

1 Charles H. Bell, Jr. (SBN 60553)
2 Thomas W. Hiltachk (SBN 131215)
3 Brian T. Hildreth (SBN 214131)
4 BELL, McANDREWS & HILTACHK, LLP
5 455 Capitol Mall, Suite 801
6 Sacramento, California 95814
7 Telephone: (916) 442-7757
8 Facsimile: (916) 442-7759

9 Attorneys for Petitioners,
10 JON COUPAL and
11 HOWARD JARVIS TAXPAYERS ASSOCIATION

FILED
Superior Court Of California,
Sacramento
03/08/2010
amacias
By _____, Deputy
Case Number:
34-2010-80000468

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SACRAMENTO

14 JON COUPAL, an individual; HOWARD
15 JARVIS TAXPAYERS ASSOCIATION, an
16 incorporated California Association,

17 Petitioner,

18 v.

19 DEBRA BOWEN, as the Secretary of State of
20 California,

21 Respondent.

22 _____
23 GEOFF BRANDT, in his official capacity as
24 State Printer; the LEGISLATURE OF THE
25 STATE OF CALIFORNIA,

26 Real Parties In Interest.

Case No.

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

[ELEC. CODE, §§ 13314; 9092]

STATEWIDE ELECTION MATTER
IMMEDIATE ACTION REQUESTED

Date:
Time:
Dept:
Judge:

Petition Filed: 03/08/10

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION.....1

BACKGROUND.....2

 A. AB 583 / Proposition 15 and the Current Ban
 on Publicly-Funded Elections.....2

 B. Proposition 15 Ballot Pamphlet and Ballot Title
 and Summary Requirements.....3

ARGUMENT.....5

I. THE BALLOT LABEL AND TITLE AND SUMMARY MUST
 BE ACCURATE AND IMPARTIAL AND MAY NOT BE
 ARGUMENTATIVE REGARDLESS OF AUTHORSHIP.....5

 A. If the Legislature Prepares the Ballot Label and
 Title and Summary, it Must be Held to the Same
 “Fair and Impartial” Standard that Governs the Attorney General.....5

 B. The California Constitutional Prohibits the Use
 of Public Funds to Influence the Outcome of
 Elections Including Funds Expended on Ballot Materials.....7

 C. The Court’s Obligation to Ensure that Ballot
 Materials Do Not Contain False and Misleading
 Information Also Extends to Materials Directed by the Legislature.....11

II. THE BALLOT LABEL AND BALLOT TITLE AND SUMMARY
 FOR PROPOSITION 15 ARE NOT FAIR AND IMPARTIAL AND
 CONTAIN FALSE AND/OR MISLEADING STATEMENTS.....12

 A. Proposition 15’s Ballot Label and Title and
 Summary Fail to Disclose that the Measure
 Will Lift the Voter-Enacted Ban on Publicly Financed Elections.....14

 B. The Legislature’s Ballot Label and Title and Summary
 Repeatedly Refer to the Tax on Lobbyists as an
 “Annual” Tax, However, the Tax is Actually a \$700
 Tax Collected Biennially by the Secretary of State.....15

 C. The Ballot Label and Title and Summary Falsely
 State that Private Contributions Would be Prohibited –
 Yet in order to Qualify for the Program Candidates Must
 Collect “7,500 qualifying contributions” from Private Sources;
 Independent Expenditures Also Would be Permitted.....16

 D. The Assertion that Proposition 15 will be Funded by
 “Voluntary Contributions” is Not Impartial and is False
 and/or Misleading Because Primary Funding Results
 from a *Mandatory* \$700 Biennial Tax.....17

1	E.	The Legislature’s Use of the Term “Fair Elections”	
2		in the Proposition 15 Ballot Materials are not Fair	
		and Impartial and Serve only to Mislead Voters.....	17
3	F.	The Legislature’s Assertion that “There would be	
4		Strict Enforcement and Accountability” of the	
		Provisions of the Proposition 15 is Not Impartial.....	18
5		PROPOSED REVISIONS.....	20
6		CONCLUSION.....	21
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

STATE CASES

Amador Valley v. State Bd. Of Equalization
(1987) 22 Cal.3d 208 13, 15, 19

Assembly v. Deukmejian
(1982) 30 Cal.3d 638 15

Board of Supervisors v. Lonegran
(1980) 27 Cal.3d 855 9

Boyd v. Jordan
(1934) 1 Cal.2d 468 6, 7

Brennan v. Board of Supervisors
(1981) 125 Cal.App.3d 87..... passim

Citizens for Responsible Government v. City of Albany
(1997) 56 Cal.App.4th 1199 6, 10, 18, 19

Clark v. Jordan
(1936) 7 Cal.2d 248 5, 6, 7, 13

Epperson v. Jordan
(1938) 12 Cal.2d 61 6, 13

Fox v. City of Bakersfield
(1950) 36 Cal.2d 136 13

Gebert v. Patterson
(1986) 186 Cal.App.3d 868..... 1, 11

Gould v. Grubb
(1975) 14 Cal.3d 661 8, 9, 10

Hart v. Jordan
(1939) 14 Cal.2d 288 9

Horwath v. City of East Palo Alto
(1989) 212 Cal.App.3d 766..... 7

Huntington Beach City Council v. Superior Court
(2002) 94 Cal.App.4th 1417 10, 17, 19

Knoll v. Davidson
(1974) 12 Cal.3d 335, 352 5, 9, 11

1	<i>League of Women Voters of California v. Countywide Criminal Justice Coordination</i>	
	<i>Com.</i>	
2	(1988) 203 Cal.App.3d 529	8
3	<i>Lungren v. Superior Court</i>	
4	(1996) 48 Cal.App.4th 435	7
5	<i>Meyers v. Patterson</i>	
	(1987) 196 Cal.App.3d 130.....	15
6	<i>Miller v. California Comm: on the Status of Women</i>	
7	(1984) 151 Cal.App.3d 693.....	9, 10
8	<i>Patterson v. Board of Supervisors</i>	
9	(1988) 202 Cal.App.3d 22.....	passim
10	<i>Songstad v. Superior Court</i>	
	(2001) 93 Cal.App.4th 1202	6
11	<i>Stanson v. Mott</i>	
12	(1976) 17 Cal.3d 206	5, 7, 8, 10
13	<i>Stasher v. Harger-Haldeman</i>	
14	(1962) 58 Cal.2d 23	15
15	<i>Vargas v. City of Salinas</i>	
	(2009) 46 Cal.4th 1	8, 10, 17
16	<i>Washburn v. City of Berkeley</i>	
17	(1987) 195 Cal.App.3d 578.....	9
18	<i>Zaremborg v. Superior Court</i>	
19	(2004) 115 Cal.App.4th 111	19
20	STATUTES	
21	AB 583	passim
22	Elec. Code	
23	§ 303.....	1
24	§ 9003.....	3, 6
25	§ 9004.....	15
26	§ 9041.....	14
27	§ 9042.....	14
28	§ 9050.....	3

1	§ 9051.....	3, 6
2	§ 9052.....	3
3	§ 9069.....	14
4	§ 9080.....	3
5	§ 9081.....	3
6	§ 9082.....	3
7	§ 9083.....	3
8	§ 9084.....	3
9	§ 9085.....	3
10	§ 9086.....	3
11	§ 9087.....	3
12	§ 9088.....	3
13	§ 9089.....	3
14	§ 9090.....	3
15	§ 9091.....	3
16	§ 9092.....	3, 4, 9, 11
17	§ 9093.....	3
18	§ 9094.....	3
19	§ 9095.....	3
20	§ 9096.....	3
21	§ 13247.....	3
22	§ 13280.....	3
23	§ 13281.....	1, 3
24	§ 13282.....	1
25	§ 13314.....	4, 5, 11
26	§ 13314 (a)(2).....	4
27		
28		

1	Gov. Code	
2	§ § 81000 et seq.	2
3	§ 85300.....	2
4	§ 88001.....	3
5	§ 88003.....	3
6	§ 88006.....	11
7	STATE CONSTITUTIONAL PROVISIONS	
8	Cal. Const., art. II, § 3	8
9	Cal. Const., art. II, § 4.....	8
10	Cal. Const., art. II, § 10.....	6, 13
11	FEDERAL CONSTITUTIONAL PROVISIONS	
12	U.S. Const., 1 st Amend.....	1
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **INTRODUCTION**

2 Recognizing that the essential purpose of ballot arguments is to give voters truthful
3 information concerning ballot measures, courts have long held that the voter pamphlet is a limited
4 public forum and therefore the government has a compelling interest in prohibiting material that
5 is false and misleading. (*Gebert v. Patterson* (1986) 186 Cal.App.3d 868 (voters pamphlet is
6 “limited public forum” requiring equal access); *see also Patterson v. Board of Supervisors* (1988)
7 202 Cal.App.3d 22, 248 Cal.Rptr. 253 (statutes prohibiting ballot pamphlet information that is
8 false, misleading and inconsistent with purposes of government sponsored voters’ pamphlet did
9 not violate First Amendment).) Voter pamphlets provide a unique vehicle of expression and it is
10 only through deletion of unfair, biased, false and/or misleading statements of fact that the
11 integrity of the official pamphlet and the election can be preserved.

12 In placing Proposition 15 on the ballot, Real Party In Interest, the LEGISLATURE OF
13 THE STATE OF CALIFORNIA (“Legislature”) wrote its own ballot label¹, title and summary,
14 and “notwithstanding any other provision of law,” prohibited the Attorney General from revising
15 them or preparing his own. The legislative bill placing Proposition 15 on the ballot also required
16 the Secretary of State, “notwithstanding any other provision of law,” to print on the ballot only
17 what the Legislature had written.

18 This action for Petition for Writ of Mandate challenges the ballot label and title and
19 summary language mandated by the Legislature, as it is neither fair nor impartial and represents
20 an unlawful attempt to influence voters through the ballot materials. In addition, several
21 statements within the ballot materials are false and/or misleading. A 20-day period is provided by
22 Elections Code sections 9092 and 13282 for public review and challenge of these materials; this
23 period ends March 15, 2010. (See Exhibit A filed herewith.)

24 Petitioners JON COUPAL and HOWARD JARVIS TAXPAYERS ASSOCIATION
25 (“Petitioners”) seek an Alternative Writ of Mandate compelling Respondent DEBRA BOWEN in
26

27 _____
28 ¹ The ballot label is a condensed statement of the ballot title and summary. (Cal. Elec. Code, §
13281.) The ballot label appears not in the voters pamphlet but on the face of the ballot or other
voting apparatus. (Cal. Elec. Code, § 303.)

1 her official capacity as California Secretary of State (hereinafter “Respondent” or “Secretary of
2 State”) to amend the ballot label and title and summary for Proposition 15, authored by Real Party
3 In Interest Legislature, and the issuance of a Peremptory Writ of Mandate commanding
4 Respondent to amend the ballot label and title and summary for Proposition 15 as set forth herein,
5 and to conform any translations of these materials to the changes ordered by this Court.

6 BACKGROUND

7 **A. AB 583 / Proposition 15 and the Current Ban on Publicly-Funded Elections**

8 The Political Reform Act (Government Code sections 81000 et seq.; hereinafter “PRA”)
9 was a ballot initiative approved by California voters in 1974. Over the last three decades, it has
10 been substantively amended by the Legislature and the voters on several occasions. The PRA
11 regulates campaign financing and spending, financial conflicts of interest, lobbyist registration
12 and reporting, post-governmental employment, and gifts and honoraria given to public officials
13 and candidates.

14 In 1988, voters amended the PRA by enacting Proposition 73. Among the most
15 significant provisions of Proposition 73 was a total ban on public financing of political
16 campaigns. (Cal. Gov. Code, § 85300.) If approved, Proposition 15 would repeal the 22-year
17 ban on public financing of elections, and not only allow for publicly financed elections at the state
18 level, but would permit local jurisdictions to implement public funding of elections without
19 further voter approval². In addition, the funds for the publicly-financed elections would derive, in
20 part, from a new *mandatory* \$700 biennial flat tax imposed on *all* lobbyists, lobbying firms,
21 lobbyist employers and lobbying coalitions.

22 However, neither the ballot label nor ballot title and summary for Proposition 15 makes
23 clear that a “yes” vote on Proposition 15 will have such a drastic effect on the future of the State’s
24

25 ² AB 583 would repeal Section 85300 of the Government Code, which prohibits the use of public
26 funds for campaign purposes. This allow for the use of non-clean money public funds for
27 campaign purposes, thus permitting general law cities and also counties to enact their own public
28 financing measures for local races. At that time, local jurisdictions, through ordinance or
resolution, could choose to fund a full public financing campaign system or a matching system by
transferring funds from the general fund, issuance of fees, or implementation of a special tax.

1 elections. The ballot label and ballot title and summary are the only two pieces of information
2 most voters will ever review -- as those two items are displayed on every ballot that is distributed
3 to voters. (Cal. Elec. Code, §§ 9050-9052, 9080-9096, 13247, 13280-8 1; see also Gov. Code, §§
4 88001-88003.)

5 **B. Proposition 15 Ballot Pamphlet and Ballot Title and Summary Requirements**

6 Arguments and Rebuttals included with the ballot pamphlets are expected to take sides.
7 However, the title and summary and ballot label, relied upon most heavily by the voters, are
8 required by law to constitute a “fair and impartial statement of the purpose of the measure” and
9 “shall neither be an argument, nor be likely to create prejudice, for or against the proposed
10 measure.” (Cal. Elec. Code, § 9051.) The responsibility for preparing the impartial portion of the
11 ballot is typically entrusted to the Attorney General because, as the state’s top law enforcement
12 officer and a sworn agent of the court, the Attorney General is trusted by the public to not take
13 sides, but to be objective in describing the measure and the changes in law it proposes. (Cal.
14 Elec. Code, §§ 9051, 9086, 13280, 13281; Gov. Code, § 88002.)

15 That the law abhors the idea of an interested party preparing the impartial elements of the
16 ballot is demonstrated by the fact that, in the rare case where the Attorney General has a conflict
17 of interest because he himself is the author of the measure, the Legislative Counsel is required to
18 assume the responsibility of preparing the impartial ballot label, title, and summary. (Cal. Elec.
19 Code, § 9003.)

20 AB 583 dispensed with these substantive and procedural protections by directing that,
21 “notwithstanding” the above Election Code provisions and “any other provision of law,” specific
22 language prepared by the Legislature itself for the ballot label and title and summary and only
23 that language should appear in the ballot pamphlet for Proposition 15 and that the Attorney
24 General “shall not supplement, subtract from, or revise that language” except to add the fiscal
25 analysis supplied by the Legislative Analyst. (Exhibit B [AB 583, p. 19] filed herewith.) AB 583
26 thus requires that the following ballot label be included in the ballot pamphlet for Proposition 15:

27 ///

28 ///

1 "CALIFORNIA FAIR ELECTIONS ACT. Creates a voluntary
2 system for candidates for Secretary of State to qualify for a public
3 campaign grant if they agree to strict spending limits and no
4 private contributions. Each candidate demonstrating enough
5 public support would receive the same amount. Participating
6 candidates would be prohibited from raising or spending money
7 beyond the grant. There would be strict enforcement and
8 accountability. Funded by voluntary contributions and by an
9 annual fee on lobbyists, lobbying firms, and lobbyist employers."

10 (See Exhibit C filed herewith.)

11 AB 583 further requires the following title and summary for Proposition 15:

12 "CALIFORNIA FAIR ELECTIONS ACT. This act creates a
13 voluntary system for candidates for Secretary of State to qualify
14 for a public campaign grant if they agree to strict spending limits
15 and take no private contributions. Candidates would have to
16 qualify before receiving the grant. Candidates who demonstrate
17 sufficient public support would receive the same amount.
18 Participating candidates would be prohibited from raising or
19 spending money beyond the grant. There would be strict
20 enforcement and accountability with published reports open to the
21 public. Funded by voluntary contributions and by a \$350 annual
22 registration fee on lobbyists, lobbying firms, and lobbyist
23 employers."

24 (See Exhibit D filed herewith.)

25 The ballot materials prescribed by the Legislature for Proposition 15 fail to meet the
26 statutory and constitutional requirements of fairness and impartiality. Additionally, those
27 materials contain several statements that are false and/or misleading. The Legislature cannot
28 eliminate these legal requirements simply by "notwithstanding" all other elections laws, nor can it
lawfully engage in "electioneering" through the ballot materials.

Elections Code sections 9092 and 13314 authorize this Court to issue a writ of mandate
ordering that changes be made to the official ballot materials to ensure that the information
provided to voters meets the requirements of law. Section 13314 authorizes courts to issue a
peremptory writ of mandate "upon proof... that an error, omission, or neglect of duty" is about to
occur with regard to the printing of the ballot materials "in violation of [the Elections Code] or
the Constitution." (Cal. Elec. Code, § 13314 (a)(2).) Additionally, Elections Code section 9092

1 authorizes courts to amend or delete language proposed to be included in the official ballot
2 pamphlet upon clear and convincing proof that such language is false or misleading. Petitioners
3 assert that relief is appropriate in this case under Elections Code sections 9092 and 13314.

4 Accordingly, Petitioners request that the ballot label and ballot title and summary be
5 amended or corrected to provide more neutral language, and provides alternative language at the
6 conclusion of the Argument.

7 ARGUMENT

8 “[T]he voter’s pamphlet can have a substantial impact on the equality and
9 fairness of the electoral process. ¶ ‘Unlike other vehicles for partisan
10 political argument, the pamphlet is printed by a governmental body and
11 distributed to all registered voters. The arguments set forth therein are
12 likely to ‘carry greater weight in the minds of the voters than normal
13 campaign literature....’ (*Knoll v. Davidson* (1974) 12 Cal.3d 335, 352.)”

14 (*Patterson v. Board of Supervisors, supra*, 202 Cal.App.3d at p. 30.)

15 A “fundamental precept of this nation’s democratic electoral process is that the
16 government may not [use the public treasury to] ‘take sides’ in election contests or bestow an
17 unfair advantage on one of several competing interests.” (*Stanson v. Mott* (1976) 17 Cal.3d 206,
18 217 and cases cited therein.) Moreover, the statutory requirements for preparation of the
19 materials that appear on voters’ ballots must serve first and foremost “to protect [the voters] from
20 being misled or imposed upon.” (*Clark v. Jordan* (1936) 7 Cal.2d 248, 252.) In this matter, the
21 Legislature’s prescribed ballot materials fail to comply with the legal requirements of the
22 Elections Code and other legal authority as they are not impartial and in some instances are
23 affirmatively misleading. They therefore require modification by this Court.

24 **I. THE BALLOT LABEL AND TITLE AND SUMMARY MUST BE ACCURATE 25 AND IMPARTIAL AND MAY NOT BE ARGUMENTATIVE REGARDLESS OF 26 AUTHORSHIP**

27 **A. If the Legislature Prepares the Ballot Label and Title and Summary, it Must 28 be Held to the Same “Fair and Impartial” Standard that Governs the Attorney General.**

The law is well settled that the government may not expend public funds or use public
resources to influence the outcome of an election. This is because “[g]overnment action which

1 may tend to influence the outcome of an election operates in an area protected by the guarantee of
2 equal protection and freedom of speech.” (*Citizens for Responsible Government v. City of Albany*
3 (1997) 56 Cal.App.4th 1199, 1227.)

4 In 1932, the California Constitution was amended to require that all voter initiatives and
5 referenda -- prior to circulation for signatures or placement on the ballot -- be submitted to the
6 Attorney General for the preparation of a title and summary of the “chief purpose and points” of a
7 proposed measure. (*Epperson v. Jordan* (1938) 12 Cal.2d 61, 65; see also Cal. Const., art. II, §
8 10.) This amendment was deemed necessary after a series of lawsuits challenging the misleading
9 nature of proponent-prepared ballot materials led to courts prohibiting the placement of measures
10 on the ballot. (*Ibid.*, citing *Clark v. Jordan*, *supra*, 7 Cal.2d 248; *Boyd v. Jordan* (1934) 1 Cal. 2d
11 468.)

12 The Elections Code implements the constitutional requirement by requiring the Attorney
13 General to prepare a “true and impartial statement of the purpose of the proposed measure” to be
14 included in the ballot pamphlet to be circulated to voters. (Cal. Elec. Code, § 9051.) This
15 summary is to be provided “in such language that the ballot title and summary shall neither be an
16 argument, nor be likely to create prejudice, for or against the proposed measure.” (*Ibid*, emphasis
17 added.) The purpose of the impartial analysis is to give voters accurate information about a
18 proposed initiative. The analysis must contain “[A] statement of the major objective or ‘chief
19 purpose and points’ of the measure” (*Brennan v. Board of Supervisors* (1981) 125 Cal.App.3d
20 87, 92 (“*Brennan*”).)

21 Entrusting the drafting of the ballot label and title and summary to the Attorney General, a
22 neutral third party, was implemented as an explicit recognition of the need for impartiality in
23 these important ballot materials. The Attorney General is presumed to be objective in describing
24 the measure and the proposed changes to the law. (*Songstad v. Superior Court* (2001) 93
25 Cal.App.4th 1202, 1209-10.) Further underscoring this emphasis on impartiality, the Elections
26 Code specifically provides that when the Attorney General is himself a proponent of a ballot
27 proposal, the Legislative Counsel is to prepare the ballot labels and titles and summaries in his
28 place. (Cal. Elec. Code, § 9003.)

1 The ballot label and title and summary are prepared and printed at public expense and the
2 analysis and fiscal impact statement is mailed to all registered voters in the State, also at public
3 expense. Thus, these materials are constitutionally required to be impartial and objective and
4 cannot “bestow an unfair advantage on one of several competing factions.” (*Stanson, supra*, at p.
5 9.) Because the pamphlet is printed by a governmental body and distributed to all registered
6 voters, its description of an initiative is likely to carry greater weight in the minds of the voters
7 than normal promotional campaign literature. (*Patterson v. Board of Supervisors, supra*, 202
8 Cal.App.3d at p. 30.) The description of the initiative, more than anything else, is “to foster a
9 more informed electorate by supplying correct information about the measures appearing on any
10 given ballot.” (*Horwath v. City of East Palo Alto* (1989) 212 Cal.App.3d 766, 776.)

11 If the Legislature is to be permitted to draft the ballot label and title and summary for
12 Proposition 15 -- a point Petitioners do not challenge in this case -- it must be held to the same
13 standard of neutrality and impartiality that governs the Attorney General. And when, as here, the
14 government neglects its responsibility to be neutral and impartial, the law “clearly empowers trial
15 courts to examine the content of a ballot digest [similar to a ballot label and title and summary] to
16 determine if it fairly represents the measure it summarizes.” (See *Lungren v. Superior Court*
17 (1996) 48 Cal.App.4th 435, 440.) Moreover, the courts are given “broad powers of review” in
18 determining whether the a ballot label and title and summary are accurate and unbiased.
19 (*Brennan v. Board of Supervisors* (1981) 125 Cal.App.3d 87, 91; see also *Clark v. Jordan* (1936)
20 7 Cal.2d 248, 250-252; *Boyd v. Jordan* (1934) 1 Cal.2d 468, 471-472.)

21 **B. The California Constitution Prohibits the Use of Public Funds to Influence**
22 **the Outcome of Elections Including Funds Expended on Ballot Materials.**

23 There can be no question that the Legislature is not permitted to use ballot materials to try
24 to influence the voters -- even if it has the procedural authority to override the provisions of the
25 Elections Code in order to submit its own ballot label and title and summary for a measure. The
26 prohibition against the government using public monies to “take sides” in an election is rooted in
27 the concern that holders of government authority could use their official powers to distort the
28 election process to further their own interests. (*Stanson, supra*, 17 Cal.3d at p. 217.) “Selective

1 use of public funds in election campaigns [by the government] ... raises the specter of just such an
2 improper distortion of the democratic electoral process.” (*Ibid*; see also *Vargas v. City of Salinas*
3 (2009) 46 Cal.4th 1, 40.)

4 All public bodies are thus subject to the same constitutional prohibition on using public
5 treasury funds to persuade or otherwise attempt to influence voters to approve or disapprove
6 measures presented on the ballot. (*Stanson, supra*, 17 Cal.3d at 218; *League of Women Voters of*
7 *California v. Countywide Criminal Justice Coordination Com.* (1988) 203 Cal.App.3d 529, 546-
8 47.) The Legislature cannot ignore this restriction simply by “notwithstanding” all the elections
9 laws, as the California Supreme Court has made clear that, as a matter of state constitutional law,
10 government officials may only include objective and impartial information in ballot materials
11 paid for at the public expense.

12 In *Stanson*, the California Supreme Court specifically referenced Article II, section 3 of
13 the State Constitution, which provides that the Legislature shall provide for “free elections.”
14 (Cal. Const., art. II, § 3.) “Free” in this context means fair and open and uninfluenced by the
15 actions of the government. (*Stanson, supra*, 17 Cal.3d at p. 217.) Governmental impartiality in
16 electoral matters was critical in the court’s view because “a fundamental goal of a democratic
17 society is to attain the free and pure expression of the voters’ choice of candidates” and the
18 government must avoid any feature that might adulterate or frustrate that choice. (*Id.* at p. 219.)

19 The Legislature also has a constitutional duty to prohibit “improper practices that affect
20 elections.” (Cal.Const., art. II, § 4.) It would be paradoxical, indeed, if the Legislature -- charged
21 with protecting the elections process -- could manipulate that process to further the passage of its
22 own proposed measures. Article II, sections 3 and 4 prohibit this result. Although the Legislature
23 retains discretion in formulating elections procedures and regulating the form and content of
24 ballots, “as in all other areas of governmental action, however, the exercise of such discretion
25 remains subject to constitutional limitations.” (*Gould v. Grubb* (1975) 14 Cal.3d 661, 673.)

26 When government action appears to favor one side in a matter submitted to the voters,
27 “there is a heightened necessity for constitutionally based judicial oversight to avoid ‘poisoning
28 the well’ of majoritarian principle.” (*Miller v. California Comm: on the Status of Women* (1984)

1 151 Cal.App.3d 693, 701, 702.) The reach of this heightened judicial scrutiny necessarily reaches
2 information contained in the official voter pamphlet, which the state distributes to all registered
3 voters. Unlike normal campaign literature, the official voter pamphlet “carries the imprimatur of
4 the government and is likely to ‘carry greater weight in the minds of the voters.’” (*Knoll v.*
5 *Davidson* (1974) 12 Cal.3d 335, 352.)

6 The purpose of the voter pamphlet as primarily an informational device for voters is well-
7 recognized. (*Hart v. Jordan* (1939) 14 Cal.2d 288, 292.) Indeed, even the layout of the ballot
8 pamphlet itself differentiates for voters between “Arguments” and the sources of impartial,
9 government-provided information - e.g., the title and summary and the LAO’s fiscal analysis.³
10 And courts frequently consult the Attorney General’s title and summary and LAO Analysis as
11 “legislative history of an initiative measure adopted by the voters” when seeking to interpret its
12 terms. (*Patterson v. Board of Supervisors, supra*, 202 Cal.App.3d at p. 30 [quoting *Board of*
13 *Supervisors v. Lonegran* (1980) 27 Cal.3d 855, 866]; see also *Washburn v. City of Berkeley*
14 (1987) 195 Cal.App.3d 578, 585.) Misuse of the ballot pamphlet materials by the government to
15 further its own interests thus poses an acute danger to the integrity of the electoral process making
16 heightened judicial scrutiny appropriate.

17 This is not to say that individual legislators cannot engage in arguments for or against a
18 measure in the appropriate context. But, the government cannot take actions that clearly favor
19 one side in an election contest by, for example, providing favored ballot placement to incumbents.
20 (*Gould, supra*, 14 Cal.3d at 673.) Nor may the government expend public funds to create a forum
21 for speech - i.e., a ballot pamphlet - and then manipulate that forum to enhance its own views on

22
23 ³ Unlike materials prepared for the ballot by government officials, of course, there is no
24 expectation that arguments and rebuttals will be impartial. However, both the ballot materials
25 drafted by government officials and the arguments and rebuttals are subject to challenge as being
26 false or misleading. (Cal. Elec. Code, § 9092.) This content-neutral restriction on speech
27 appearing in the voter pamphlet is important because every aspect of the official voter pamphlet,
28 including the arguments is held to have a substantial impact on the equality and fairness of the
electoral process. (*Patterson v. Board of Supervisors, supra*, 202 Cal.App.3d at p. 30.) They are,
after all, part of an official state document on which the voters rely for accurate information about
the measures that they are asked to vote on. (*Ibid.*)

1 an election matter relative to the views of others. (*Miller, supra*, 151 Cal.App.3d at p. 701.)

2 When a legislative body prescribes the language to be included the official voter
3 pamphlet, a court may properly strike or amend that language if it is “insufficiently neutral.”
4 (*Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1434 (holding
5 that the word “exemption” in a tax context connotes “unfair influence and special treatment”); see
6 also *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199, 1225
7 (striking non-neutral language in ballot question that attempted to put measure in favorable light
8 and served no independent government purpose).)

9 The California Supreme Court recently acknowledged that it may be appropriate for the
10 government to publish materials regarding an upcoming election if: (1) the materials present
11 information about past or present facts; (2) the materials do not contain argumentative or
12 hyperbole designed to persuade voters; and (3) the materials are consistent with past practice of
13 publishing materials related to elections. (*Vargas, supra*, 46 Cal.4th at p. 40.) What the
14 government cannot do is use “official” materials to advance a political argument opposing or
15 supporting a measure, or use an electioneering title and summary to essentially outweigh any
16 dissenting voices in the materials that go to the public: Such actions pose serious threats to the
17 integrity of the election process. (See *Stanson, supra*, 17 Cal.3d at p. 218; *Gould, supra*; *Miller,*
18 *supra*.)

19 To evaluate the fairness or impartiality of government-sponsored publications, California
20 courts have considered such factors as the style, tenor, and timing of the publication. (*Stanson,*
21 *supra*, 17 Cal.3d at p. 222.) This mode of evaluation applies regardless of whether the
22 publication is presented as express advocacy or in a more neutral form of communication.
23 (*Vargas, supra*, 46 Cal.4th at p. 34.) Thus, this Court must evaluate the style, tenor, and timing of
24 the Proposition 15 ballot materials in order to determine whether the Legislature has crossed the
25 line and engaged in improper advocacy.

26 ///

27 ///

28

1 **C. The Court’s Obligation to Ensure that Ballot Materials Do Not Contain False**
2 **and Misleading Information Also Extends to Materials Directed by the**
3 **Legislature.**

4 Government Code section 88006 and Elections Code section 9092 specifically authorize
5 the courts to delete or amend materials to be included in the ballot pamphlet that are false or
6 misleading. Elections Code section 9092 authorizes issuance of a writ of mandate to delete or
7 amend ballot label and pamphlet materials which are false, misleading or inconsistent with the
8 requirements of the law or code. The Elections Code requires that a peremptory writ of mandate
9 issue “upon clear and convincing proof that the material in question is false [or] misleading” or
10 inconsistent with code requirements and char “issuance of the writ will not substantially interfere
11 with the printing and distribution of official elections materials as required by law.” Elections
12 Code Section 13314 is even broader - it requires that a court issue a peremptory writ upon proof
13 that an “error, omission or neglect of duty” is about to occur in the printing of a ballot, sample
14 ballot, voter pamphlet or other official matter in violation of the Code. The purpose of these
15 statutes is to protect the electorate from deceptive copy and undue influences in the official ballot
16 label and pamphlet.

17 In order to preserve the integrity of the election process, courts have been extremely
18 solicitous of these provisions. In fact, the courts have observed that the voter pamphlet has a
19 “substantial impact on the equality and fairness of the electoral process” since it is assembled,
20 published and distributed by the government and therefore appears to the public to be approved
21 by the government. (See *Patterson, supra*, at 30.) As the California Supreme Court stated in
22 *Knoll v. Davidson, supra*, 12 Cal.3d at 352:

23 The voters pamphlet, which accompanies the sample ballot,
24 purports to be an authoritative document that appears to give an
25 imprimatur of official approval to statements of qualifications
26 included therein. It is quite likely that this document would carry
27 greater weight in the minds of the voters than normal campaign
28 literature.

29 Thus, the importance of ballot pamphlets to the election process cannot be understated,
30 and the need for the accuracy (and impartiality) of the Legislature’s ballot label and title and

1 summary is critical.

2 **II. THE BALLOT LABEL AND BALLOT TITLE AND SUMMARY FOR**
3 **PROPOSITION 15 ARE NOT FAIR AND IMPARTIAL AND CONTAIN FALSE**
4 **AND/OR MISLEADING STATEMENTS**

5 The ballot label statement prepared by Legislature reads as follows:

6 “CALIFORNIA FAIR ELECTIONS ACT. Creates a voluntary
7 system for candidates for Secretary of State to qualify for a public
8 campaign grant if they agree to strict spending limits and no
9 private contributions. Each candidate demonstrating enough
10 public support would receive the same amount. Participating
11 candidates would be prohibited from raising or spending money
12 beyond the grant. There would be strict enforcement and
13 accountability. Funded by voluntary contributions and by an
14 annual fee on lobbyists, lobbying firms, and lobbyist employers.”

15 (See Exhibit C.)

16 The ballot summary statement prepared by Legislature reads as follows:

17 “CALIFORNIA FAIR ELECTIONS ACT. This act creates a
18 voluntary system for candidates for Secretary of State to qualify
19 for a public campaign grant if they agree to strict spending limits
20 and take no private contributions. Candidates would have to
21 qualify before receiving the grant. Candidates who demonstrate
22 sufficient public support would receive the same amount.
23 Participating candidates would be prohibited from raising or
24 spending money beyond the grant. There would be strict
25 enforcement and accountability with published reports open to the
26 public. Funded by voluntary contributions and by a \$350 annual
27 registration fee on lobbyists, lobbying firms, and lobbyist
28 employers.”

(See Exhibit D.)

These statements are critically important to the electoral process as they are the final descriptions of the measure that a voter will see before casting his or her ballot. They are deficient in numerous respects:

First, the statements fail to identify the chief purpose of the initiative which is to lift the ban on publicly funded elections and rescind significant portions of Proposition 73, enacted by voters in 1988 and would permit local jurisdictions to implement publicly funded elections without further voter approval.

1 **Second**, the Legislature’s ballot label and title and summary repeatedly falsely refer to the
2 tax on lobbyists as an “annual” tax, however, the tax is actually a \$700 tax that is collected
3 *biennially* by the Secretary of State.

4 **Third**, the Legislature’s ballot label and title and summary falsely state that private
5 contributions would be prohibited under Proposition 15, however, in order to qualify for the
6 program candidates must collect “\$7,500 qualifying contributions” from private sources. (See
7 Exhibit B at p. 7 (AB 583 Sec. 91071(a)(2)(A).)

8 **Fourth**, the Legislature’s assertion that Proposition 15 will be funded by “voluntary
9 contributions” is not impartial and is false and/or misleading in that the primary funding of the
10 program will result from a \$700 biennial tax is a *mandatory* tax imposed on all lobbyists,
11 lobbying firms, lobbyist employers and lobbying coalitions in the state.

12 **Fifth**, the Legislature’s use of the term “fair elections” in the ballot materials are not fair
13 and impartial and serve only to (unlawfully) convince voters to approve the measure and
14 campaign on the face of the ballot itself.

15 **Sixth**, the Legislature’s assertion that “[t]here would be strict enforcement and
16 accountability” of the provisions of Proposition 15 is not impartial and serves only as a campaign
17 slogan on the face of each ballot.

18 As a result, the ballot label and title and summary are defective. (*Fox v. City of*
19 *Bakersfield* (1950) 36 Cal.2d 136, 145 (ballot title to include “main and general purpose” of the
20 initiative”); see also *Clark v. Jordan* (1936) 7 Cal. 2d 248, 251 (short title of initiative lacking for
21 failure to include major purpose of initiative), and *Brennan v. Board of Supervisors* (1981) 125
22 Cal.App.3d 87, 92); see also *Epperson v. Jordan* (1938) 12 Cal.2d 61, 65 (The title and summary
23 is to be the “chief purpose and points” of a proposed measure); *Amador Valley v. State Bd. Of*
24 *Equalization* (1987) 22 Cal.3d 208, 243 (The main purpose of requiring ballot materials to be true
25 and accurate is “to avoid misleading the public with inaccurate information.”); and Cal. Const.,
26 art. II, § 10.)

27 ///

28 ///

1 **A. Proposition 15’s Ballot Label and Title and Summary Fail to Disclose that the**
2 **Measure Will Lift the Voter-Enacted Ban on Publicly Financed Elections.**

3 In 1988 voters enacted Proposition 73, which prohibited public officials from using and
4 candidates from accepting public funds for purpose of seeking elective office. (See Exhibit E
5 filed herewith.) The ballot label for Proposition 73 stated: “Campaign Funding. Contribution
6 Limits. **Prohibition of Public Funding.**” (*Id.*, emphasis added.) The measure passed
7 overwhelmingly (Yes: 3,144,944 (58.06%) No: 2,271,941 (41.94%). (*Id.*)

8 Though Proposition 15 will summarily overturn a critical portion of Proposition 73,
9 nowhere in the ballot label or ballot title and summary is there an indication of this fact. The
10 results of the vote taken on Proposition 73 plainly demonstrate the importance of this issue among
11 the electorate. However, those concerned with the public financing of elections will literally have
12 no indication based on the ballot materials that the public financing ban would be lifted by
13 Proposition 15.

14 Other materials related to Proposition 15 (arguments for and against, etc.) are provided
15 only in the ballot pamphlets and not displayed on the ballots. (Cal. Elec. Code, §§ 9041, 9042,
16 9069.) Notably, these materials also include Legislative Analyst’s summary, which as its first
17 point recognizes the importance of Proposition 15’s effect on the public financing of elections.
18 The Legislative Analyst’s summary states further that:

19 This measure eliminates the ban on using public funding for
20 political campaigns for elected office. This would allow the
21 Legislature—and, in some cases, city, county, and other local
22 elected policy makers—to create public financing programs in the
23 future.

24 (Exhibit F filed herewith.)

25 The Legislature should not be permitted to intentionally confuse what Proposition 15
26 actually does. This Court should require that there be disclosure of the fact the ban on public
27 financing would be lifted by the measure, if it is approved, and *allow for local jurisdictions to*
28 *implement publicly financed elections without further voter approval.* A ballot label and title
and summary must be in “substantial compliance” with the statutory requirement that they set

1 forth the “chief purposes and points” of a measure. (Cal. Elec. Code, § 9004; *Amador Valley*
2 *Joint Union High School Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208, 243; *Brennan*
3 *v. Board of Supervisors* (1981) 125 Cal.App.3d 87, 92-93.) Substantial compliance ““means
4 actual compliance in respect to the substance essential to every reasonable objective of the
5 statute.’ (*Stasher v. Harger-Haldeman* (1962) 58 Cal.2d 23, 29).” (*Assembly v. Deukmejian*
6 (1982) 30 Cal.3d 638, 649, app. diss. and cert. den., 456 U.S. 941; see also *Meyers v. Patterson*
7 (1987) 196 Cal.App.3d 130, 138.) The Legislature’s attempt at summarizing the “chief purposes
8 and points” of Proposition 15 has omitted a critical fact regarding the consequences of passage of
9 the measure.

10 **B. The Legislature’s Ballot Label and Title and Summary Repeatedly Refer to**
11 **the Tax on Lobbyists as an “Annual” Tax, However, the Tax is Actually a**
12 **\$700 Tax Collected Biennially by the Secretary of State.**

13 The Legislature’s ballot label for Proposition states that the publicly funded elections will
14 be “funded by an *annual fee* on lobbyists, lobbying firms, and lobbyist employers.” (Emphasis
15 added.) The Legislature’s title and summary for Proposition 15 also states that the elections will
16 be “[f]unded by voluntary contributions and by a \$350 *annual registration fee* on lobbyists,
17 lobbying firms, and lobbyist employers.” (Emphasis added.)

18 Conversely, the language of the AB 583 states:

19 Each lobbying firm, ... lobbyist ... and each lobbyist employer ...
20 shall pay the Secretary of State a nonrefundable fee of seven
21 hundred dollars (\$700) every two years.

22 (AB 583, § 20600, emphasis added.)

23 Restricting information in the ballot pamphlet and ballot label to that which is neither
24 false nor misleading is the State’s chosen method of fostering the integrity of the election process
25 and aiding citizens in making informed choices. (See *Patterson v. Board of Supervisors, supra*,
26 202 Cal.App.3d at p. 30 [analyzing comparable provision in the San Francisco Administrative
27 Code].) The statement that the tax is collected annually (at an amount of \$350 per year) is
28 inherently false and misleading, and must be corrected by this Court.

///

1 **C. The Ballot Label and Title and Summary Falsely State that Private**
2 **Contributions Would be Prohibited -- Yet in order to Qualify for the**
3 **Program Candidates Must Collect “7,500 qualifying contributions” from**
4 **Private Sources; Independent Expenditures Also Would be Permitted.**

5 The Legislature’s ballot label and title and summary for Proposition 15 claim that private
6 contributions would be prohibited to candidates participating in the public financing program.
7 However, a plain reading of the bill language for AB 583 shows that in fact candidates must
8 collect “7,500 qualifying contributions” from private sources in order to even qualify for the
9 program. (See Exhibit B at p. 7 (AB 583 Sec. 91071(a)(2)(A).)

10 The Legislature’s assertion that private contributions would not be allowed is likely meant
11 to give the appearance that the elections will not be touched by private dollars, and that each
12 candidate for Secretary of State would have an equal opportunity to seek public finding. This
13 contention is flatly false. In fact, just to qualify for the public financing program, candidates must
14 seek contributions from 7,500 individual Californians.⁴

15 Moreover, candidates for Secretary of State could still open ballot measure campaign
16 committees, legal defense fund committees, inaugural committees, and officeholder accounts --
17 and accept private contributions funds into these accounts while participating in the public
18 finance program offered by Proposition 15. In addition, private individuals could still make
19 independent expenditures on behalf of participating candidates (and any other candidates, for that
20 matter). All of this means that millions of unlimited private dollars could (and would) still flow
21 into to the campaigns for Secretary of State, even for those candidates who are participating in the
22 public funding program. It follows that the Legislature’s contention that private contributions
23 would be prohibited is misleading and factually false.

24 ///

25 ///

26
27 ⁴ As an aside, Petitioner notes that while collecting contributions from 7,500 separate sources
28 may be easy for incumbent officeholders, for the new entrant into elective public service, he or
29 she would be forced to dedicate substantial portions of time to seeking 7,500 separate donors –
30 just to qualify for the funding program.

1 **D. The Assertion that Proposition 15 will be Funded by “Voluntary**
2 **Contributions” is Not Impartial and is False and/or Misleading Because**
3 **Primary Funding Results from a Mandatory \$700 Biennial Tax.**

4 The Legislature’s ballot label and title and summary for Proposition 15 state that proposed
5 program will be “[f]unded by voluntary contributions.” In fact, however, primary funding for the
6 program is derived by a mandatory tax on lobbyists. According to the “Fiscal Impact” analysis,
7 this tax will result in \$6 million for each four-year period. (See Exhibit C.)

8 For the Legislature to infer that the public financing system proposed by Proposition 15 is
9 somehow funded voluntarily is entirely misleading and factually false. Though taxpayers can
10 choose to donate to the program, the fact is, (as the fiscal analysis states) the revues needed to run
11 the program would derive “mostly from charged related to lobbyists...” – in other words, from
12 the forced collection of a \$700 biennial tax on lobbying firms, lobbyists, and lobbyist employers.

13 The multiple phrasings by the Legislature that the publicly funded elections “system”
14 created by Proposition 15 is “voluntary” is likely another attempt by the Legislature to campaign
15 on the face of the ballot. The term is argumentative, speculative, and not factual correct and must
16 be substituted or rewritten so that voters are not misled. “Context may show that a statement that,
17 in one sense, can be said to be literally true can still be materially misleading.” (*Huntington*
18 *Beach City Council, supra*, 94 Cal.App.4th at p. 1432.)

19 The assertion that the program is voluntary is yet another effort to cast the changes
20 proposed by Proposition 15 in the most positive light. Who could be against a program funded on
21 a “voluntary” basis? The term is argumentative language designed to persuade voters, and is a
22 departure from the past practice of entrusting the Attorney General with the task of preparing the
23 title and summary. (See *Vargas, supra*, 46 Cal.4th at p. 40.)

24 **E. The Legislature’s Use of the Term “Fair Elections” in the Proposition 15**
25 **Ballot Materials are not Fair and Impartial and Serve only to Mislead Voters.**

26 The ballot label and title and summary each are titled “CALIFORNIA FAIR ELECTIONS
27 ACT.” Unfortunately, there is nothing in AB 583 that would appear to make elections more
28 “fair” than they already are. References that Proposition 15 will somehow make elections more
“fair” are speculative at best and at worse serve only as a subversive plea to voters by the

1 Legislature to pass their measure. Purporting to make elections more “fair” is to rely on loaded
2 terms to which voters seem to have a tendency to respond in the hopes voters will approve the
3 measure.

4 Moreover, the assertion that Proposition 15 will make elections “fair” is itself neither fair
5 nor impartial. Rather, it is a classic example of an “opinion” statement that may be appropriate
6 for the argument section of the ballot pamphlet materials, but not for the official ballot label and
7 title and summary which are supposed to be neutral.

8 In addition, the Legislature’s claims about making elections “fair” are, in fact,
9 argumentative and necessarily speculative - and therefore not a factual summary. There is
10 nothing in the text of the measure itself that bears directly on the “fairness” of elections. The
11 claim simply relies on an argument, made by proponents that Proposition 15’s changes to the
12 financing of elections of the office of Secretary of State will somehow equalize the funding for
13 those elections. The Legislature makes the claim lacking any empirical evidence to support such
14 a claim.

15 **F. The Legislature’s Assertion that “There would be Strict Enforcement and**
16 **Accountability” of the Provisions of the Proposition 15 is Not Impartial.**

17 Both the ballot label and the title and summary for Proposition 15 drafted by the
18 Legislature state that “[t]here would be strict enforcement and accountability” of the provisions of
19 the public funded elections system proposed by AB 583.

20 Once again, the Legislature attempts to argue its way to passage of Proposition 15.
21 “[S]trict enforcement and accountability” is appealing to voters who are tired of what is perceived
22 to be lax enforcement and accountability by the government with public funds. “[S]trict
23 enforcement and accountability” are loaded terms to encourage voters to pass Proposition 15.
24 They serve no factual purpose and in fact there is no language anywhere in AB 583 that calls for
25 strict liability enforcement of the law were it to be enacted.

26 The government may not include partisan words in ballot labels. The Court of Appeal in
27 *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 199 found partisan
28 words in a ballot label to be improperly in favor of passage of the ballot. In sustaining a cause of

1 action challenging a ballot label for an initiative seeking voter approval of a cardroom, the court
2 found words in the label such as “controlled” card games and the phrase that the measure would
3 “provide revenue for the City of Albany, create jobs, provide for an Albany Bay Trail and allow
4 waterfront access” to have “the effect of stating a partisan position.” (*Id.* at pp. 1225-26.) The
5 court observed, “The use of the adjective ‘controlled,’ though relatively innocuous, still
6 represented an apparent attempt to put the initiative in a favorable light.” (*Ibid.*)

7 Because the statement that “[t]here would be strict enforcement and accountability” of the
8 provisions of the public funded elections system proposed by the AB 583 serves no independent
9 government purpose other than to present the ballot measure in a favorable light, it should be
10 stricken. (See *Huntington Beach City Council*, *supra*, 94 Cal.App.4th at 1434; *Citizens for*
11 *Responsible Government*, *supra*, 56 Cal.App.4th at p. 1225.)

12 Petitioners note that some of the phrasings used by Legislature in the ballot materials the
13 are even used by the campaign committee seeking passage of Proposition 15 to convince voters to
14 pass Proposition 15. In the Argument in Favor of Proposition 15, voters are told to vote in favor
15 of the measure because, “*THE SPENDING LIMITS AND REPORTING REQUIREMENTS ARE*
16 *STRICTLY ENFORCED.*” (Exhibit G filed herewith, all-capitals and italics emphasis in
17 original, bold emphasis added.)

18 In summation of the foregoing, it is essential that ballot materials “reasonably inform the
19 voter of the character and real purpose of the proposed measure.” (*Brennan v. Bd of Supervisors*
20 *of San Francisco* (1981) 125 Cal.App.3d 87, 93, emphasis added.) Ballot materials are deficient
21 where they “ignore major points” of proposals, while those matters which were “subsidiary or
22 auxiliary” to the measure were not required to be included. (*Id.* at 96; see also *Zarembeg v.*
23 *Superior Court* (2004) 115 Cal.App.4th 111, 118; *Amador Valley*, *supra*, 22 Cal.3d at p. 243.)

24 A fair and impartial reading of the text of AB 583 and Proposition 15 unquestionably
25 reveals that the “chief purposes” of the measure is to make sweeping changes to allow the public
26 funding of election campaigns in California. Instead, what voters are presented with is a view of
27 a “voluntary” program that will create “fair elections” in California with “strict enforcement and
28 accountability” to ensure the program is a success.

1 **PROPOSED REVISIONS**

2 Based on the foregoing analysis, petitioners request that the court grant the following
3 proposed revisions:

4 To ensure neutrality and prevent the ballot label from being false and/or misleading, this
5 Court should amend or correct this statement as follows:

6 **CALIFORNIA FAIR ELECTIONS ACT. PUBLIC FINANCING OF**
7 **CAMPAIGNS.** Repeals ban on public funding of political campaigns.
8 Creates a voluntary system for candidates for Secretary of State to qualify
9 for a public campaign grant if they agree to ~~strict~~ spending limits and ~~no~~
10 ~~private contributions~~. Each candidate demonstrating enough public
11 support would receive same amount. Participating candidates would be
12 prohibited from raising or spending money beyond the grant. Provides for
13 ~~There would be strict enforcement and accountability.~~ Funded primarily
14 by mandatory voluntary contributions and an annual biennial fee on
15 lobbyists, lobbying firms, and lobbyist employers.

16 This suggested language is a fair and accurate informational summary of Proposition 15.

17 To ensure neutrality and prevent the title and summary from being false and/or
18 misleading, this Court should amend or correct this statement as follows:

19 **CALIFORNIA FAIR ELECTIONS ACT. PUBLIC**
20 **FINANCING OF CAMPAIGNS.**

- 21 • This act repeals the ban on public funding of political
22 campaigns
- 23 • Creates a voluntary system for candidates for Secretary of
24 State to qualify for a public campaign grant if they agree to
25 ~~strict~~ spending limits and ~~take no private contributions~~.
- 26 • Candidates would have to qualify before receiving the
27 grant.
- 28 • Candidates who demonstrate sufficient public support
would receive the same amount.
- Participating candidates would be prohibited from raising
or spending money beyond the grant.
- There would be ~~strict enforcement and accountability with~~
and published reports open to the public.
- Funded primarily by mandatory voluntary contributions
~~and an annual biennial fee on lobbyists, lobbying firms, and~~
lobbyist employers

29 ///

30 ///

1 Summary of Legislative Analyst's Estimate of Net State and Local
2 Government Fiscal Impact:

- 3 • Increased revenues (mostly from charges on lobbyists,
4 lobbying firms, and lobbyist employers) totaling over \$6
5 million every four years. These funds would be spent on
6 public financing for campaigns of Secretary of State
7 candidates for the 2014 and 2018 elections.

8 This suggested language is a fair and accurate informational summary of Proposition 15.

9 **CONCLUSION**

10 For the foregoing reasons, Petitioners ask that this Court order the above-requested
11 revisions to the ballot label and title and summary for Proposition 15.

12 Dated: March 8, 2010

13 Respectfully Submitted,
14 BELL, McANDREWS, & HILTACHK, LLP

15 By: 

16 CHARLES H. BELL, JR.
17 THOMAS W. HILTACHK
18 BRIAN T. HILDRETH

19 Attorneys for Petitioners,
20 JON COUPAL and HOWARD JARVIS
21 TAXPAYERS ASSOCIATION
22
23
24
25
26
27
28