

No. S136294

IN THE SUPREME COURT OF CALIFORNIA

EDWARD J. ("TED") COSTA, SIDNEY S. NOVARESI,
ARTHUR LAFFER, and JIMMIE JOHNSON,

Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SACRAMENTO,

Respondent,

BILL LOCKYER, Attorney General of the State of California;
CALIFORNIANS FOR FAIR REPRESENTATION – NO ON 77;
BRUCE McPHERSON, Secretary of State for the State of California;
and GEOFF BRANDT, Acting State Printer,

Real Parties In Interest.

After A Decision By The Court Of Appeal Of The State of California,
Third Appellate District, Case No. C050297

Sacramento County Superior Court, Case No. 05CS00998
Honorable Gail D. Ohanesian, Judge, Department 11, (916) 874-6184

REPLY IN SUPPORT OF EMERGENCY PETITION FOR REVIEW

**URGENT MATTER RE VOTER INITIATIVE
IMMEDIATE CONSIDERATION REQUESTED**

**TEMPORARY STAY REQUESTED
STAY ORDERED BY COURT OF APPEAL EXPIRES AT
MIDNIGHT ON SUNDAY, AUGUST 14, 2005**

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. THE COURT OF APPEAL’S OPINION CREATES UNCERTAINTY CONCERNING THE APPLICATION OF PRE-ELECTION REVIEW.....	4
III. THE DECISION BELOW CREATES A SPLIT AMONG THE COURTS OF APPEAL.....	9
IV. THE SUBSTANTIAL COMPLIANCE TEST IN <i>MHC</i> <i>FINANCING</i> DOES NOT SET A BAD PRECEDENT	12
V. THE COURT OF APPEAL’S OPINION MANUFACTURES A NEW DUTY OF DISCLOSURE.....	13
VI. THE COURT SHOULD ORDER A STAY PENDING REVIEW	16
VII. THE ONE-DAY STAY	18
VIII. RELIEF REQUESTED.....	18

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Alliance for a Better Downtown Millbrae v. Wade</i> (2003) 108 Cal.App.4th 123	11
<i>Amador Valley Joint Union High School District v. State Board of Equalization</i> (1978) 22 Cal.3d 208	2
<i>American Federation of Labor-Congress of Industrial Organizations v. Eu</i> (1984) 36 Cal.3d 687	7
<i>Assembly v. Deukmejian</i> (1982) 30 Cal.3d 638	2, 3, 11
<i>Brosnahan v. Eu</i> (1982) 31 Cal.3d 1	passim
<i>Hayward Area Planning Assoc. v. Superior Court</i> (1990) 218 Cal.App.3d 53	3
<i>Legislature v. Deukmejian</i> (1983) 34 Cal.3d 658	6, 7
<i>MHC Financing Limited Partnership Two v. City of Santee</i> (2005) 125 Cal.App.4th 1372	2, 9, 10, 11
<i>Mulkey v. Reitman</i> (1966) 64 Cal.2d 529	8
<i>People v. Braxton</i> (2004) 34 Cal.4th 798	9
<i>People v. Scott</i> (2002) 98 Cal.App.4th 514	3
<i>Senate v. Jones</i> (1999) 21 Cal.4th 1142	7, 8

Constitutional Provisions

California Constitution, Article II § 8	7
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Regulations

Elections Code § 3520	5
Elections Code § 9005	17
Elections Code § 9086	17
Elections Code § 9203	9, 11
Elections Code § 13281	17

Other Authorities

Lawrence, "Supporters Urge High Court to Restore Initiative to Nov. 8 Ballot," AP (Aug. 10, 2005)	8
Restatement 2d of Torts, § 551	4

I. INTRODUCTION

As Justice Scotland asserts in his dissenting opinion in this case, the challenge to Proposition 77 is "much ado about nothing." (*Costa v. Superior Court*, slip opn. at p. 65 (*Costa*).)

The minor, largely stylistic, differences between the text of the petition circulated to voters and the draft submitted for title and summary, are immaterial to the operation of Proposition 77 and had no impact on the Attorney General's title and summary, the Legislative Analyst's impartial analysis and fiscal analysis, the fiscal estimate, or the ballot opponents' ballot arguments (all of which can be viewed on the Secretary of State's website). This is the proverbial "mountain" being made out of a "molehill" to keep the electors from voting on Proposition 77, which would give citizens fair, rather than preordained, districts from which to elect their representatives.

The 2-1 decision here warrants review. It creates not only a split among the appellate courts, but a significant disparity in initiative law in at least the following respects:

1. Despite how much real parties¹ may try to distinguish *MHC Financing Limited Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372 (*MHC Financing*), the fact remains that *MHC Financing* applied the substantial compliance doctrine to uphold an initiative that used a title and summary prepared for *another version* of the initiative based on the court's determination that the title and summary was not misleading. In contrast, the decision below held that "the Election Code requirements require that the *same text* of an initiative measure be circulated as that submitted to the Attorney General." (*Costa*, slip opn., p. 41; italics added.) It considered the accuracy of the title and summary an inadequate measure of substantial compliance. (*Id.* at p. 27.) There is thus a split among the courts of appeal on this issue. (See Petition, pp. 20-24.)

2. The substantial compliance doctrine holds that errors or defects in the text of an initiative measure do not invalidate it as long as the voters are not misled. (E.g., *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208, 243 ["we doubt that any significant number of petition signers or voters were misled" by the imprecise title and summary]; *Assembly v. Deukmejian* (1982) 30 Cal.3d 653 ["errors were so minor as to pose no danger of misleading the

¹ For purposes of this reply, real parties refer only to the Attorney General ("AG") and Californians for Fair Representation – No on 77 ("CFFR").

signers of the petitions"]; *People v. Scott* (2002) 98 Cal.App.4th 514, 520 ["Scott has provided no evidence any petition signers were misled by the differences between the qualified and ballot versions of Proposition 21"].) By contrast, here, the majority opinion declines to consider this test. (*Costa*, slip opn. at p. 38.) Thus, the decision below creates a new standard for the substantial compliance test. (See Petition, pp. 26-28.)

3. California cases apply the substantial compliance doctrine to uphold initiatives and referenda where the proponents *were responsible* for the technical error in the preparation of the petitions. (E.g., *Assembly v. Deukmejian*, *supra*, 30 Cal.3d 638, 652-653 [errors in text]; *Hayward Area Planning Assoc. v. Superior Court* (1990) 218 Cal.App.3d 53, 58-59 [omission of statutory title].) The majority opinion departs from this by repeatedly emphasizing that "proponents caused the problem in this case by their own negligence." (*Costa*, slip opn. at p. 41.) Thus, the decision below is inconsistent with the practice of other cases and failed to recognize that the initiative "is the power of the electors," not simply the proponents. (Cal. Const., art. II, § 8, subd. (a).). (Petition, pp. 7-8, 23-24.)

4. Adopting the dissenting and concurring opinion of Justice Mosk, rather than the majority opinion in *Brosnahan v. Eu* (1982) 31 Cal.3d 1 (*Brosnahan*), the majority opinion below holds that procedural claims do not fall within the *Brosnahan* rule against preelection review. This unsettles the rule against preelection review. (Petition, pp. 34-36.)

5. And the majority opinion claims for the first time that proponents have a duty to promptly disclose discovery of any discrepancies in an initiative petition on the basis of a section of the Restatement Second of Torts, which is expressly limited to "business transaction[s]." (Rest.2d Torts, § 551.) This dangerous precedent of untold consequences is itself worthy of review and has no relevant legal support. (Petition, p. 7 & fn. 1.) Although petitioners are unaware of another case where proponents voluntarily disclosed a defect in their petition to the State's chief elections officer, their disclosure has been twisted against them.

II. THE COURT OF APPEAL'S OPINION CREATES UNCERTAINTY CONCERNING THE APPLICATION OF PREELECTION REVIEW

The majority opinion ruled that "pre-ballot procedural violation claims are not within the ambit of the rule [against preelection review] noted in *Brosnahan* [*v. Eu* (1982) 31 Cal.3d 1 (*Brosnahan*)]," and thus that preelection review is appropriate. (*Costa v. Superior Court*, slip opn., p. 19.)

This ruling is in direct conflict with the long-standing rule in *Brosnahan* 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." (*Brosnahan, supra*, 31 Cal.3d at pp. 4-5.) (Petition, pp. 34-36.)

Given the absence of any clear showing of invalidity here (as evidenced by the split appellate panel and vigorous dissent) and given the August 15 deadline for submitting the ballot pamphlet to the printer, the challenge to Proposition 77 should be deferred until after the election. The trial court's order should be stayed pending the election, as argued by the dissent below. (*Costa*, slip opn., p. 48.)

Real parties, however, argue that "[p]re-election review is appropriate here because the challenge here was procedural, not substantive." (AG Ans., p. 8; CFFR Ans., p. 4.) They claim that *Brosnahan* "addressed the procedural eligibility of the initiative in its pre-election decision, noting that the Legislature had passed urgency legislation changing the signature percentage needed to establish certification." (AG Ans., pp. 2, 8.)

But *Brosnahan* did not analyze the procedural eligibility of the initiative in a preelection review. Instead, several challenges to the initiative were made there, including that the proposition had failed to substantially comply with the law because it only had 108.76 percent of the number of signatures required for the ballot, instead of the 110 percent then required by Elections Code section 3520, subdivision (g). (*Brosnahan, supra*, 31 Cal.3d at pp. 2-3.) After issuing an alternative writ to hear all of

the challenges to the proposition, this Court did not address the substantial compliance claim because legislation was passed, making anything more than 105 percent of the required signatures sufficient, and declined to reach the other issues to avoid "disrupt[ing] the electoral process by preventing the exercise of the people's franchise, in the absence of some clear showing of invalidity." (*Id.* at pp. 4-5.) Thus, *Brosnahan* did not endorse preelection review of procedural claims.

Real party CFFR next states that it "disagrees with petitioners' characterization of *Legislature v. Deukmejian* as rejecting the 'substance-procedure distinction' of *Brosnahan*." (CFFR Ans., p. 4, AG Ans, p. 9.) First, as noted, *Brosnahan* did not explicitly make any such distinction. Second, *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 666-667, only endorsed preelection review for jurisdictional challenges: "As Justice Mosk observed in his separate opinion in *Brosnahan* . . . : '[Election] officials have been ordered not to place initiative and referendum proposals on the ballot on the ground that the electorate did not have the power to enact them since they were not legislative in character [citations], the subject matter was not a municipal affair [citations], or the proposal amounted to a revision of the Constitution rather than an amendment thereto. [Citation.]' Here, as in those cases, the *challenge goes to the power of the electorate* to adopt the proposal in the first instance." (Italics added.)

Subsequent cases demonstrate that the exception to the *Brosnahan* rule against preelection review is where the challenge goes to the *power* of the electorate to adopt the proposal in the first instance. Thus, in *American Federation of Labor-Congress of Industrial Organizations v. Eu* (1984) 36 Cal.3d 687, 696, this Court stated: "Our opinion in *Legislature v. Deukmejian*, *supra*, 34 Cal.3d 658 endorsed the standard described by Justice Mosk. 'Here,' we said, as in those cases cited by Justice Mosk, 'the challenge goes to the *power of the electorate* to adopt the proposal in the first instance The question raised is, in a sense, *jurisdictional*.' [Citation.]" (Italics added.)

Real party CFFR also claims that in *Senate v. Jones* (1999) 21 Cal.4th 1142, 1153 (*Jones*), "the Court ultimately adopted Justice Mosk's view that an alleged violation of the 'single-subject' rule should be considered a kind of procedural prerequisite – *i.e.*, 'jurisdictional'" (CFFR Ans., p. 5.)

As shown in *American Federation of Labor* above, the view of Justice Mosk that was adopted involved only a challenge that went to the *power* of the electorate to adopt the proposal. In *Jones*, *supra*, 21 Cal.4th 1142, 1153, this Court afforded preelection review to a challenge based on the single-subject rule because under article II, section 8(d) of the state Constitution, "[a]n initiative measure embracing more than one subject *may not be submitted to the electors* or have any effect." (Italics added.) This

Court therefore maintained that preelection review was proper where the proposed measure could not properly be submitted to the voters: "[S]ubsequent decisions have explained that this general rule [in *Brosnahan*] applies *primarily* when a challenge rests upon the alleged unconstitutionality of the substance of the proposed initiative, and that rule does not preclude pre-election review when the challenge is based upon a claim, for example, that *the proposed measure may not properly be submitted to voters* because the measure is not legislative in character or because it amounts to a constitutional revision rather than amendment." (*Jones, supra*, 21 Cal.4th at p. 1153; italics added.) Accordingly, *Jones* did not adopt a substantive-procedural distinction.

In sum, it is more appropriate to review challenges, other than "jurisdictional" challenges, after the election where preelection review would "disrupt the electoral process by preventing the exercise of the people's franchise." (*Brosnahan, supra*, 31 Cal.3d at pp. 4-5; accord *Mulkey v. Reitman* (1966) 64 Cal.2d 529, 535.)

In this case, the court should adhere to the approach it recently took with Proposition 80 given the timing of the Court of Appeal's decision (August 9) and the deadline for printing the ballots (August 15) – although the Secretary of State's office is reported to have noted some "flexibility" in that schedule. (Lawrence, "Supporters Urge High Court to Restore Initiative to Nov. 8 Ballot," AP (Aug. 10, 2005) (available online at

http://www.fresnobee.com/state_wire/story/11070049p-11828964c.html.)

This Court should grant review and issue a stay of the trial court's judgment so that Proposition 77 can remain on the November ballot, given the absence of a "clear showing of invalidity,"²

III. THE DECISION BELOW CREATES A SPLIT AMONG THE COURTS OF APPEAL

The majority opinion below creates a direct conflict with the Fourth Appellate District's decision in *MHC Financing, supra*, 125 Cal.App.4th 1372.

As noted in the Petition, pp. 20-24, in *MHC Financing*, the Court of Appeal found that an initiative petition that used the title and summary prepared for an earlier (March 18) version substantially complied with Elections Code section 9203 (the provision requiring a title and summary for municipal initiative petitions) because the ballot title and summary "accurately reflected the substance of the accompanying April 2 initiative and did not create a risk that voters signing the petition would be misled

² Real parties contend that "petitioners did not raise the issue [concerning pre-election review] below." (AG Ans., p. 8; CFFR Ans., p. 4.) But the Court of Appeal raised it for consideration and analyzed it, and the dissent argues that the Court of Appeal "should [have] continue[d] to stay the trial court's ruling and retain[ed] jurisdiction in this matter to allow [it], after the election, to resolve the issues raised." (*Costa*, slip opn. at p. 48 (Scotland, P.J., dissenting).) Since the majority's opinion erred in finding preelection review appropriate, it is properly reviewed by this Court. (See *People v. Braxton* (2004) 34 Cal.4th 798, 809; Cal. Rules of Court, rule 29(b)(2).)

about the substance of the initiative." (*MHC Financing, supra*, 125 Cal.App.4th at p. 1391.)

In contrast, here, the Court of Appeal held that "the Election Code requirements require that the same text of an initiative measure be circulated as that submitted to the Attorney General" and declined to inquire whether any voter could have been misled by the circulated version of Proposition 77. (*Costa*, slip opn., p. 41.)

Despite the Attorney General's protestations to the contrary, the decision here is at odds with *MHC Financing*. The Attorney General and CCFR's attempts to distinguish *MHC Financing* are meritless.

First, the Attorney General contends that "the central issue in *MHC Financing* – whether a local legislative body can correct legislation that it adopted in error – is not present here. (AG Ans., p. 10; CCFR Ans., p. 14.)

But *MHC Financing* addressed a number of issues to arrive at its ultimate determination that the local legislative body could replace the uncirculated text of the initiative, which it had erroneously enacted, with the version of the initiative circulated to voters. One such issue was whether "the [trial] court erred in ruling Ordinance 412 [the circulated April 2 version] was invalid on the ground that a ballot title and summary was not prepared for [that] . . . initiative." (125 Cal.App.4th at p. 1388.) That is the issue in this case as well.

The Attorney General next argues that *MHC Financing* was in the preelection context. (AG Ans., p. 11.) But there is no indication that *MHC Financing* was influenced by whether its review was "preelection" or "postelection." Indeed, the two cases cited by the Fourth Appellate District to support its finding of substantial compliance involved *preelection proceedings*. (*MHC Financing, supra*, 125 Cal.App.4th at pp. 1389-1391, citing *Assembly v. Deukmejian, supra*, 30 Cal.3d 638, and *Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123.)

The Attorney General and CCFR insist that the decision below was correct when it distinguished *MHC Financing* on the ground that the proponents in *MHC Financing* were faultless because they "did submit the text of the circulated petitions to the appropriate officer during the period for preparation of the title and summary." (AG Ans., p. 11, quoting *Costa*, slip opn., p. 30; CCFR Ans., p. 14.) But the proponents in *MHC Financing* did not expressly request the title and summary for their April 2 version of the initiative, as required by Elections Code section 9203, subdivision (a), and the City Attorney thus did not prepare one. (*MHC Financing, supra*, 125 Cal.App.4th at pp. 1377-1378.) The defect was thus their fault.

In sum, while *MHC Financing* applied the substantial compliance test based on whether voters were misled by the use of the title and summary prepared for another version of the initiative, the instant opinion below did not. Yet, the instant case is an even stronger case for substantial

compliance than *MHC Financing*: Here, the title and summary did not implicate any of the differences between the two versions. In *MHC Financing*, the court held that the challenged initiative substantially complied with the law, even though it found three differences between the circulated and uncirculated versions *which were directly reflected in the title and summary*. (125 Cal.App.4th at p. 1390.)

This Court should resolve the conflict between *MHC Financing* and the decision here.

IV. THE SUBSTANTIAL COMPLIANCE TEST IN *MHC FINANCING* DOES NOT SET A BAD PRECEDENT

The Attorney General claims that substantial compliance cannot be measured "by whether the changes between the two versions would change the content of the Attorney General's title and summary." (AG Ans., p. 4.) He adds: "If proponents' standard were adopted, it would allow future proponents to make numerous substantive changes after submission of a proposed initiative to the Attorney General, so long as the changes did not impact the 100 words in the Attorney General's title and summary. Such a standard is unworkable, and would be dangerous and unprecedented." (AG Ans., pp. 4-5.)

Not so. First, any intentional change in the text of an initiative petition after submission to the Attorney General would likely fail the

substantial compliance doctrine on the ground that *intentional non-compliance* cannot constitute *substantial compliance*. Second, circulation of an initiative with materially different provisions (even if they did not implicate the title and summary) could not be said to have been submitted to the Attorney General's office at all. There would be no compliance in that case.

In contrast, here, the final draft of the initiative was submitted to the Attorney General's office for title and summary. The differences between the circulating text and the draft provided for title and summary are immaterial, stylistic and technical.

The Attorney General also suggests that proponents can simply start over. (AG Ans., p. 5.) But if that were the law, the substantial compliance doctrine – which excuses technical deficiencies – would be a dead letter. Under the substantial compliance doctrine, if an initiative substantially complies, the people have the right to vote on it at the next election. They do not have to start all over.

V. THE COURT OF APPEAL'S OPINION MANUFACTURES A NEW DUTY OF DISCLOSURE

Although petitioners are unaware of another case where the proponents voluntarily disclosed a defect in their initiative petition to the State's chief elections officer, this act of honesty has been twisted against them. The majority of the court below claimed that "[p]etitioners should

have promptly disclosed the discovery of this problem to avoid the continuation and exacerbation of the harm stemming from their original negligence." (*Costa*, slip opn., p. 38.)

Acknowledging that there was no statutory duty, the majority premised this purported election-law duty on Restatement Second of Torts section 551. (*Id.* at p. 38.) However, that section is expressly limited to a "business transaction," and it only imposes a duty to exercise reasonable care to disclose "before the transaction is consummated" where subsequently acquired information makes a previous "representation" untrue or misleading.

Premised on this "duty," CFFR accuses the petitioners of "[running] out the clock" and "allow[ing] their measure to be certified knowing that there were significant defects in the petitions." (CCFR Ans., p. 7, citing *Costa*, slip opn. at p. 10-11; see AG Ans., p. 7.)

But petitioners only became aware of the discrepancy in May after the circulated petitions had been submitted to elections officials for the signature count. They then conducted an investigation and research, determined that the differences were immaterial, and advised the Secretary of State's office of the discrepancies on Monday, June 13 – the next business day after certification and nine weeks before the ballot pamphlets were due at the printer (and six weeks before the public display period). (Pet. App., exh.30, p. 373; exh. 32, p. 420.)

CFFR complains that "[a]fter informing the Secretary, they did nothing further for almost three weeks" (CFFR Ans., p. 7, fn. 3.)

But petitioners are not responsible for any lapse of time once they made their disclosure to the State's chief elections officer. And since proponents asked the Secretary of State's office to put the circulated version on the ballot and on public display (Pet. App., exh. 42, p. 482), they clearly understood that their disclosure would become public.

Further, in contrast to the nine weeks before printing here, this Court has rejected a claim that litigation was unduly delayed where the challenge was made only one and one-half months before the ballot pamphlet was due to be submitted to the State Printer. (*Senate v. Jones, supra*, 21 Cal.4th 1142, 1155.)

CFFR also claims that petitioners "allowed opponents to submit [ballot] arguments to the wrong text." (CFFR Ans., p. 7, fn. 3.) But CFFR was aware of the different versions of Proposition 77 by July 8 when the Attorney General brought suit based on the discrepancies and admit that it did not submit ballot arguments until July 12 and July 21 – *after* it was aware of the differences in text. (CFFR Ans., p. 16.)

CFFR also claims that petitioners "never sought judicial consideration of the arguments [of substantial compliance]." (CFFR Ans., p. 7.) But proponents had no obligation to sue unless the Secretary of State refused to put their measure on the ballot. Who would they sue?

Finally, once suit was brought, the issue was whether Proposition 77 substantially complied with the law, regardless of how and when the textual differences came to light. The concerns raised by real parties that certification took place, notwithstanding the immaterial differences, only means that local election officials had mathematically determined that the circulated petitions had been signed by the requisite number of voters.

VI. THE COURT SHOULD ORDER A STAY PENDING REVIEW

Real Parties argue that "an extension of the Court of Appeal's stay would cause further disruption and prejudice" because there is no impartial analysis of the circulated text of Proposition 77 by the Legislative Analyst, opponents had no opportunity to submit arguments against the circulated text of Proposition 77, the circulated text was not the subject of a fiscal analysis, and the title and summary did not include a fiscal impact of the measure. (CFFR Ans., pp. 15-16; AG Ans., pp. 6-7.)

However, since the differences between the two versions are immaterial, they could not affect any of the above-referenced ballot arguments or analyses. First, the Legislative Analyst's fiscal analysis could not possibly be impacted by the only two differences specifically identified by the majority as significant: the change in the preamble, and the one-day

difference in the time for nominating or challenging special masters.

(*Costa*, slip opn. at pp 28, 36-37.)

Second, the immaterial differences could not have affected the fiscal impact that goes into the ballot summary and label. In fact, the Attorney General included the fiscal impact in the summary and label for the version of the text submitted to him. Petitioners had to seek, and obtained an order from the Court of Appeal dated July 29, directing the Attorney General to prepare a title and label for the circulated version of Proposition 77, but he omitted the fiscal impact from the label and summary, although it was his responsibility to include it for "each state measure to be voted upon." (See Elec. Code, §§ 9005, 9086, 13281.) However, the minor differences in the circulated version of the initiative could not possibly affect the fiscal impact prepared by the Attorney General for the text submitted to him.

Further, a quick review of the Secretary of State's website shows that the opponents' ballot arguments are too general to implicate any of the immaterial and technical changes between the two versions. Moreover, the ballot opponents have known at least since July 8 of the immaterial differences and nonetheless submitted their ballot arguments on July 12 and 21 without implicating any of the differences. (CFFR Ans., p. 16.)

Finally, CFFR's complaint that "[p]ermission to submit new arguments was denied by the Secretary of State by letter to opponents dated August 4, 2005" (CFFR Ans., p. 16, fn. 5) is not only outside the record,

but refers to a letter from the Secretary's attorney that noted that "[t]he Secretary does not enjoy the statutory authority to reopen your time" (CFFR's request was only made on August 3) and that CFFR would need a court order. CFFR did not have to wait until August 3 to make its request and never sought such an order.

VII. THE ONE-DAY STAY

The Attorney General opposes petitioners' request for an extension of the stay issued by the Court of Appeal to August 15, 2005 at 5:00 p.m. while this Court considers this Petition (see Petition, pp. 2-3) because "[i]f this Court extends the stay, but does not provide guidance immediately, it is anticipated that the Secretary of State will send one of the versions to the State Printer at 5:00 p.m. on Monday, August 15, 2005." (AG Ans., p. 4.)

But unless the stay of the trial court's judgment is extended, its prohibition against placing Proposition 77 on the ballot will take immediate effect.

VIII. RELIEF REQUESTED

The Attorney General asserts that in the event this Court grants review and extends the stay, the Secretary of State will require guidance as to whether to place Proposition 77 on the ballot. (AG Ans., p. 4.) Petitioners agree.

Accordingly, petitioners respectfully request as follows:

1. That the present stay be extended to August 15 at 5:00 p.m.
while this Court considers review;


2. That this Court expedite its consideration of review and grant
review;

3. That this Court continue the stay of the trial court's decision
and allow the circulated version of Proposition 77 to go on the ballot while
it considers the merits of this matter;

4. For such other relief as this Court deems just and proper.

Respectfully submitted this 12th day of August, 2005.

GIBSON, DUNN & CRUTCHER LLP
DANIEL M. KOLKEY
G. CHARLES NIERLICH
REBECCA JUSTICE LAZARUS

By: 
Daniel M Kolkey

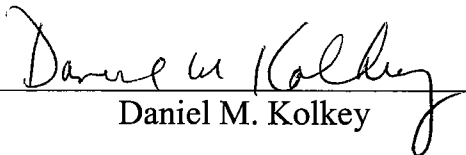
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CERTIFICATE OF WORD COUNT

The text of this reply consists of 4,185 words as counted by the Microsoft Word word-processing program used to generate the reply, excluding tables and this certificate.

Dated: August 12, 2005

GIBSON, DUNN & CRUTCHER LLP

By: 
Daniel M. Kolkey

Counsel for Petitioners
Edward J. ("Ted") Costa, Sidney S.
Novaresi, Arthur Laffer, and Jimmie
Johnson

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DECLARATION OF SERVICE

I, Carol Dickerson, declare as follows:

I am employed in the County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is One Montgomery Street, 31st Floor, San Francisco, California 94104, in said County and State. On August 12, 2005, I served the within document:

REPLY IN SUPPORT OF EMERGENCY PETITION FOR REVIEW

by placing a true copy thereof in an envelope addressed to each of the persons named below at the address shown in the following manner:

SEE ATTACHED SERVICE LIST

- ☒ **BY MAIL:** On August 12, 2005, I placed a true copy in a sealed envelope addressed to each person specifying service by U.S. Mail at the address shown. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of 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.
- ☐ **BY PERSONAL SERVICE:** I placed a true copy in a sealed envelope addressed to each person[s] named at the address[es] shown and giving same to a messenger for personal delivery before 5:00 p.m. on August 12, 2005.
- ☐ **BY FACSIMILE:** From facsimile machine telephone number (415) 986-5309, on the above-mentioned date, I served a full and complete copy of the above-referenced document[s] by facsimile transmission to the person[s] at the number[s] indicated.
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