Case No. S220289

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL,
*Petitioners,*

v.

ALEX PADILLA, in his official capacity as the Secretary of State of the State of California,
*Respondent.*

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LEGISLATURE OF THE STATE OF CALIFORNIA,
*Real Party in Interest.*

*ORIGINAL WRIT PROCEEDING*

# REAL PARTY IN INTEREST LEGISLATURE OF THE STATE OF CALIFORNIA'S PETITION FOR REHEARING


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## CONTENTS

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

I. THE TIME LIMITATION SET FORTH IN SB 1272 FOR PLACEMENT OF THE *CITIZENS UNITED* ADVISORY QUESTION ON THE BALLOT IS MERELY DIRECTORY, AND THE SECRETARY OF STATE'S FAILURE OR INABILITY TO MEET THAT TIME LIMIT SHOULD NOT RENDER THE STATUTE A NULLITY OR PREVENT THE ACHIEVEMENT OF ITS PRIMARY OBJECTIVE OF ALLOWING THE ELECTORATE TO VOTE ON THE MEASURE ..... 6

II. THE SECRETARY OF STATE HAS A CONTINUING MINISTERIAL DUTY TO PLACE PROPOSITION 49 ON THE GENERAL ELECTION BALLOT EVEN WHERE PERFORMANCE IS BEYOND SB 1272'S STATUTORY TIME FRAME ..... 11

III. THE COURT SHOULD EXERCISE ITS POWER TO REFORM SB 1272'S ELECTION DATE IN ORDER TO EFFECTUATE THE LEGISLATURE'S INTENT RATHER THAN PERMIT THE MERE PASSAGE OF TIME TO NULLIFY A VALID LEGISLATIVE ENACTMENT ..... 16

CONCLUSION ..... 21

CERTIFICATE OF COMPLIANCE WITH RULE 8.204(c)(1) ..... 24

DECLARATION OF CONGRESSMAN TED W. LIEU ..... 25

## TABLE OF AUTHORITIES

### Cases

*Bernardo v. Rue* (1914) 26 Cal.App. 108 . . . . . 7, 8, 10

*California Correctional Peace Officers Assn. v. State Personnel Board* (1995) 10 Cal.4th 1133 . . . . . 9

*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231 . . . . . 17, 18, 19, 20, 21

*Enyeart v. Board of Supervisors of Orange County* (1967) 66 Cal.2d 728 . . . . . 18

*Garrison v. Rourke* (1948) 32 Cal.2d 430 . . . . . 8, 9, 10

*Goodenough v. Superior Court* (1971) 18 Cal.App.3d 692 . . . . . 12, 13

*Keane v. Smith* (1971) 4 Cal.3d 932 . . . . . 8

*Kopp v. Fair Political Practices Commission* (1995) 11 Cal.4th 607 . . . . . 16, 17

*Lin v. City of Pleasanton* (2009) 175 Cal.App.4th 1143 . . . . . 14

*Merriman v. Board of Supervisors* (1983) 138 Cal.App.3d 889 . . . . . 14

*MHC Financing Ltd. Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372 . . . . . 11

*Morris v. County of Marin* (1977) 18 Cal.3d 901 . . . . . 6, 7, 10

*Native American Sacred Site and Environmental Protection Assn. v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961 . . . . 11, 12

*People v. Allen* (2007) 42 Cal.4th 91 . . . . . 9

*We Care-Santa Paula v. Herrera* (2006) 139 Cal.App.4th 387 . . . . . 13, 14

*Willett v. Jordan* (1934) 1 Cal.2d 461 . . . . . 15

*Yost v. Thomas* (1984) 36 Cal.3d 531 . . . . . 14

**Statutes**

Cal. Rules of Court,

rule 8.532(c) . . . . . 5, 22

rule 8.536 . . . . . 5

Elec. Code,

§ 9214 . . . . . 15

§ 9241 . . . . . 15

**Miscellaneous**

Statement of Secretary of State Alex Padilla on Proposition 49 Ruling (Jan. 4, 2016) <http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and-advisories/secretary-state-alex-padilla-statement-proposition-49-ruling/> (last visited Jan. 18, 2016) . . . . . 2

## INTRODUCTION

On January 4, 2016, the Court issued its decision in this case discharging the order to show cause, denying Petitioner Howard Jarvis Taxpayers Association's petition for a peremptory writ of mandate, and vacating the stay previously ordered by the Court restraining Respondent Secretary of State from taking any further action related to the placement of Proposition 49 on the November 4, 2014, ballot. (Slip Opn., p. 46.) By a 6-1 vote, the Court held that the Legislature properly exercised its constitutional authority in enacting Senate Bill No. 1272 (2013-2014 Reg. Sess.) ("SB 1272"), which directed the Secretary of State to place a nonbinding advisory measure (Proposition 49) on the November 2014 general election ballot. The majority opinion concluded that SB 1272 was a reasonable and lawful exercise of the Legislature's implied power under the California Constitution to investigate and determine the best course of action in connection with a potential federal constitutional amendment, and that nothing in the state Constitution prohibits the use of advisory questions to inform the Legislature's exercise of its article V-related powers. (Slip Opn., p. 2.)

Needless to say, Real Party in Interest Legislature of the State of California (the "Legislature") fully supports the Court's decision on the merits of SB 1272's constitutionality, having advocated for precisely such a result

throughout this action. The Legislature does take issue, however, with the portion of the Court's decision suggesting — if not explicitly ruling — that because it is no longer possible for the Secretary of State to place Proposition 49 on the November *2014* general election ballot, the Legislature must enact a *new measure* in order to have Proposition 49 appear on the *next* general election ballot in November *2016*. (See Slip Opn., p. 6 ["Senate Bill No. 1272 directs only placement on [the November 2014] ballot (Stats. 2014, ch. 175, §§ 3-4), and this case is technically moot. But . . . in the event we were to conclude Senate Bill No. 1272 was indeed constitutional, the Legislature could pass an identical measure directing placement of the same advisory question on a future ballot."].) Referencing this language in the Court's opinion, Respondent Secretary of State Padilla has announced that "it is my hope that the Legislature takes action to place the measure on the ballot in 2016," thereby indicating that he believes further legislative action is required before he can or will place Proposition 49 on the November 2016 ballot. (See Statement of Secretary of State Alex Padilla on Proposition 49 Ruling (Jan. 4, 2016) [available at <http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and-advisories/secretary-state-alex-padilla-statement-proposition-49-ruling/> (last visited Jan. 18, 2016)].)

The Legislature respectfully submits that it should not have to pass a new measure in order to secure the placement of Proposition 49's advisory question on the November 2016 ballot. The manifest intent of the Legislature in enacting SB 1272 was to provide California voters with the opportunity to express their opinion on whether they wish to amend the U.S. Constitution to overturn the *Citizens United* decision; the particular general election ballot on which the advisory question was to appear was not the concern. Moreover, the conditions that led the Legislature to pass SB 1272 in 2014 still prevail today, perhaps even more so: *Citizens United* remains the law of the land; unregulated money from wealthy interests continues to flow unabated into campaigns; and no proposed federal constitutional amendment has yet to emerge from Congress.

The only reason that Proposition 49 did not appear on the November 2014 ballot was that this Court issued a stay *temporarily* removing the advisory question from the ballot pending a final determination of the merits of Petitioner's writ petition. (See Slip Opn., pp. 2, 5 [referring to the stay order as "*delaying* a proposition to a future election" and "*postponing* a potentially lawful proposition to a later ballot"] [emphasis added].) Having carefully considered the issue, the Court has now conclusively held that SB 1272 is indeed a valid, lawful statute. Although the Court's issuance of the

stay made it impossible for SB 1272 to take effect in 2014, as the Legislature originally contemplated, there is no legitimate reason why the measure should not now be given effect in 2016 — without the need for the Legislature to again go through the time-consuming, expensive, arduous, and ultimately uncertain process of having to secure the approval of a majority of the Members of both Houses, as well as of the Governor, for an entirely *new* statute.

Moreover, the 2013-2014 Legislature has been replaced by a successor Legislature, composed of different members, so it is impossible in any event for the Court to return the situation to the status *quo ante* by referring the matter back to the same Legislature that enacted SB 1272 to determine whether it wishes to renew its prior action by placing the identical measure on a future ballot. Under these circumstances, the proper course for the Court to take now in order to achieve an equitable and just result is thus not to *nullify* SB 1272, thereby leaving it up to the current Legislature and the Governor to determine whether they wish to enact a similar statute, but to *validate* and give effect to the lawful action of the 2013-2014 Legislature by applying its terms to the first statewide general election ballot upon which the measure may be placed.

In sum, it is lamentable enough that the need for the Court to take the

time to give due consideration to Petitioner's meritless writ petition has resulted in the *postponement* of the implementation of a valid legislative enactment. It would be truly perverse and unjust, however, if the exigencies of the Court's calendar alone were effectively to result in the *permanent* judicial *invalidation* of what has now been acknowledged to be a perfectly legal and constitutional act of the Legislature, necessitating that the entire legislative process be re-engaged and successfully completed again in order to implement SB 1272's lawful directive.

Nor do this Court's precedents require or envision such an unreasonable result. Indeed, as set forth below, such an outcome is inconsistent with at least three separate lines of well-established judicial authority, each of which would instead call for SB 1272's advisory question to be placed on the November 2016 general election ballot. Accordingly, pursuant to rule 8.536 of the California Rules of Court, the Legislature files this Petition for Rehearing solely for the limited purpose of asking the Court to modify its opinion, as authorized by rule 8.532, subdivision (c), to direct Respondent Secretary of State to place SB 1272's advisory question on the November 2016 general election ballot without the need for the Legislature to take further action.

## I. THE TIME LIMITATION SET FORTH IN SB 1272 FOR PLACEMENT OF THE *CITIZENS UNITED* ADVISORY QUESTION ON THE BALLOT IS MERELY DIRECTORY, AND THE SECRETARY OF STATE'S FAILURE OR INABILITY TO MEET THAT TIME LIMIT SHOULD NOT RENDER THE STATUTE A NULLITY OR PREVENT THE ACHIEVEMENT OF ITS PRIMARY OBJECTIVE OF ALLOWING THE ELECTORATE TO VOTE ON THE MEASURE

The majority opinion notes that SB 1272 contained a specific time limitation directing the Secretary of State to place Proposition 49 on the November 2014 general election ballot. The opinion then concludes, without further analysis, that because the November 2014 election date has now passed, "this case is thus technically moot," but "the Legislature could pass an identical measure directing placement of the same advisory question on a future ballot," implying that this is the *only* means by which the advisory question may now be put before the voters. (See Slip Opn., p. 6.) A long line of cases, however, hold that the type of time limitation contained in SB 1272 is to be considered "directory" only, not "mandatory," and thus the Secretary of State's failure to comply with SB 1272's time limitation does not invalidate the statute and should not prevent achievement of its primary purpose to submit the *Citizens United* advisory question to a vote of the people.[1]

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[1]The "directory" versus "mandatory" distinction should not be confused with the similarly termed distinction between "discretionary" or "permissive" actions versus "mandatory" duties. As this Court explained in *Morris v. County of Marin* (1977) 18 Cal.3d 901, "the term 'mandatory' refers to an obligatory duty which a governmental entity is required to perform, as opposed to a permissive power which a governmental entity may exercise or not as it

One of the first cases in which this principle was applied is *Bernardo v. Rue* (1914) 26 Cal.App. 108, which involved an appeal of the dismissal of an election contest following the presentation of the plaintiff's case in the trial court. Under section 1118a of the Code of Civil Procedure, the court was required to file its findings and enter judgment within ten days after the submission of the case, but the trial judge missed that deadline and did not enter the findings and judgment until twenty days later. On appeal, the plaintiff argued that the trial court, having failed to act within the specific time limitation set forth in the statute, lost jurisdiction to render its decision and that the judgment must therefore be reversed. The court of appeal rejected the argument, explaining:

> "We incline to the opinion that the sections of the act governing the court's action upon the trial of proceedings of this character are directory, in the absence of an express provision of the statute declaring them to be mandatory, and that, while the recent amendment to the Code of Civil Procedure, by which section 1118a was added, was evidently intended to hasten the work of the courts in passing upon election contests, it was not intended thereby to provide the parties to an election contest should lose valuable rights because of the delay of the judge in making or filing his findings and judgment." (*Id.* at p. 110.)

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chooses. By contrast, the 'directory' or 'mandatory' designation does not refer to whether a particular statutory requirement is 'permissive' or 'obligatory,' but instead simply denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates." (*Id.* at p. 908.)

This Court was subsequently confronted with the same issue some thirty years later in *Garrison v. Rourke* (1948) 32 Cal.2d 430, *overruled on other grounds by Keane v. Smith* (1971) 4 Cal.3d 932, 939, another election contest in which the trial judge had failed to comply with the statutory deadlines for filing its findings and conclusions following the submission of the case. The Court in *Garrison* first re-affirmed the principle articulated in *Bernardo v. Rue* that the act's time limitations should be considered to be "directory in the absence of an express provision of the statute declaring them to be mandatory." (32 Cal.2d at p. 434.) The Court then rejected the appellant's contention that the Legislature had in fact "expressly declared" the statute's time limitations to be mandatory by specifically adding a provision to the Code of Civil Procedure defining the word "shall" as used in the Code to be "mandatory." Such language, the Court held, was insufficient to nullify the trial court's decision. Rather, "[a] time limitation for the court's action in a matter subject to its determination is not mandatory (regardless of the mandatory nature of the language), *unless a consequence or penalty is provided for failure to do the act within the time commanded.*" (*Id.* at pp. 435-436 [emphasis added].) Any different conclusion, the Court explained, would contravene the Legislature's intent and would not serve the public interest:

> "[I]t is the public interest, not the parties' claims, which is the paramount legislative concern. That interest is to ascertain the

> will of the people at the polls, fairly, honestly and legally expressed. The outcome of the present election contest is to give the office to the candidate shown to have been legally entitled to it; and while expedition in arriving at a determination of the issues is desirable in accomplishing the objective, speed is not the primary statutory aim but is merely incidental to the main purpose of the law." (*Id.* at pp. 436-437 [citations omitted].)

From these and other cases has developed the established principle that "[t]ime limits are usually deemed to be directory unless the Legislature clearly expresses a contrary intent." (*California Correctional Peace Officers Assn. v. State Personnel Board* (1995) 10 Cal.4th 1133, 1145; accord, *People v. Allen* (2007) 42 Cal.4th 91, 102 [collecting cases].) Furthermore, "[i]n ascertaining probable intent, California courts have expressed a variety of tests. In some cases focus has been directed at the likely consequences of holding a particular time limitation mandatory, in an attempt to ascertain whether those consequences would defeat or promote the purpose of the enactment. Other cases have suggested that a time limitation is deemed merely directory 'unless a consequence or penalty is provided for failure to do the act within the time commanded.' [T]he consequence or penalty must have the effect of invalidating the government action in question if the limit is to be characterized as 'mandatory.'" (*California Correctional Peace Officers Assn.*, 10 Cal.4th at 1145 [citations omitted].)

In the present case, SB 1272's time limitation — requiring the Secretary

of State to place the *Citizens United* advisory question on the November 2014 general election ballot — is plainly "directory," not mandatory. The Legislature provided "no consequence or penalty" for the Secretary of State's failure to place the measure on the ballot in time for the November 2014 election. Just as with the election contest statutes at issue in *Bernardo v. Rue* and *Garrison v. Rourke*, SB 1272's "paramount legislative concern" is "to ascertain the will of the people at the polls" regarding their support for a federal constitutional amendment, "and while expedition in arriving at a determination of the issues is desirable in accomplishing the objective, speed is not the primary statutory aim but is merely incidental to the main purpose of the law." (*Garrison*, 32 Cal.3d at pp. 436-437.)

Because SB 1272's November 2014 time limitation was merely directory, the Secretary of State's failure to meet that time frame should not have "the effect of invalidating the governmental action to which [the deadline] relates." (*Morris v. County of Marin*, 18 Cal.3d at p. 908.) Instead, the Secretary of State should be ordered to promote the purpose of the enactment by placing SB 1272's advisory question on the next available general election ballot, in November 2016.

## II. THE SECRETARY OF STATE HAS A CONTINUING MINISTERIAL DUTY TO PLACE PROPOSITION 49 ON THE GENERAL ELECTION BALLOT EVEN WHERE PERFORMANCE IS BEYOND SB 1272'S STATUTORY TIME FRAME

The majority opinion's conclusion that "this case is technically moot" because the November 2014 general election date passed while this Court was considering Petitioner's writ petition — and thus the Legislature would have to pass a new measure directing placement of the same advisory question on a future ballot — is also inconsistent with an established line of election law cases holding that the passage of a statutory deadline relating to the qualification of an initiative or referendum for the ballot does not "moot" a case as long as the court is still capable of providing "effective relief." These same cases hold that a government official has a continuing ministerial duty to submit a qualified ballot measure to a vote of the people, even where performance is beyond the statutory time frame. (See, e.g., *Native American Sacred Site and Environmental Protection Assn. v. City of San Juan Capistrano* (2004) ("*NASSEPA*") 120 Cal.App.4th 961, 966-967 [city's failure either to adopt a qualified voter initiative or to place it on the ballot within the statutory time period does not relieve the city from its ministerial duty to take such action after time period has passed]; *MHC Financing Ltd. Partnership Two v. City of Santee* (2005) 125 Cal.App.4th 1372, 1382-1385 [expiration of the statutory time frame within which a city council must either adopt, or set

an election on, a qualified voter-sponsored initiative does not extinguish the city council's mandatory and ministerial duty to do so].)[2]

Thus, for example, in *Goodenough v. Superior Court* (1971) 18 Cal.App.3d 692, the city council had failed to call a special election to place a qualified initiative on the ballot. After the trial court denied relief, the court of appeal issued a writ of mandate to compel the city to set the election. (*Id.*

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[2] In *NASSEPA*, upon being presented with a qualified initiative petition, the city council initially adopted an ordinance that added an "implementation agreement" to the citizens' measure. Opponents of the initiative sued, and the trial court ordered the defendants to set aside the ordinance on the ground that it constituted an impermissible alteration of the initiative. The city council then passed a new ordinance that adopted the unaltered initiative without the implementation agreement. (120 Cal.App.4th at p. 965.) Opponents sued again, contending among other things that the city council ceased to have a ministerial duty to adopt the initiative once the ten–day period prescribed by Elections Code section 9214 had expired. The court of appeal scoffed at that argument, calling it an "absurd result we cannot countenance":

> "Here, after the writ of mandate was issued and defendants voided adoption of the first ordinance that had passed the initiative and the implementation agreement, defendants again were faced with acting on the initiative. Other than the passage of more than 10 days, nothing had changed since the time the initiative petition was first certified and presented to defendants. Under plaintiffs' analysis, however, this lapse of time acted to invalidate defendants' power to adopt the voter-sponsored initiative. Considering the intent of the section and the broader statutory and constitutional scheme of which it is a part, that is an absurd result we cannot countenance. Rather, the only reasonable explanation for a 10–day period in which to adopt a voter-sponsored initiative is a speedy effectuation of the will of the people." (*Id.* at p. 967 [citation omitted].)

at p. 697.) In so doing, the court rejected the city's argument that, since the statutory deadline for calling for a special election had now passed, the council had the discretion to delay an election on the measure until the next regular municipal election:

> "The City Council had a clear legal duty to call a special election within 89 days of June 1. It failed to do so. It may not refuse now to call the special election on the ground it could not be held with the giving of required notice within the 89-day period. That procedural detail will not be permitted to defeat the clear purpose of the statute to bring initiative measures to an early vote." (*Id.* at pp. 696-697.)

Even more pertinent, perhaps, are the legion of cases holding that an appeal is not moot merely because the statutory date for calling or holding an election has passed during the pendency of judicial proceedings, and that the appropriate relief in such circumstances is to order the elections official to place the qualified measure on the next applicable ballot. *We Care-Santa Paula v. Herrera* (2006) 139 Cal.App.4th 387, is typical of these cases. In May 2005, the plaintiffs submitted an initiative petition to the city clerk for placement on the November 2005 ballot. Although the petition contained sufficient signatures, the city clerk refused to certify it on the ground that it allegedly failed to include the "full text" of the proposed measure, and the proponents sued, seeking a writ of mandate directing the city council to place the initiative on the November 2005 ballot. The trial court denied the writ, but

a year later, the court of appeal reversed, concluding that the petitions complied with the Elections Code's requirements. The city then argued that the appeal was moot, because the November 2005 election had occurred as scheduled without the initiative. The court of appeal wasted little time in rejecting the city's argument, explaining: "An appeal becomes moot when the occurrence of an event renders it impossible for the Court of Appeal to grant any effective relief. But we can still grant effective relief. The initiative may be placed on some future ballot. The appeal is not moot." (*Id.* at p. 391 [citation omitted].)

Courts — including this Court — have provided similar relief in many other cases, ordering initiative and referendum measures to be placed on the ballot well after the applicable statutory time periods have passed. (See, e.g., *Yost v. Thomas* (1984) 36 Cal.3d 531 [ordering rezoning referendum to be placed on the ballot more than three years after submission of the petitions]; *Lin v. City of Pleasanton* (2009) 175 Cal.App.4th 1143 [two years after submission of referendum petition, court of appeal reversed trial court's issuance of writ invalidating the petition and ordered the city either to repeal the challenged ordinance or to submit it to an election]; *Merriman v. Board of Supervisors* (1983) 138 Cal.App.3d 889 [in January 1983, court of appeal ordered election to be held on referendum petition that had sought submission

of city ordinance to the voters at the November 1980 general election]; see also *Willett v. Jordan* (1934) 1 Cal.2d 461, 464 [Court ordered Secretary of State to accept county clerk's amended certification of initiative petition signatures even though statutory deadline for qualifying the initiative had elapsed, because refusing to do so "would countenance a palpable injustice to those who, at great expense and effort, did all that was required of them by law and had established the antecedent right to have their petitions recognized as sufficient"].)

To be sure, in the cases cited above, the legislatively established deadlines for action were set forth in generally applicable statutes that pertained to all initiative and referendum petitions. (See, e.g., Elec. Code, § 9214 [upon receipt of clerk's certification of sufficiency of initiative petition, city council must either adopt the measure without alteration within ten days of presentation or immediately order a special election to be held not less than 88 nor more than 103 days thereafter]; *id.*, § 9241 [upon receipt of qualified referendum petition, city council must either repeal the challenged ordinance or submit it to a vote no later than at the next regular municipal election occurring at least 88 days thereafter].) In the present case, the legislatively established deadline for action was contained in a statute, SB 1272, that pertained to a single ballot measure and specified a particular election date.

The governing principle, however, should be the same: A government official has a continuing ministerial duty to submit a qualified ballot measure to a vote of the people, even where performance is beyond the statutory time frame, and as long as the court can still grant any "effective relief," it should do so. In the present case, that relief should take the form of directing Respondent Secretary of State to place the *Citizens United* advisory question on the November 2016 general election ballot.

## III. THE COURT SHOULD EXERCISE ITS POWER TO REFORM SB 1272'S ELECTION DATE IN ORDER TO EFFECTUATE THE LEGISLATURE'S INTENT RATHER THAN PERMIT THE MERE PASSAGE OF TIME TO NULLIFY A VALID LEGISLATIVE ENACTMENT

Finally, if the Court does not believe that the authorities cited above compel the Secretary of State to place SB 1272's advisory question on the November 2016 general election ballot without further legislative action, the Court should exercise its established judicial power to "reform" SB 1272 so as to effectuate the Legislature's intent by replacing the words "November 4, 2014" in the statute with the words "November 8, 2016."

In *Kopp v. Fair Political Practices Commission* (1995) 11 Cal.4th 607, 626-661, this Court conducted an extensive review of the judiciary's authority to reform a statute, concluding that "a court may reform — i.e., 'rewrite' — a statute in order to preserve it against invalidation under the Constitution, when we can say with confidence that (i) it is possible to reform the statute in

a manner that closely effectuates policy judgments clearly articulated by the enacting body, and (ii) the enacting body would have preferred the reformed construction to invalidation of the statute." (*Id.* at pp. 660-661.) If use of the judicial reformation power is appropriate in order to effectuate the Legislature's intent by saving an *unconstitutional* statute from invalidation, its use is all the more appropriate in the present case, in order to save a perfectly *lawful and constitutional* statute from invalidation.

Indeed, this Court employed its reformation power in *almost identical circumstances* barely four years ago in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231. In *Matosantos*, the petitioners sought extraordinary writ relief from this Court, challenging the constitutionality of two recently enacted statutes relating to the dissolution of redevelopment agencies. As in the present case, the Court issued an order to show cause, set an expedited briefing schedule, and stayed parts of the two measures in order to prevent the statutes from taking effect during the pendency of the matter. Approximately four and a half months later, after fully considering the petitioners' claims, the Court issued its decision on the merits, invalidating one of the statutes but largely upholding the statute requiring the dissolution of redevelopment agencies. (*Id.* at p. 274.)

The Court was then confronted with what the proper disposition of the

case should be, since the Court had stayed implementation of most of the provisions of the statute calling for the orderly dissolution of the redevelopment agencies, and numerous critical deadlines in the statute had passed by now and could no longer be met. The Court determined that it would be appropriate to exercise its power of reformation to extend these statutory deadlines, concluding that the Legislature surely would have preferred the measure to take effect on a delayed basis rather than not at all. (*Id.* at p. 275.)[3]

It is worth setting out this portion of the Court's ruling in *Matosantos* in full, because the Court's reasoning and analysis is completely applicable to the present case, as well:

> "This impossibility [of complying with the statutory deadlines] ought not to prevent the Legislature's valid enactment from taking effect. As Matosantos urges, and the Association does not contest, we have the power to reform a statute so as to effectuate the Legislature's intent where the statute would otherwise be invalid. (*Kopp v. Fair Pol. Practices*

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[3]The Court fashioned similar relief in *Enyeart v. Board of Supervisors of Orange County* (1967) 66 Cal.2d 728. In that case, the Court held that the Board of Supervisors had erroneously terminated an incorporation proceeding for a new city, ruling that an insufficient number of protests were timely filed against the proposed incorporation. Although the governing statute only permitted the Board to adjourn the proceeding for a maximum of two months following the initial hearing — a period that had long since expired during the course of judicial review — the Court ordered that "an additional period of 60 days after issuance of the writ should be allowed for the board to hold a final hearing, define the boundaries of the proposed city, and perform its other duties in the premises." (*Id.* at p. 737.)

> *Com.* (1995) 11 Cal.4th 607, 660–661, 47 Cal.Rptr.2d 108, 905 P.2d 1248.) Here, the problem is not invalidity but impossibility: the need, recognized by both sides, to put to rest constitutional questions concerning these measures, when combined with a stay issued to preserve the court's jurisdiction to issue meaningful relief, has rendered it impossible for the parties and others affected to comply with the legislation's literal terms. *By exercising the power of reform, however, we may as closely as possible effectuate the Legislature's intent and allow its valid enactment to have its intended effect.* Reformation is proper when it is feasible to do so in a manner that carries out those policy choices clearly expressed in the original legislation, and when the legislative body would have preferred reform to ineffectuality. (*Id.* at p. 661, 47 Cal.Rptr.2d 108, 905 P.2d 1248.) We think it clear that (1) the Legislature would have preferred Assembly Bill 1X 26 to take effect on a delayed basis, rather than not at all, and (2) the timeline provided for in Assembly Bill 1X 26 can be reformed in a fashion that cleaves sufficiently to legislative intent." (53 Cal.4th at pp. 274-275 [emphasis added].)

Here, just as in *Matosantos*, "the need . . . to put to rest constitutional questions concerning [SB 1272], when combined with a stay issued to preserve the court's jurisdiction to issue meaningful relief, has rendered it impossible for the parties and others affected to comply with the legislation's literal terms." (*Id.* at p. 274.) Here, just as in *Matosantos*, "[t]his impossibility ought not to prevent the Legislature's valid enactment from taking effect." (*Ibid.*) Here, just as in *Matosantos,* it is clear that "the Legislature would have preferred [SB 1272] to take effect on a delayed basis, rather than not at all." (*Id.* at p. 275.) And here, just as in *Matosantos*, "the timeline provided for in [SB 1272] can be reformed in a fashion that cleaves sufficiently to legislative

intent." (*Ibid.*)

The proper course of action, then — just as in *Matosantos* — is for the Court to reform SB 1272 by simply replacing each instance in the statute of the general election date of November 4, 2014, with the next general election date of November 8, 2016. As then-Senator and now-Congressman Ted Lieu, the author of SB 1272, confirms in his declaration accompanying this petition, there was nothing magical about the November 2014 election date. Rather, his intent and that of the Legislature was to submit the *Citizens United* advisory question to the voters at the next available general election. (Declaration of Congressman Ted W. Lieu in Support of Petition for Rehearing ("Lieu Decl."), ¶ 2.) November 4, 2014, was selected as the election date in SB 1272 simply because that was the next general election ballot on which the measure could appear. (*Ibid.*) Indeed, as Congressman Lieu notes in his declaration (see *id.*, ¶ 3) and as the Court observes in its decision (see Slip Opn., p. 5, fn. 4), SB 1272 originally called for the election on its advisory question to be held in conjunction with the *November 8, 2016,* general election; the bill was amended to change that date to the November 4, 2014, general election only because it became clear that there was still sufficient time to place the measure on that ballot without unduly disrupting the electoral process. (Lieu Decl., ¶ 4.)

In sum, despite the fact that the November 2014 general election has now passed, there is ample authority for this Court to use its reformation power to effectuate the intent of the Legislature simply by modifying SB 1272 to provide that the election on the *Citizens United* advisory question shall be consolidated with the November *2016* general election. Such a disposition would not only prevent the effective judicial nullification of a lawful legislative act — surely a result to be avoided if at all possible under separation of powers principles[4] — but it would ensure that the people are given the opportunity that the Legislature intended them to have to voice their views at the ballot box on this question of continuing importance that is central to the future of our democracy.[5]

## CONCLUSION

The Legislature is gratified that the Court's decision in this case upheld the validity of SB 1272 and acknowledged the Legislature's constitutional

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[4]As the majority opinion emphasizes, "[i]t is no small matter for one branch of the government to annul the formal exercise by another and coordinate branch of power committed to the latter . . . ." (Slip Opn., p. 41 [quoting *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 692].)

[5]Of course, if the current Legislature for some reason no longer wants the *Citizens United* advisory question to be submitted to the voters, or would prefer that the election on the measure be consolidated with a *different* statewide election, the Legislature retains the authority to repeal or amend SB 1272 as reformed by the Court. (See *Matosantos*, 53 Cal.4th at p. 255 ["What the Legislature has enacted, it may repeal."].)

authority to submit an advisory question to the voters in order to seek input from their constituents on matters relevant to the federal constitutional amendment process. Yet language in the majority opinion suggesting that the Legislature must enact a new measure directing the placement of the *Citizens United* advisory question on a future ballot effectively nullifies SB 1272 despite the Court's holding that it constitutes a perfectly valid and constitutional legislative enactment. As the authorities discussed above establish, that is neither a necessary nor a proper disposition for the present case.

Accordingly, the Legislature respectfully requests that the Court exercise its authority under rule 8.532, subdivision (c), of the California Rules of Court to modify its opinion and direct Respondent Secretary of State to place SB 1272's advisory question on the November 2016 general election ballot without the need for the Legislature to take further action.

Dated: January 19, 2016

STRUMWASSER & WOOCHER LLP
Fredric D. Woocher
Michael J. Strumwasser
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By _____
Fredric D. Woocher

*Attorneys for Real Party in Interest*
*Legislature of the State of California*

## CERTIFICATE OF COMPLIANCE

## WITH RULE 8.204(c)(1)

I certify that, pursuant to California Rules of Court, rule 8.204(c)(1), the attached Real Party in Interest Legislature of the State of California's Petition for Rehearing is proportionately spaced, has a typeface of 13 points or more, and contains 5,438 words, as determined by a computer word count.

Dated: January 19, 2016

STRUMWASSER & WOOCHER LLP
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*Attorneys for Real Party in Interest Legislature of the State of California*

## DECLARATION OF CONGRESSMAN TED W. LIEU

I, Ted W. Lieu, declare:

1. I am currently a Member of the United States House of Representatives representing the 33rd District of California, a seat to which I was elected in November 2014. Prior to my election to Congress, I served in the California State Senate, representing the 28th Senate District. I was the author of Senate Bill No. 1272 ("SB 1272"), which I actively guided through the entire legislative process. I make this declaration in support of the Legislature's Petition for Rehearing in this case.

2. My purpose in authoring SB 1272 — and the purpose of the citizen supporters and legislative colleagues with whom I communicated about the bill — was to place an advisory question on the ballot so that the voters of California could voice their opinion in a formal manner on whether Congress should propose a federal constitutional amendment to address the *Citizens United* decision and the influence of unregulated money in our political system. We wanted the advisory measure to appear on a general election ballot, so that as many voters as possible would turn out and have the opportunity to express their views, and we hoped to hold the vote as soon as practicable, but beyond that, the specific election date was not a concern.

3. The original version of SB 1272 (following its March 28, 2014,

amendment from the former "spot bill" language) called for a special election on the advisory question to be held on November 8, 2016, to be consolidated with the statewide general election held on that same date. I was advised by legislative staff that the bill needed to specify a particular date for the consolidated election, because without one, a stand-alone special election would cost millions of dollars. We chose to direct the advisory measure election to be consolidated with the November 2016 general election because we believed at the time that it would be difficult, if not impossible, to get SB 1272 through the necessary committee hearings and clear both Houses of the Legislature, and then obtain the Governor's consent, in sufficient time for the measure to be placed on the November 2014 general election ballot.

4. We subsequently came to believe that it would be possible to enact SB 1272 in time to have the advisory question placed on the November 2014 general election ballot, especially if provisions were included to waive the 131-day-prior-to-the-election statutory deadline for placement of legislative measures on the ballot and other Elections Code deadlines relating to the preparation of the ballot pamphlet. SB 1272 was therefore amended to direct that the special election on the *Citizens United* advisory question should be consolidated with the November 2014 general election.

5. As the author of SB 1272, I certainly never anticipated that

following its passage by the Legislature and approval by the Governor, SB 1272's advisory measure would be ordered to be removed from the November 2014 ballot by this Court and would then later be found to be valid and constitutional. I do not believe anyone else in the Legislature ever anticipated such a series of events, either. Consequently, we made no provision in SB 1272 for such an eventuality.

6. I have no doubt, however, that — like me — my colleagues in the Legislature who voted for SB 1272 would prefer and expect that the *Citizens United* advisory question be placed on the November 2016 general election ballot rather than not have it appear on any ballot at all (or even to appear on a different ballot) following this Court's decision. In all of the many hearings, debates, and discussions that occurred during the Legislature's consideration of SB 1272, I do not remember a single concern being raised about which general election ballot the advisory question should be placed on. My colleagues who supported the measure simply wanted to give as many people as possible the opportunity to vote on the advisory question; those who opposed SB 1272 did not support holding any election at all on the advisory measure.

7. It required a lot of time and effort from many people to enact SB 1272 and to secure the Governor's approval for the advisory question to

appear on the ballot. This Court has now conclusively determined and agreed that SB 1272 was a valid and lawful legislative enactment. SB 1272 therefore deserves to be implemented and given effect, even if — for reasons beyond the Legislature's control — the advisory measure can no longer appear on the November 2014 general election ballot but must instead be placed on the November 2016 ballot.

8. As I mentioned, I am now serving in Congress and am no longer a member of the state Legislature. I am therefore unable to author another version of SB 1272 that would direct the placement of an identical advisory question on the November 2016 or any future ballot. I do not understand, however, why it should be necessary to do so, given that SB 1272 can readily be interpreted or reformed to direct the Secretary of State to place the *Citizens United* advisory question on the next available general election ballot, on November 8, 2016.

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

Executed this 19th day of January, 2016, at Los Angeles, California.

Ted W. Lieu

Ted W. Lieu

**PROOF OF SERVICE**

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Re: *Howard Jarvis Taxpayers Association, et al. v. Alex Padilla, et al.*, Supreme Court Case No. S220289

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024.

On **January 19, 2016**, I served the document(s) described as **REAL PARTY IN INTEREST LEGISLATURE OF THE STATE OF CALIFORNIA'S PETITION FOR REHEARING** on all appropriate parties in this action, as listed on the attached Service List, by the method stated.

☒ If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, 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 contained in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 19, 2016**, at Los Angeles, California.

LaKeitha Oliver

**Service List**

*Howard Jarvis Taxpayers Association, et al. v. Alex Padilla, et al.*,
Supreme Court Case No. S220289

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|---|---|
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