In my view, Proposition 49 is clearly invalid and thus review prior to the election is required. The adoption of a resolution by initiative is unconstitutional under article II, section 8, subdivision (a) of the California Constitution. (*American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 707-715.) The Legislature has no authority to authorize the voters to adopt a resolution in violation of the California Constitution.

Dated: July 31, 2014

RAYE, P.J.

---

cc: See Mailing List

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

MAILING LIST

Re: Howard Jarvis Taxpayers Association et al. v. Bowen, as Secretary of State, etc.
C076928

Copies of this document have been sent to the individuals checked below:

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Principal Deputy Legislative Counsel
Diane F. Boyer-Vine
Office of the Legislative Counsel
3021 State Capitol
Sacramento, CA 95814-4996

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 455 Capitol Mall, Suite 600, Sacramento, CA 95814.

On July 31, 2014, I served the following: PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF-IMMEDIATE STAY REQUESTED ELECTION MATTER PRIORITY AUGUST 11, 2014 PRINTING DEADLINE

Counsel	Party Represented:
Robbie Anderson, Esq. 1500 11th Street, 5th Floor Sacramento, CA 95814	*Debra Bowen, California Secretary of State*
Diane Boyer-Vine, Esq. State Capitol, Room 3021 Sacramento, CA 95814	*Legislature of the State of California*

X **BY U.S. MAIL:** By placing said document(s) in a sealed envelope and depositing said envelope, with postage thereon fully prepaid, in the United States Postal Service mailbox in Sacramento, California, addressed to said party(ies), in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X **BY ELECTRONIC MAIL:** By causing true copy(ies) of PDF versions of said document(s) to be sent to the e-mail address of each party listed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 31, 2014 at Sacramento, California.

_____

CORIANNE DURKEE