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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

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14 NEAL A. DONNER,

15 Petitioner,

16 vs.

17 CONNY McCORMACK, County of Los
Angeles Registrar-Recorder/County Clerk;
18 FRANK MARTINEZ, City of Los Angeles City
Clerk,

19 Respondents.
20

21 CITY OF LOS ANGELES CITY COUNCIL
and DOES 51 through 100, Inclusive,

22 Real Parties in Interest.
23

Case No.

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

24
25 INTRODUCTION

26 On August 2, 2006, the City of Los Angeles City Council enacted Ordinance No. 177773
27 placing on the November 7, 2006 city-wide ballot a ballot measure entitled COUNCILMEMBER
28 TERM LIMITS OF THREE TERMS; CITY LOBBYING, CAMPAIGN FINANCE AND

1 ETHICS LAWS. CHARTER AMENDMENT AND ORDINANCE PROPOSITION R. (See
2 Verified Petition, Exhibit A.) The ballot measure seeks to amend the City Charter 1) to allow
3 members of the City Council to serve a total of three terms - compared to the current two-term
4 limit; 2) add a new restriction against lobbyists contributing to candidates and their controlled
5 political committees; 3) amend disclaimer requirements for independent expenditure committees,
6 and 4) change the qualifications for those who may be appointed to city commissions. (See
7 Verified Petition, Exhibit B.) Proposition R also proposes several city ordinance amendments
8 related to charter amendments 2-4. By combining within one ballot measure several charter and
9 ordinance amendments embracing multiple unrelated subjects, the ballot measure violates the
10 single subject rule of the California Constitution, Article XI, Section 7.5, as adopted by the City of
11 Los Angeles Charter, Volume I, Article IV, Section 450.
12

13
14 I. AN AMENDMENT TO THE CHARTER OF THE CITY OF LOS ANGELES MUST
15 COMPLY WITH THE STATE CONSTITUTION'S PROHIBITION AGAINST A
16 BALLOT MEASURE ENCOMPASSING MORE THAN ONE SUBJECT

17 Volume 1, Article IV, Section 450 of the charter of the City of Los Angeles provides:

18 **Sec. 450. Subject of Initiative**

19 (a) Any proposed ordinance which the Council itself might adopt may be
20 submitted to the Council by a petition filed with the City Clerk, requesting that the
21 ordinance be adopted by the Council or be submitted to a vote of the electors of the
22 City. Any proposed ordinance amending or repealing an ordinance previously
23 adopted by a vote of the electors may be submitted to the Council by a petition
24 filed with the City Clerk requesting that the ordinance be submitted to a vote of the
25 electors of the City.

26 (b) *Petitions to amend the Charter shall be governed by provisions of the
27 California Constitution and applicable provisions of state law concerning
28 Charter amendments.* (Emphasis added.)

As such, any petition to amend the City of Los Angeles Charter must comply with any restrictions
set by the California Constitution regarding charter amendments.

In relation to the city ballot measure power, Article II, Section 11 of the state constitution
prohibits popularly-originated ballot measures in the following manners:

Sec. 11. (a) Initiative and referendum powers may be exercised by the electors of
each city or county under procedures that the Legislature shall provide. Except as
provided in subdivisions (b) and (c), this section does not affect a city having a

1 charter.

2 (b) A city or county initiative measure shall not include or exclude any part of the
3 city or county from the application or effect of its provisions based upon approval
4 or disapproval of the initiative measure, or based upon the casting of a specified
percentage of votes in favor of the measure, by the electors of the city or county or
any part thereof.

5 (c) A city or county initiative measure shall not contain alternative or cumulative
6 provisions wherein one or more of those provisions would become law depending
upon the casting of a specified percentage of votes for or against the measure.

7 Similarly, Article XI, Section 7.5 of the state constitution prohibits legislatively-originated ballot
8 measures in near identical fashion:

9 Sec. 7.5. (a) A city or county measure *proposed by the legislative body of a city,*
10 *charter city*, county, or charter county and submitted to the voters for approval
shall not do either of the following:

11 (1) Include or exclude any part of the city, charter city, county, or charter county
12 from the application or effect of its provisions based upon approval or disapproval
13 of the city or county measure, or based upon the casting of a specified percentage
of votes in favor of the measure, by the electors of the city, charter city, county,
14 charter county, or any part thereof.

15 (2) Contain alternative or cumulative provisions wherein one or more of those
16 provisions would become law depending upon the casting of a specified percentage
of votes for or against the measure.

17 (b) "City or county measure," as used in this section, means an advisory question,
18 proposed charter or charter amendment, ordinance, proposition for the issuance of
bonds, or other question or proposition submitted to the voters of a city, or to the
voters of a county at an election held throughout an entire single county.

19 Thus, Article II, Section 11 and Article XI, Section 7.5 act symbiotically in setting the same set of
20 restrictions for both popularly-originated and legislatively-originated city ballot measures.

21 On their face, neither Article II, Section 11 nor Article XI, Section 7.5 address the "single
22 subject rule." The "single subject rule," as it is commonly identified, is the restriction found in
23 Article II, Section 8, subdivision (d) of the California Constitution prohibiting a statewide ballot
24 measure from embracing more than one subject.

25 (d) An initiative measure embracing more than one subject may not be submitted to
26 the electors or have any effect.

27 Despite the fact that the single subject rule is not explicitly listed in Article II, Section 11 nor
28 Article XI, Section 7.5, the court in *Pala Band of Mission Indians v. Board of Supervisors* ("Pala

1 *Band*”) (1997) 54 Cal.App.4th 565, 582, recognized that the single subject rule and all other
2 restrictions for state ballot measures are in fact implicitly included in the list of restrictions set
3 against the local ballot measure power unless the restriction is explicitly precluded by the local
4 charter.

5
6 The courts have long recognized that the rights of initiative and referendum
7 reserved to local voters under article II, section 11 (and its predecessor provision)
8 are co-extensive with the rights reserved to the people of the state as set forth in the
9 state Constitution, unless a local charter gives the voters broader powers.
[Citations.] Thus, unless a charter extends the local initiative or referendum power,
constitutional limitations on the statewide initiative and referendum powers
generally apply to also restrict the power of local voters to vote on countywide
initiatives. [Citations].

10 While the cases recognizing that the statewide limitations on the initiative and
11 referendum power apply in local elections have arisen mostly in the context of
12 limitations on the referendum power, the reasoning of these cases apply equally to
13 the initiative power. [Citation.] At least one court has assumed that the single
14 subject rule applicable to statewide initiatives applies equally to county initiatives.
[Citation.] Likewise, respondents here concede the applicability of article II,
section 8 subdivision (a)’s requirement that initiatives must enact “statutes,” even
though article II, section 8 pertains to the statewide initiative power. [Citation.]

15 We thus presume the voters understood that when they approved the 1950 and 1964
16 propositions prohibiting naming of entities in initiatives, the proposed rules would
17 apply equally to statewide *and* local initiatives, unless a local charter provided
18 otherwise. Had these voters or the Constitution Revision Commission wanted a
19 different rule, they could have said so. They did not.

20 (Footnotes omitted.)

21 While *Pala Band* focused upon Article II, Section 11, the co-extensive nature of Article II,
22 Section 11 with Article XI, Section 7.5, and *Pala Band*’s universal analysis of the Constitution
23 Revision Commission’s intent, provides that the same rule equally applies, and that local
24 legislative bodies are also prohibited from violating state ballot measure restrictions.

25 One of the state ballot measure restrictions applicable to local legislative bodies pursuant
26 to *Pala Band* is Article XVIII, Section 1 of the California Constitution which provides:

27 Sec. 1. The Legislature by rollcall vote entered in the journal, two-thirds of the
28 membership of each house concurring, may propose an amendment or revision of
the Constitution and in the same manner may amend or withdraw its proposal. Each
amendment shall be so prepared and submitted that it can be voted on separately.

The California Supreme Court recently examined this provision in *Californians For An Open*

1 *Primary v. McPherson* (“*CFAOP*”) (2006) 38 Cal.4th 735. In *CFAOP*, the state high court found
2 that Article XVIII, Section 1 was the legislative equivalent to the electorate-restriction single
3 subject rule found at Article II, section 8(d).

4 [W]e shall adopt the approach that is, and has been, the majority rule in our sister
5 state jurisdictions for approximately 125 years: the separate-vote provision should
6 be construed consistently with its kindred provision, the single subject rule.

7 (*CFAOP*, *supra*, 38 Cal.4th at p. 763.)

8 As stated in *CFAOP*, the courts of California and other states employing single subject
9 rules view these restrictions as paramount in order to cut off “log rolling” malfeasance where
10 voters are forced to vote for a package of laws, only some of which they support, or vote against
11 such a package even though they do support some provisions.

12 Numerous out-of-state decisions long have observed that single subject provisions
13 (sometimes called a single object provision) and separate-vote provisions share the
14 same purpose of preventing voter confusion and “logrolling”- that is, the practice of
15 combining in one measure two or more unrelated provisions, thereby forcing a
16 single vote on matters that properly should be voted upon separately. For example,
17 a leading early decision of the Missouri Supreme Court, [citation] explained: “The
18 convention which required each amendment to be separately submitted also
19 ordained that no act of the legislature should contain more than one subject, and
20 that subject should be clearly expressed in the title. *The same common purpose*
21 *actuated the convention in placing these two provisions in the constitution.* “It was
22 intended to kill logrolling, and prevent unscrupulous, designing men, and interested
23 parties, from comprising subjects diverse and antagonistic in their nature, in order
24 to combine in its support members who were in favor of a particular measure.”
25 [Citation.] Similarly, [the Missouri case] and numerous other decisions also have
26 recognized, explicitly or implicitly, that those two rules, despite their different
27 phrasing, are kindred provisions that should be construed consistently-that is, as
28 each having essentially the same substantive effect.

(*CFAOP*, *supra*, 38 Cal.4th at p. 763 [emphasis in original, footnotes omitted].)

22 As provided above, in Volume 1, Article IV, Section 450 of the City of Los Angeles
23 Charter, the residents of the City of Los Angeles determined to set their own rules for the adoption
24 of ballot measure “ordinances.” Unlike the restrictions set forth in the California Constitution and
25 related state statutes and regulations, the residents of Los Angeles may propose any type of
26 ordinance which could also be proposed by the City Council – including ordinances embracing
27 multiple subjects. However, in terms of charter amendment ballot measures, the residents of Los
28 Angeles may propose any type of ordinance which could also be proposed by the City Council – including ordinances embracing

1 Angeles decided in their wisdom to adopt state constitutional mandates. These constitutional
2 mandates include the prohibition from either the populace or the local governing body from
3 introducing a ballot measure which proposes amendments to the local charter embracing more
4 than one subject.

5 As such, if Proposition R proposes amendments to the city charter embracing more than
6 one subject, said ordinance is invalid.

8 II. PROPOSITION R EMBRACES MORE THAN ONE SUBJECT

9 In *Senate of State of California v. Jones* (1999) 21 Cal.4th 1142, 1157 the California
10 Supreme Court set out the guidelines for determining when a ballot measure violates the single
11 subject rule.

12 In articulating the proper standard to guide analysis in this context, the governing
13 decisions establish that “ “[a]n initiative measure does not violate the single-
14 subject requirement if, despite its varied collateral effects, *all of its parts are*
15 *‘reasonably germane’* to each other,” and to the general purpose or object of the
16 initiative.”

17 (Emphasis in original.)

18 The court also cited *California Trial Lawyers Assn. v. Eu* (1988) 200 Cal.App.3d 351, 360,
19 for the proposition that the several provisions of a ballot measure must be in some manner
20 “functionally related” rather than simply regard a single industry or generalized topic, otherwise,
21 such an interpretation “would permit the joining of enactments so disparate as to render the
22 constitutional single-subject limitation nugatory.” (See *Senate of State of California v. Jones*,
23 *supra*, 21 Cal.4th at p. 1159.)

24 In a July 28, 2006 memo to Real Party in Interest, City Attorney Rockard J. Delgadillo
25 advised the several members as follows regarding Proposition R:

26 Our concern is heightened here where the municipal ordinance [amendments and
27 charter amendments 2-4] Council seeks to place before the voters is not directly
28 related to the Charter Amendment to lengthen term limits.

...

The proposed amendments to the Municipal Code [and charter amendments 2-4],
however, do not relate to or implement the proposed [term limit] Charter

1 amendments....¹
2 (Verified Petition, Exhibit C, pp. 2-3.)

3 Even the quickest review of Proposition R discloses the reasons for concern voiced by City
4 Attorney Delgadillo. Proposition R seeks to amend Volume 1, Article II, Section 206 of the Los
5 Angeles City Charter to increase the maximum number of terms a resident may hold office as a
6 city councilmember to three:

7
8 **Sec. 206. Term Limits.**

9 No person may serve more than two terms of office as Mayor. No person may
10 serve more than two terms of office as City Attorney. No person may serve more
11 than two terms of office as Controller. No person may serve more than ~~two~~ *three*
12 terms of office as member of the City Council. ***These limitations on the number
13 or terms of office shall apply only to terms of office that began on or after July 1,
14 1993.*** These limitations on the number of terms of office shall not apply to any
15 unexpired term to which a person is elected or appointed if the remainder of the
16 term is less than one-half of the full term of office.

17 (Verified Petition, Exhibit B, p. 1 [changes in highlight].)

18 This same ballot measure also seeks to amend Volume 1, Article IV, Section 470 of the
19 Los Angeles City Charter by adding new subdivision (c)(11) to prohibit lobbyists from
20 contributing to candidates and their controlled political committees:

21 ***(11) No elective City officer or candidate for elective City office, nor any
22 of his or her City controlled committees, shall solicit or accept any contribution
23 to the officer or candidate, or to any of his or her City controlled committees,
24 from any lobbyist or lobbying firm registered to lobby the City office for which
the candidate is seeking election, or the current City office, commission,
department, bureau or agency or the candidate or officer. No person required
by ordinance to be registered as a lobbyist or lobbying firm shall make any
contribution to an elective City officer or candidate for elective City office, or to
any of his or her City controlled committees, if the lobbyist or lobbying firm is
required by ordinance to be registered to lobby the City office for which the
candidate is seeking election, or the current City office, commission,***

25 ¹ As evidenced by Exhibit C and its attachments, charter amendments 2-4 were originally
26 designed to be implemented by exclusively amending the City of Los Angeles Municipal Code,
27 not the city charter. As such, City Attorney Delgadillo exclusively refers to these changes as
28 amendments to the city municipal code in Exhibit C. For reasons unstated in the exhibits, Real
Party in Interest determined to implement these changes by also amending the city charter. For
sake of ease, Petitioner has stylistically changed the above quoted passages of Exhibit C
(denominated by brackets ‘[]’) to address the fact that these changes were later altered to amend
the City of Los Angeles Charter as well.

1 *department, bureau or agency of the candidate or officer.*

2 (Verified Petition, Exhibit B, pp. 1-2 [changes in highlight (entire passage)].)

3 Another charter amendment proposed by Proposition R seeks to alter Volume I, Article IV,
4 Section 470's disclosure requirements for persons making independent expenditures in city
5 elections.

6
7 (l) Campaign Expenditures – Uncontrolled by Candidate or Committee.
8 Persons or organizations not subject to the control of a candidate or committee but
9 who make independent expenditures for or against a candidate or committee shall
10 **indicate clearly on any material published, displayed or broadcast that it was
not authorized by a candidate or a committee controlled by a candidate
comply with the applicable disclaimer requirements established by ordinance.**

11 (Verified Petition, Exhibit B, p. 2 [changes in highlight].)

12 Finally, Proposition R seeks to expand the number of city commissions which must
13 comply with the qualifications set by Volume 1, Article V, Section 501 of the City of Los Angeles
14 City Charter, and also prohibit lobbyists from serving on such commissions.

15 (d) Qualifications.

16 (1) No person shall be appointed to a Charter created commission
17 who is not a registered voter of the City. This requirement shall also apply to
18 standing commissions created by ordinance that are advisory to, *or manage*, a
19 department or office, *or perform regulatory functions*. This requirement does
20 not apply to commissioners who are elected or who serve *ex officio*.

19 (2) *No person who is required by ordinance to be registered as a
20 lobbyist shall be appointed to a commission whose members are required to file
financial disclosure statements pursuant to the California Political Reform Act.*

21 (Verified Petition, Exhibit B, p. 2 [changes in highlight].)

22 As assessed by the City Attorney, none of the final three changes sought by Proposition R
23 are related in any functional sense to the proposed amendment change providing an extra term of
24 service for city council members. The part of Proposition R proposing the extra city council term
25 is simply not “germane” to the part proposing political reform amendments, which in turn is not
26 “germane” to the part proposing changes to the qualifications for commission members.
27

28 Tellingly, the amendment to change city councilmember term limits is found in one article of the

1 city charter (Article II, entitled “Officers of the City”) entirely different from the article where the
2 two political reform changes are proposed (Article IV, entitled “Elections”), which is an entirely
3 different article from where the city commission qualification changes are proposed (Article V,
4 entitled “Departments”). Proposition R embraces no less than three unrelated, non-germane, non-
5 functionally related subjects. As such, Proposition R violates the California Constitution, Article
6 XI, Section 7.5, as adopted by the City of Los Angeles Charter, Volume I, Article IV, Section 450.
7

8 III. PRE-ELECTION REVIEW IS NECESSARY IN THIS CASE

9 Our Supreme Court has concluded that pre-election review and removal of an invalid
10 ballot measure serves to “safeguard the people’s precious right of initiative” by avoiding the risk
11 of confusion and manipulation. (*Senate of State of California. v. Jones, supra*, 21 Cal.4th at 1168.)
12 Indeed, the Court has stated that leaving an unconstitutional and fatally defective ballot measure
13 on the ballot “tends to denigrate the legitimate use of the initiative procedure.” (*American*
14 *Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 697.)
15

16 More significantly, the state high court has provided a hard and fast rule that a challenge
17 based upon the single subject rule *must* be reviewed by a court if the proffered pre-election
18 challenge evidences “a strong likelihood that the initiative violates the single-subject rule.”
19 (*Senate of State of Cal. v. Jones, supra*, 21 Cal.4th at 1154.) In *Senate of State of California* the
20 California Supreme Court interpreted the language in Article II, Section 8(d) of the California
21 Constitution prescribing that a multi-subject ballot measure “*may not be submitted to the*
22 *electors*” as requiring courts to determine before an election whether a disputed ballot measure did
23 in fact embrace more than one subject. (See *id* at pp. 1153-1155.)
24

25 Similarly, Article XVIII, Section 1 of the California Constitution provides that each
26 amendment proposed by the legislative body “shall be so prepared *and submitted* that it can be
27 voted on separately.” As stated in *Senate of State of California*, use of the term ‘submitted’ in the
28

1 constitutional language instructs the courts that “deferring a decision until after the election ... will
2 defeat the constitutionally contemplated procedure reflected in the language.” (*Id.* at p. 1154.)

3 As analyzed above, there is more than a strong likelihood that Proposition R violates the
4 single subject rule. Therefore, not only is pre-election review in this matter appropriate, it is
5 mandatory.

6
7 CONCLUSION

8 For the reasons set forth above, this court should grant Petitioner an alternative writ of
9 mandate ordering Respondents Conny McCormack, Registrar-Recorder/County Clerk of the
10 County of Los Angeles, and FRANK MARTINEZ, City of Los Angeles City Clerk, to remove the
11 measure from the ballot.

12 Date:

Respectfully submitted,

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14 BELL, McANDREWS & HILTACHK, LLP

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17 _____
Paul T. Gough
Attorney for Petitioner
18 NEAL A. DONNER

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