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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

THE RED BRENNAN GROUP,
Petitioner/Plaintiff,

v.

MICHAEL JIMENEZ, in his official
capacity as San Bernardino County
Registrar of Voters; and DOES 1 through
10, inclusive,
Respondents/Defendants.

CASE NO.: CIVSB2218598

*Assigned for all purposes to the Hon. Winston Keh,
Dept. S33*

**PETITIONER'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
AMENDED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY RELIEF**

[Filed concurrently with Declaration of Alexander A
Frank; notice of writ hearing and writ; [proposed]
order]

Date: December 15, 2022
Time: 8:30 AM
Dept: S33

Action Filed: Sep. 28, 2022

SAN BERNARDINO COUNTY BOARD
OF SUPERVISORS,

Real Party in Interest.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For several years, citizens have fought a legal battle with the San Bernardino County Board of Supervisors over how much the Supervisors should be paid and how many terms of office they should be able to hold. The battle began in 2020, when San Bernardino County voters approved Measure K. Measure K was a citizens' initiative that reduced the Supervisors' pay to \$5,000 per month and imposed a one term of office limit.

The Supervisors sued to strike down Measure K. Immediately after the California Court of Appeal released a tentative opinion in July of 2022 upholding Measure K, the Supervisors immediately aimed to short circuit that litigation's threat to their self-interests by sponsoring Measure D. The Supervisors gave Measure D a duplicitous title that tells voters it is a "taxpayer protection" and "government reform" measure. It is neither.

Measure D proposes three main amendments to the County charter. First, it would set the Supervisors' salaries at 80% of a San Bernardino County superior court judge's salary, and thereby contradict the \$5,000 per month salary that voters approved with Measure K. Second, it would allow the Supervisors to hold up to three terms of office, not including their currently serving terms, also in contradiction of Measure K. Third, it would increase the number of Supervisors' votes required to adopt and then submit any taxation proposal to voters from three-of-five to four-of-five. (Frank Decl., ¶10, Ex. G.)

But Measure D does not even remotely serve "taxpayer protection" or "government reform." It is simply an attack on Measure K. Drastically increasing the Supervisors' salaries by hundreds of thousands of dollars is not taxpayer protection, it is taxpayer exploitation. Nor does the change from 3/5 supervisor votes to 4/5 for new tax proposal measures change anything. Ultimately, taxation measures are subject to voter approval anyway. So, whether 3/5 or 4/5 votes are required is hardly "taxpayer protection" or "government reform," which is a vague and borderline meaningless term. Indeed, this component of Measure D is simply meant to obscure the Supervisors' true goals. Nor does creating the potential for multiple terms of office "reform" government; it only consolidates the Supervisors' power and makes their power more valuable.

1 In addition to its false and partisan description, Measure D’s disparate provisions violate
2 the rule that a measure’s provisions must be reasonably related to achieve a common purpose.

3 Measure D’s duplicity also rises to the level of a constitutional due process violation and should
4 be invalidated on that separate basis as well. Indeed, the extent of the duplicity is astonishing.

5 Importantly, Petitioner does not allege that the Supervisors lack the authority to propose
6 Measure D’s three substantive provisions or that the three provisions are substantively off limits.
7 Petitioner alleges that the way that Supervisors have presented Measure D violates the law. If the
8 Supervisors want to propose these substantive changes to the voters in a charter amendment
9 measure, California law requires them to do so with honest and impartial language. Because they
10 did not, Measure D should be invalidated.

11 Although the Registrar has not certified the November 8, 2022, election results, as of this
12 filing the preliminary election results that are nearly guaranteed to remain undisturbed show that
13 Measure D passed with 58.88% voter approval (159,683 votes). (Frank Decl., ¶18, Ex. O.)

14 **II. STATEMENT OF FACTS**

15 **A. Citizens Overwhelmingly Approve Measure K’s Term & Compensation** 16 **Limits in 2020**

17 In 2020, 66.84% of voters (516,184 people) in San Bernardino County overwhelmingly
18 approved Measure K. (Frank Decl., ¶2, Ex. A.) Measure K’s two core substantive provisions were
19 limiting the individual Supervisors’ salaries to \$5,000 per month (inclusive of benefits) and
20 imposing a one term of office limitation. (*Id.*, ¶3, Ex. B.)

21 In response, the Supervisors sued to invalidate Measure K. The Supervisors prevailed in
22 the trial court, which ruled that the one term limit is unconstitutional, but that the compensation
23 limit is constitutional. (Frank Decl., ¶5, Ex. C.) However, the trial court held both provisions
24 invalid because the measure’s provisions were deemed inseverable. (*Ibid.*)

25 Measure K’s citizen proponent appealed and the Supervisors cross-appealed. (Frank Decl.,
26 ¶5, Ex. C.) In the court of appeal’s July 12, 2022, tentative opinion, the court stated it would
27 uphold the one-term limit, uphold the compensation limit, but that while the one term limit would
28 apply to the three new supervisors, the compensation limit initially would not apply but would

1 apply to subsequently elected supervisors. (*Ibid.*)

2
3 **B. The Supervisors Immediately Move to Circumvent the Court of Appeal’s July 2022 Tentative Opinion by Sponsoring Measure D**

4 The Supervisors formally met on July 12, 2022, and their next formal meeting was on July
5 26, 2022. (Frank Decl., ¶7, Ex. E.) At the July 26, 2022, meeting, the Supervisors introduced
6 Measure D. (*Ibid.*) On August 9, 2022, the Supervisors finally adopted it. (*Id.*, ¶8, Ex. F.)

7 One month later on September 9, 2022, Petitioner fax-filed its complaint in this action, but
8 later learned that the court clerks did not receive it. (Frank Decl., ¶9.) Petitioner re-filed by fax on
9 September 21, 2022. (*Ibid.*) On September 28, 2022, the court accepted the filing. (*Ibid.*)

10
11 **III. MEASURE D’S PROVISIONS ARE NOT REASONABLY RELATED TO**
12 **ACHIEVE A COMMON THEME OR PURPOSE**

13 The single-subject rule is found in the California Constitution, article II, section 8,
14 subdivision (d). That section of the California Constitution provides that “[a]n initiative measure
15 embracing more than one subject may not be submitted to the electors or have any effect.” (Cal.
16 Const. art. II, § 8, subd. (d).) Under the California Constitution, there are only two ways to amend
17 a county or city charter. First is through an initiative petition for the ballot signed by voters, and
18 the second is through a ballot measure sponsored by a city or county’s governing entity. (Cal.
19 Const. art. XI, § 3, subd. (b).) That section expressly provides “[t]he governing body or charter
20 commission of a county or city may propose a charter or revision. Amendment or repeal may be
21 proposed by initiative or by the governing body.” (*Ibid.*)

22 In *Hernandez v. County of Los Angeles* (2008) 167 Cal.App.4th 12, the plaintiffs alleged
23 the single-subject rule should apply to a ballot measure charter amendment sponsored by a city
24 council just as it would apply to a ballot measure charter amendment proposed by a citizens’
25 initiative. But the *Hernandez* court reasoned that because the charter amendment measure was
26 sponsored by the city council, and therefore technically was not an “initiative” measure, the
27 single-subject rule did not apply to it. (*Hernandez*, at p. 22-23.)
28

1 Although *Hernandez* held the single-subject rule does not expressly apply to a government
2 sponsored ballot measure, *Hernandez* is clear that a city or county governing body's power to
3 propose a charter amendment initiative is not completely without limits. A ballot measure's
4 provisions must still be *reasonably* related to each other. The *Hernandez* court clarified:

5
6 By not encumbering governing bodies of charter cities with a single
7 subject requirement, the framers enabled charter cities to sponsor
8 measures aimed at accomplishing comprehensive reform at the ballot
9 box. Charter cities are also able to group multiple technical
10 amendments into one ballot measure. Since every ballot question
11 carries significant administrative costs, substantial efficiencies can be
12 achieved by a city council's authority to group technical changes of
13 *disparate but reasonably related* provisions and statutory amendments
14 into one measure to achieve a common theme or purpose.

15 (*Hernandez, supra*, 167 Cal.App.4th at pp. 22-23, italics added.)

16 Thus, *Hernandez* established that provisions grouped together in a charter amendment
17 measure still need to be *reasonably related to achieve a common theme or purpose*, even if those
18 provisions may be beyond the more restrictive reach of the single-subject rule. This reasoning is
19 not dicta and appears in the same paragraph as the case's core holding. Thus, the flaw with
20 Measure D is that its provisions are not reasonably related to achieve a common theme or
21 purpose as *Hernandez* requires. Measure D's three main substantive provisions are:

- 22 1) Term limits change – allowing Supervisors to have up to three 4-year terms.
- 23 2) Compensation increases to 80% of a San Bernardino County Superior Court Judge's
24 salary for each Supervisor.
- 25 3) Increase in the number of Supervisors' votes required to submit a tax increase to the
26 peoples' vote from 3/5 to 4/5.

27 These three substantive provisions are not *reasonably related to achieve a common theme*
28 *or purpose*. Supervisors' term limits, Supervisors' salaries, and Supervisors' votes to approve
taxation measures for submission to the voters are three distinct aspects of the Supervisors'
activities. At minimum, the 4/5 vote provision for new taxes clearly is not reasonably related to
the compensation and term limit provisions. These three provisions do not share a common
purpose, even if two of them might be more closely related than the third.

Ostensibly, the Supervisors included the tax vote provision to create the illusion that the Supervisors are trying to protect the taxpayer. But that is a ruse meant to capitalize on an undisclosed fact: taxes already require taxpayers' approval under Propositions 62 and 218.

Thus, there is no common purpose among these three provisions. The purported purpose of Measure D may be to "amend the charter" in the broadest sense, but the true purpose is to moot the forthcoming court of appeal decision that will solidify the validity of Measure K's term and compensation provisions. The 4/5 tax provision has nothing to do with that at all.

IV. MEASURE D'S BALLOT STATEMENT VIOLATES ELECTION CODE SECTION 13119 BECAUSE IT IS FALSE, PARTIAL, AND PREJUDICIAL IN THE MEASURE'S FAVOR

Measure D is labeled a "taxpayer protection" and "government reform" measure. But inspection of Measure D's statement of purpose and substantive provisions shows that these descriptions are false, partial, prejudicial, and therefore violate California elections law.

California Elections Code section 13119 provides that "the statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure." (Elec. Code § 13119, subd. (c).)

Measure D's "statement of purpose" is as follows: "Section I: Statement of Purpose

The purpose of this measure is [1] to prohibit the elected Board of Supervisors of San Bernardino County from increasing taxes without a vote of the people, [2] prevent elected County Supervisors from voting to increase their salary, [3] and facilitate effective representation in county government." (Frank Decl., ¶10, Ex. G, bold added.)

These claims are not true, not impartial, and are very likely to create prejudice in Measure D's favor. Indeed, the statement of purpose includes three bogus and misleading contentions which violate section 13119, and do not promote "taxpayer protection" and "government reform."

A. Measure D Will Not Prohibit the Supervisors from Increasing Taxes Without a Vote of the People Because the Law Already Prohibits That

The claim that Measure D will "prohibit the elected Board of Supervisors of San Bernardino County from increasing taxes without a vote of the people" is a false and misleading statement. This claim clearly implies that the Supervisors currently can impose taxes

1 on the voters without their approval, and this measure would end that. Not so, not even close.

2 Voter approval is *already* required for both special and general taxes under Propositions
3 62 and 218. (Gov. Code §§ 53721-53723; Cal. Const., art. XIII C. §§ 2.) Thus, for the Supervisors
4 to explicitly state that Measure D would prevent them from imposing taxes without the peoples’
5 vote, which is something the Supervisors already cannot do, is untrue, partial, and very likely to
6 create prejudice in Measure D’s favor. It is per se deceptive and misleading.

7 The average voter simply does not know enough, and in most cases really does not know
8 anything, about the legal mechanics of taxation approval. So when a voter sees language like this
9 in an official government published election document context, the voter justifiably assumes that
10 the obvious implications are safe to make, and that the language they see is a fair, accurate, and
11 sufficiently complete representation that does not omit critical information. But here that is
12 obviously not the case. There is really no room to argue that this ballot statement provides enough
13 information for a voter to make an informed decision when it is so plainly misleading.

14
15 **B. Measure D Does Not Prevent the Supervisors from Voting to Increase Their Salaries**

16 The Supervisors represent that Measure D will “prevent elected County Supervisors from
17 voting to increase their salary.” (Frank Decl., ¶10, Ex. G.) This is another egregious sin of
18 omission and flat-out misrepresentation of what Measure D does. Section 209 of Measure D
19 proposes as new law the text in underline and proposes to repeal the language that is struck out. It
20 provides, in relevant part:

21 “Members of the Board of Supervisors shall be paid an annual
22 base salary that is equal to 80 percent of the annual base salary
23 prescribed by law for Judges of the Superior Court of San
24 Bernardino County, and shall be provided, to the extent legally
25 permissible, the regular benefits that are offered to Exempt
26 Group employees in the benefits category for department heads
27 as provided by ordinance.

28 Thereafter, the annual base salary of the Members of the Board of
Supervisors shall be changed at such times and in such percentages
as changes by law to the Judges of the Superior Court of San
Bernardino County, except as otherwise provided in this paragraph.
Any increase in the salary of the Members of the Board of
Supervisors pursuant to this paragraph shall only become effective

1 ~~after there has been an election for any member of the Board of~~
2 ~~Supervisors, only if such increase is ratified pursuant to an ordinance~~
3 ~~that is introduced at a noticed public hearing and is thereafter~~
4 ~~approved. The Board of Supervisors may approve a salary increase~~
5 ~~that is less than the amount permitted under this paragraph.”~~

6 (Frank Decl., ¶ 10, Ex. G.)

7 So the representation that Measure D’s purpose is to “prevent elected County Supervisors
8 from voting to increase their salary” is false. The purpose is to repeal the Supervisors’ *option* to
9 approve a salary increase for themselves that is *less* than the increase they would otherwise get
10 through operation of law thanks to another sentence in the very same paragraph. To make things
11 worse, Measure D goes even further by repealing the requirement for approval of the operation of
12 law salary increase by striking out the language “only if such increase is ratified pursuant to an
13 ordinance that is introduced at a noticed public hearing and is thereafter approved.”

14 Thus, it turns out that Measure D does not prevent the Supervisors from voting to increase
15 their salaries; it preserves the language that gives them an automatic raise, *removes* the approval
16 mechanism for the automatic raise, and then repeals their ability to give themselves a lesser raise
17 than they would get automatically without having to lift a finger.

18 This is egregiously deceptive and utterly unacceptable. A truthful statement about
19 Measure D would resemble this: Measure D will “prevent elected County Supervisors from
20 voting to increase their salary *by a lower amount than the law already increases it automatically.*”
21 Big difference between the truth and what Measure D actually says, which is “prevent elected
22 County Supervisors from voting to increase their salary.”

23 With deception like this, it really is no surprise that Measure D passed. And sadly, the
24 duplicity of this statement is also coupled to the irony that Measure D is the product of the
25 Supervisors doing *exactly* what Measure D purportedly prohibits - voting to increase their
26 salaries. Measure D accomplishes just that: Measure K set compensation at \$5,000 per month
27 inclusive of benefits; Measure D sets compensation at 80% of a San Bernardino County Superior
28 Court Judge’s salary, which ranges from \$180,000 to \$240,000 a year, exclusive of benefits.

(Frank Decl., ¶23, Ex. T.) Thus, it simply strains credulity that the voters would ever have

1 supported Measure D if they knew the truth about it. Especially given the voters’ overwhelming
2 support for Measure K in 2020.

3
4 **C. Measure D Will Not Facilitate “Effective Representation” in County Government**

5 Measure D’s representation that it will “facilitate effective representation in County
6 Government” ostensibly describes Measure D’s term change provision. But this representation is
7 a statement of opinion because what policy might facilitate “effective representation” in county
8 government is entirely subjective and open to debate. It is a manifestly partial and partisan
9 description of Measure D’s purported substance, is intentionally deceptive, and is very likely to
10 create prejudice in Measure D’s favor.

11 **D. Measure D’s True Purpose Is Mooting the Measure K Appeal**

12 The purpose of Measure D was to moot the Measure K lawsuit which would very likely be
13 resolved against the Supervisors’ interests in their paychecks and power. On July 12, 2022, the
14 California Court of Appeal, Fourth District, issued its tentative opinion in the Measure K lawsuit
15 matter, *San Bernardino County Board of Supervisors v. Monell (Renner)*, Case No. E077772.
16 (Frank Decl., ¶5, Ex. C.)

17 The Court of Appeal’s lengthy tentative opinion found that the Supervisors’ attack on
18 Measure K lacks merit and that its term limit provision and Supervisor salary provisions will
19 stand. So, at the very next regular meeting after the court released that tentative opinion, the
20 Supervisors introduced Measure D, and a few weeks later the Supervisors approved Measure D
21 for submission to the voters. (Frank Decl., ¶¶ 7-8, Exs. E, F.) The timing speaks for itself.

22 And given the unseemliness of the timing and the obvious political infeasibility of
23 emphatically asking the citizens to reverse themselves by repealing the term and compensation
24 limits measure they resoundingly approved in 2020, the Supervisors submitted a thoroughly
25 deceptive measure to them, and hoped their subterfuge would work. Unfortunately, they were
26 right. This is an unlawful insult to their constituents and to democracy.

27 California initiative case law is richly adorned with lofty language extolling the heritage
28 and significance of California’s citizens’ initiative powers. “[C]ourts are charged to construe the

1 Elections code to favor the people’s awesome initiative power[.] (*San Francisco Forty-Niners v.*
2 *Nishioka* (1999) 75 Cal.App.4th 637.) “The ballot box is the sword of democracy.” (*Id.*, at pp.
3 643-644.) It is the “court’s duty to jealously guard the people’s right of initiative and
4 referendum.” (*Ibid.*) “[C]ourts have described the initiative and referendum as articulating ‘one of
5 the most precious rights of our democratic process’.” (*Rossi v. Brown* (1995) 9 Cal.4th 688, 695
6 (quoting *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591).)

7 Here, Measure D is clearly hostile to and disrespectful of the citizens’ initiative power.
8 Not only is Measure D a false and deceptive attack on the peoples’ will as expressed in their
9 overwhelming support for Measure K, but it is also an insult to the judiciary’s indication that
10 Measure K is valid and that its terms may take effect. Indeed, it took only one month from the
11 date the court of appeal released its tentative opinion upholding Measure K in July 2022 for the
12 Supervisors to approve Measure D. (Frank Decl., ¶¶ 7-8, Exs. E, F.) They dropped everything else
13 to focus on protecting their paychecks and their power.

14 More proof of Measure D’s true purpose is found in Section VII, which provides that if
15 any future citizens’ measure attempts to undo Measure D’s compensation and term limit
16 provisions, the purported taxpayer “protection” clause in Measure D automatically repeals. (Frank
17 Decl., ¶10, Ex. G.) So the Supervisors offer a purported taxpayer “protection” measure which is
18 wholly illusory and duplicitous, and insert a self-executing threat provision which would take
19 away that purported benefit if the voters have the audacity to change Measure D’s term and
20 compensation limits in the future.

21 Although elected representatives no doubt have the power to govern, that power to govern
22 must be responsive to the citizens’ will, and not be exercised through falsehoods, deceptions, and
23 illusory promises. Especially when the citizens’ will is reflected in a 66.84%, 516,184 vote,
24 mandate level of support, like Measure K received in 2020. By supporting Measure K’s modest
25 salary and term limit provisions, the 2020 voters clearly expressed that they wanted to dissuade
26 people with financial motivations from seeking the supervisorship. They want the people who
27 hold this important office to promote the greater good of their community, not to be there for
28 money or power. The Supervisors’ rejection of their constituents’ desires could not be any clearer.

1 **V. MEASURE D’S DUPLICITY IS A CONSTITUTIONAL DUE PROCESS INJURY**

2 California law generally requires a litigant who seeks to invalidate a ballot measure due to
3 issues with content in the ballot materials to adjudicate that action prior to an election. (*Owens v.*
4 *County of Los Angeles* (2013) 220 Cal.App.4th 107, 123.) However, California courts have
5 established an avenue for a post-election constitutional challenge to ballot materials that are so
6 deceptive that they violate due process.

7 Indeed, ballot material language could be so misleading and inaccurate that constitutional
8 due process requires a court to invalidate the election. (See *Friends of Sierra Madre v. City of*
9 *Sierra Madre* (2001) 25 Cal.4th 165; *Horwath v. City of E. Palo Alto* (1989) 212 Cal.App.3d 766;
10 *People ex rel. Kerr v. County of Orange* (2003) 106 Cal.App.4th 914.) “California courts
11 recognize the general principle that an election cannot stand in the face of irregularity or illegality
12 in the election process which affected the result – a departure from legal requirements that ‘in fact
13 prevented the fair expression of popular will’. This overriding principle . . . can be viewed as
14 encompassing a concern about fundamental fairness or due process in the election procedures
15 themselves.” (*Horwath*, at p. 776.)

16 “*Friends of Sierra Madre*, *Horwath*, and *Kerr* all recognized that an election might still be
17 set aside if there was malconduct that rose to constitutional levels.” (*McKinney v. Superior Court*
18 *(City of San Diego)* (2004) 124 Cal.App.4th 951. Achieving a post-election invalidation on the
19 basis of ballot material deficiency “requires a showing that the [ballot material] profoundly misled
20 the electorate[.]” (*People ex rel. Kerr, supra*, 106 Cal.App.4th at p. 934.) The question is
21 “whether the official misinformation so permeated the lawmaking process as to render it
22 substantively invalid.” (*Horwath, supra*, 212 Cal.App.3d at p. 775.)

23 In *Horwath*, the court “fashion[ed] a [three factor] model for deciding whether the
24 defective ballot measure [material] triggers invalidation of [the measure] on due process
25 grounds.” (*Horwath, supra*, 212 Cal.App.3d at p. 777.) First, “in conducting this inquiry courts
26 should examine the extent of preelection publicity, canvassing and other informational activities,
27 as well as the substance or content of such efforts.” (*Id.*, at p. 777.) Second, “[t]he ready
28 availability of the text of the ordinance, or the official dissemination and content of other related

1 materials, such as arguments for or against the measure, will also bear on whether statutory
2 noncompliance rendered the election unfair.” (*Id.*, at p. 778.) Third, and “[f]inally, courts should
3 take into account the materiality of the omission or other informational deficiency. Flaws striking
4 at the very nature and purpose of the legislation are more serious than other, more ancillary
5 matters.” (*Ibid.*)

6 **A. Pro Measure D Advocacy Groups Waged a Campaign of Election Deception**

7 Here, factor one is clearly met. The “substance or content” of the “preelection publicity”
8 and “other informational activities” was thoroughly compromised with disinformation. Like
9 virtually all ballot measures, voters received pamphlets in the mail from interest groups imploring
10 people to vote “yes” or “no.” Here, many “Yes on D” pamphlets reiterate and amplify the
11 Supervisors’ brazen deceptions and omissions. For example, an advocacy group called Southern
12 California Partnership for Jobs pitches Measure D as a road-fixing and job-creating measure. Its
13 pamphlet says: 1) “It’s time to fix our roads – and make sure local residents benefit from good
14 jobs”, 2) “Measure D would hold our local leaders accountable to fix potholes, repair aging
15 bridges, improve safety and reduce congestion – creating thousands of good local jobs for
16 working families”, 3) “Require approval for any tax increase”, 4) “Prohibit the Board of
17 Supervisors from voting to increase their salaries,” and 5) “Strengthen term limits.” (Frank Decl.,
18 ¶11, Ex. H.) This is abjectly deceptive messaging.

19 Another pro Measure D pamphlet circulated by an advocacy group called “Good
20 Government San Bernardino, Yes on D” takes the deception even further by misappropriating
21 legendary anti-tax activist Howard Jarvis’ likeness and stating “spirit of the tax revolt” next to
22 conservative icon Ronald Reagan’s likeness. (Frank Decl., ¶12, Ex. I.) This outrageously
23 deceptive advertisement elicited a scathing denunciation from Jon Coupal, president of the
24 Howard Jarvis Taxpayers Association. (Frank Decl., ¶13, Ex. J.) Mr. Coupal said the
25 advertisement is “despicable,” “likely actionable,” and “unseemly.” (*Ibid.*) He’s right.

26 Unfortunately, Good Government San Bernardino did not stop there. It circulated **at least**
27 **six** pamphlets containing false, deceptive, and misleading content. The second stating in bold
28 language: 1) “SAN BERNARDINO WORKING FAMILIES AND SENIORS DESERVE MORE

1 THAN INFLATION VOTE YES ON MEASURE D,” 2) “Give voters the power to decide on any
2 San Bernardino County Board approved tax increases that impact their budgets,” and “Block
3 county politicians from helping themselves to more of your tax dollars by banning their ability to
4 give themselves pay raises.” (Frank Decl., ¶14, Ex. K.) Of course, Measure D has nothing to do
5 with protecting seniors or working-class families, and will not otherwise do what this pamphlet
6 purports it will do. It is just a cynical attempt to exploit the inflation crisis and peoples’ empathy
7 for the working class and the elderly. The third Good Government San Bernardino pamphlet
8 proclaims, among other deceptions: 1) “LET VOTERS DECIDE on ALL tax increases in San
9 Bernardino County”, 2) “VOTE YES ON D to Protect Your Wallet from Higher Taxes!” and 3)
10 “Ban County Supervisors from raising their own salaries.” (Frank Decl., ¶15, Ex. L.) None of
11 these statements are accurate.

12 The fourth Good Government San Bernardino pamphlet states: 1) “Keep San Bernardino
13 County Affordable”, 2) “Measure D Will...let voters decide on ALL tax increases in San
14 Bernardino County.”, 3) “AND it bans County Supervisors from raising their own salaries while
15 in office”, 4) “Take control of county taxes. Vote YES on Measure D”, 5) “WORRIED ABOUT
16 TAXES TAKING MORE OF YOUR MONEY?” (Frank Decl., ¶19, Ex. P.) More recycling of the
17 same deceptions.

18 The fifth Good Government San Bernardino County pamphlet states: 1) “INFLATION
19 HURTS EVERYONE”, 2) “STOP NEW TAXES FROM MAKING IT WORSE”, 3) “Prevent
20 politicians from raising their own salaries”, 4) and “KEEP SAN BERNADINO COUNTY
21 AFFORDABLE.” (Frank Decl., ¶20, Ex. Q.) And the sixth Good Government San Bernardino
22 County pamphlet depicts citizens at the gas pump and grocery store appearing upset by prices and
23 states: 1) “PRICES ARE UP...KEEP TAXES DOWN”, 2) “PREVENT POLITICIANS from
24 raising their own salaries”, 3) and “KEEP SAN BERNARDINO COUNTY AFFORDABLE.”
25 (Frank Decl., ¶21, Ex. R.) These are all clear misrepresentations designed to exploit peoples’
26 financial troubles and to mislead them about Measure D.

27 To top off its disinformation campaign, Good Government San Bernardino also sent a
28 mass text message to voters stating: “Yes on Measure D will give us ‘the TOUGHEST taxpayer

1 protections in the state,’ according to the region’s LEADING TAXPAYER ADVOCACY group.
2 Supporting Measure D will STOP NEW TAXES by giving voters the chance to decide on every
3 new tax, and it will make it harder or the County Board of Supervisors to propose new taxes.”
4 (Frank Decl., ¶22, Ex. S.)

5 Even the San Bernardino County Republican Party circulated a misleading pamphlet that
6 states: “REQUIRED: Voter approval for any tax increase proposed by County Supervisors” and
7 “REQUIRED: County Supervisors BANNED from raising their own salaries.” (Frank Decl., ¶16,
8 Ex. M.)

9 Thus, the first *Horwath* factor is clearly satisfied. The broader informational environment
10 concerning Measure D was thoroughly contaminated by a coordinated and intentional deception
11 campaign. And because “we first observe that the responsibility for voter education is not the
12 government’s alone; [and that] other segments of society, including the media, interest groups and
13 the voters themselves, share this responsibility,” the failure to honestly shoulder that
14 responsibility cannot go without censure. (*Horwath, supra*, 212 Cal.App.3d at p. 775.)

15 **B. The Supporting Ballot Materials Were Also Deceptive and Misleading**

16 The second *Horvath* factor, which looks at the availability of the measure’s text and other
17 official ballot materials disseminated to the voters, reveals that the Registrar’s official voter
18 information guide is also contaminated with deception in three key areas: the impartial analysis,
19 the argument in favor, and the rebuttal in favor. (Frank Decl., ¶17, Ex. N.)

20 The egregious deceptions are in the pro Measure D argument and the pro Measure D
21 rebuttal. This content is as deceptive as anything in the pamphlets. From the argument in favor: 1)
22 “STOP NEW TAXES WITHOUT VOTER APPROVAL. LIMIT COUNTY SUPERVISOR
23 SALARY INCREASES,” 2) “Prohibiting the Board of Supervisors from voting to increase their
24 own salaries,” 3) “STOP TAX INCREASES, LIMIT POLITICAN SALARIES,” 4) “Requiring
25 voter approval for ANY tax increase the Board of Supervisors proposes. NO new taxation without
26 OUR vote.” From the rebuttal: “Measure D will prevent politicians from raising their own salaries
27 and abusing precious county resources, and it will ensure that tax increases cannot occur without
28 true consensus by requiring the vote of the people.” (Frank Decl., ¶17, Ex. N). As already

1 explained, these are outright, bald-face deceptions. And the impartial analysis is deceptive
2 because it insinuates that 4/5 vote approval and submission to the voters are new and welcome
3 developments. (Frank Decl., ¶17, Ex. N). But a majority of Supervisors' votes is already required
4 and so is submission to the voters. Failing to explain this is a material omission that must be
5 stated for sufficient context, and thus true impartiality.

6 **C. The Deceptions Went to the Very Essence of Measure D's Core Provisions**

7 Factor three is clearly satisfied because it is unmistakably evident that the deceptions here
8 "strike at the very nature and purpose of the legislation," and that Measure D's materials
9 "profoundly mislead" the electorate and therefore rise to a constitutional due process injury.
10 (*Horwath, supra*, 212 Cal.App.3d at p. 778.) As already argued in sections IV(a), IV(b), and
11 IV(c), *supra*, the main representations about Measure D's purpose are all materially and
12 unmistakably misrepresented, deceptive, and misleading.

13 The Supervisors lied, mischaracterized, and omitted key facts about Measure D's three
14 key purposes. Measure D does not "prohibit the elected Board of Supervisors of San Bernardino
15 County from increasing taxes without a vote of the people." The law already prohibits that.
16 Measure D does not "prevent elected County Supervisors from voting to increase their salary." It
17 repeals a bizarre provision that allows them to give themselves a *lower* raise than they would get
18 automatically. And Measure D does not "facilitate effective representation in county
19 government," which is a meaningless contention of biased opinion that hides a selfish agenda.
20 These deceptions unambiguously strike "at the very nature and purpose of the legislation."
21 (*Horwath, supra*, 212 Cal.App.3d at p. 778.) These are not immaterial details about "ancillary
22 matters"; these are lies about Measure D's core provisions.

23 Without any doubt, Measure D's misinformation profoundly mislead the electorate, was
24 so inaccurate and misleading "as to prevent the voters from making informed choices," and so
25 "permeates the lawmaking process" as to render Measure D substantively invalid. (*Horwath,*
26 *supra*, 212 Cal.App.3d at p. 775, 377.) Indeed, the severity of the deception prevented the voters
27 from making an informed choice and violated their due process rights. Nothing else could
28 plausibly explain the voters' 180-degree about-face reversal of what they resoundingly voted for

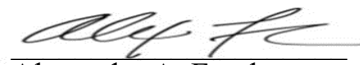
1 when they enacted Measure K in 2020 with over a half-million votes. They thought they were
2 voting for a “taxpayer protection” and “government reform” measure. But that is not what
3 Measure D truly is. Measure D should therefore be struck down.

4 CONCLUSION

5 Measure D runs afoul of *Hernandez*’s holding that a ballot measure’s terms must be
6 reasonably related to achieve a common purpose, violates section 13119’s requirement that the
7 statement of the measure’s purpose be true, impartial, and not be likely to create prejudice for or
8 against it, and is so thoroughly duplicitous and misleading that it rises to the level of a
9 constitutional due process violation. This Court should strike it down on all three grounds.

10
11 Dated: November 21, 2022

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