

Case No.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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

v.

DEBRA BOWEN, in her 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.*

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***ORIGINAL WRIT PROCEEDING  
IMMEDIATE RELIEF REQUESTED***

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**PETITION FOR WRIT OF MANDATE OR OTHER  
EXTRAORDINARY RELIEF – IMMEDIATE STAY REQUESTED  
ELECTION MATTER PRIORITY**

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State of California  
Court of Appeal  
Third Appellate District

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**  
**California Rules of Court, rules 8.208, 8.490(i), 8.494(c), 8.496(c), or**  
**8.498(d)**

Court of Appeal Case Caption:

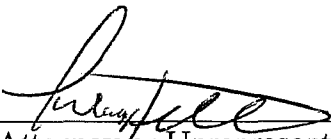
*HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL,*  
v.  
*DEBRA BOWEN, in her official capacity as Secretary of State of the State*  
*of California*

Please check here if applicable:

☒ There are no interested entities or persons to list in this Certificate as defined in the California Rules of Court.

Name of Interested Entity or Person (Alphabetical order, please.)	Nature of Interest
1.	
2.	
3.	

*Please attach additional sheets with Entity or Person Information, if necessary.*

  
\_\_\_\_\_  
Signature of Attorney or Unrepresented Party

Date: July 22, 2014

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**TO: THE HONORABLE PRESIDING JUSTICE AND THE  
ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF  
APPEAL, THIRD APPELLATE DISTRICT:**

Petitioners HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL (“Petitioners”) hereby respectfully ask this Court to issue its writ of mandate or, an alternative writ/order to show cause or such other extraordinary relief it deems appropriate until such time as this Court can hear and decide the present writ, against Respondent, DEBRA BOWEN (“Bowen”), to prohibit the unlawful inclusion of Proposition 49 in the state “Voter Information Guide” and on ballots in connection with the forthcoming statewide general election.

The “public inspection period” for the Voter Information Guide commenced on Tuesday, July 22, 2014, and concludes twenty (20) days later on Monday, August 11, 2014. (Gov. Code § 88006; Elec. Code §§ 9082, 9092, 13282.) Bowen’s General Election Calendar states that she will transmit the Voter Information Guide to the State Printer on August 11, 2014. The next critical deadline for conducting the general election is August 28, 2014, (the last day for Bowen to certify the final list of candidates for the ballot), thereby allowing counties the opportunity to

commence the printing of actual ballots shortly thereafter. Thus, Petitioners respectfully request this Court's intervention on or before August 11, 2014, but in no event later than August 28, 2014.<sup>1</sup>

**PETITION FOR WRIT OF MANDATE AND SUCH OTHER  
EXTRAORDINARY RELIEF AS THE COURT DEEMS JUST AND  
PROPER**

**INTRODUCTION**

1. Proposition 49 was unlawfully ordered on the ballot by the Legislature when it enacted SB 1272 on July 3, 2014. Its directive to Bowen became operative twelve (12) days thereafter when Governor Brown neither signed nor vetoed the bill. (Cal. Const. Art. IV, § 10(b)(3).)

2. Proposition 49 proposes no law. Rather, it simply asks the voters to agree or disagree with the following question:

Shall the Congress of the United States propose, and the California Legislature ratify, an amendment or amendments to the United States Constitution to overturn *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that the rights protected by the United States Constitution are the rights of natural persons only?

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<sup>1</sup> Even if this Court is unable or unwilling to consider this petition in time to prohibit the inclusion of Proposition 49 on the November 2014 ballot, Petitioners nonetheless would request the Court consider the legal issues presented to prevent future occurrences.



3. As indicated more fully below, even if the voters agree, the result is of no legal consequence since Article V of the United States Constitution only authorizes “the Legislature” to propose a constitutional convention to propose constitutional amendments. Moreover, this legislature has already enacted such a request of Congress on this very topic. (AJR1 (Chapter 77) was filed with Bowen on June 27, 2014.)

4. If Proposition 49 serves any purpose, it is that of a glorified “public opinion poll” which our Supreme Court has stated is not a lawful use of the ballot. Its’ present danger is that it: (1) “steals attention, time, and money from the numerous valid propositions on the same ballot”; (2) will also “confuse some voters and frustrate others”; and (3) “tends to denigrate the legitimate use of the initiative procedure.” (*American Federation of Labor- Congress of Industrial Organizations v. Eu* (1984) 36 Cal.3d 687, 697.) Its’ long-term danger is that it may lead to more “advisory measures” in the future. Indeed, at least one other such bill is currently pending in the Legislature. (See, SB 1402, de Leon.)

5. Inexplicably, even if the Legislature had the power to place such an “advisory measure” on the ballot, it enacted SB 1272 after the 131-day statutory deadline for legislative measures to be placed on the ballot (Elec. Code § 9040). Proposition 49 is not the first example of the Legislature attempting to place a legislative measure on the ballot after the 131-day statutory deadline. However, in such cases in the past, the

Legislature has overridden the statutory deadline by enacting an “urgency statute” which allowed the new election procedure for that legislative measure to go into effect immediately. This method of legislative enactment and exemption from the 131-day statutory deadline is perfectly lawful.

6. SB 1272 was not passed as an “urgency statute.” It did not receive a two-thirds vote of the Legislature, and there is no declaration stating any necessity that it go into immediate effect. Rather, SB 1272 purports to go into immediate effect by “calling an election” pursuant to Article IV of the Constitution. In this case, SB 1272 calls a “special election” to be conveniently held on the same day as the general election. This extraordinary action not only evaded the constitutional requirement that two-thirds of the Legislature consent to enact an “urgency statute,” it unlawfully called a statewide special election on the same day as the statewide general election.

7. A partisan majority of the Legislature has acted unlawfully, unfairly and unnecessarily to alter the makeup of the ballot for the transparent purpose of attempting to influence the voter turnout in a year where low voter turnout is expected. The Legislature appears to be using this “advisory measure” to affect the election despite this Court’s admonition that such election tampering is improper. (See *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110, 127. See also Gov.

Code § 81001(b) (public officials “should perform their duties in an impartial manner”).) . The right to vote depends on fair elections. “No right is more precious in a free country.” *Canaan v. Abdelnour* (1985) 40 Cal.3d 703, 714. “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Id.*; *Castro v. State of California* (1970) 2 Cal.3d 223, 234. For this reason, courts have a solemn duty to “preserv[e] the integrity of the election process.” *Fair v. Hernandez* (1981) 116 Cal.App.3d 868, 881.

8. Elections Code section 13314 authorizes this Court to take action by issuing a writ of mandate to prohibit a violation of the Elections Code or the constitution. This unprecedented and extraordinary act of the Legislature is what brings the parties before this Court.

### **RELEVANT FACTS**

9. The California General Election is scheduled to be held on November 4, 2014. Its date is fixed by statute (Elec. Code §§ 324, 1001). In addition to the state candidates that will be elected on that date, there are several ballot measures (i.e., “propositions”) that will appear on the same ballot. These measures include “legislative measures” placed on the ballot by the Legislature pursuant to the authority derived from the State Constitution. For example, Proposition 43 is a statewide bond measure relating to water. (Cal. Const. Art. XVI, section 2 (a).) Proposition 44 is a

proposed constitutional amendment relating to the state budget (Cal. Const. Art. XVIII, sections 1 and 4.) The other measures are initiative or referendum measures qualified for the ballot by the voters under Article II of the Constitution. These include: (1) Proposition 45, relating to health insurance rates; (2) Proposition 46, relating to medical malpractice lawsuits; (3) Proposition 47, relating to criminal penalties for certain offenses; and, (4) Proposition 48, relating to an Indian gaming compact.

10. All of these measures qualified for the ballot prior to the 131-day deadline provided for in Elections Code section 9040.<sup>2</sup> The 131-day deadline is based on the date of the election and requires a measure to qualify for the ballot on or before the 131<sup>st</sup> day before the election. In this case, the deadline to qualify was June 26, 2014.

11. Assembly Joint Resolution 1 (“AJR1”) was introduced in the Assembly on December 12, 2012, more than two years ago. As introduced, the Resolution calls upon Congress to call a constitutional convention to proposed amendments to the Constitution, pursuant to Article V, in response to the Supreme Court’s decision in *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310. AJR1 was finally adopted by the assembly on January 30, 2014, and then by the Senate on June 23, 2014.

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<sup>2</sup> For initiative measures, the constitution also includes the same 131-day deadline to qualify for the ballot. (Cal. Const. Art. II, § 8(c).)

12. SB 1272 was introduced in the Senate on February 21, 2014. As introduced, it proposed to amend an Elections Code provision relating to write-in candidates. It was amended on March 28, 2014, in the Senate to propose an “advisory measure” to be placed on the ballot in November of 2016. The question posed to the voters in that version of SB 1272 is the same as Proposition 49. On April 8, 2014, the bill was amended again, but this time to pose the question in connection with the November 2014 general election ballot. Inexplicably, the Legislature was unable to approve SB 1272 until July 3, 2014.

13. The final version of SB 1272 purports to “call an election” within the meaning of Article IV. Section 3 of the bill provides:

A special election is hereby called to be held throughout the state on November 4, 2014. The special election shall be consolidated with the statewide general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election and only one form of ballot shall be used.

14. The governor did not sign SB 1272. Rather, the governor issued a letter to the State Senate on July 15, 2014, which noted: “To be clear, this bill and the advisory vote it requires has no legal effect whatsoever.... But we should not make it a habit to clutter our ballots with nonbinding measures as citizens rightfully assume that their votes are meant to have legal effect.” However, the governor did not veto SB 1272

either. Thus, it became operative on July 15, 2014, (12 days after presentment) pursuant to Article IV, Section 10(b)(3) of the California Constitution.

15. Thereafter, Bowen designated the ballot question as “Proposition 49.” Ballot materials, including a ballot title and summary, ballot label, analysis and ballot arguments are all being prepared now for Proposition 49 in great haste and at great taxpayer expense.

#### **THE PETITION IS TIMELY**

16. Petitioners bring this petition just one week after SB 1272 became law by inaction of the governor, and on the very first day of the public inspection period for the Voter Information Guide. The instant writ was filed and served as soon as practicable. Therefore, this petition is timely.

#### **THE PARTIES**

17. Petitioner, HOWARD JARVIS TAXPAYERS ASSOCIATION (“HJTA”), is a duly authorized California nonprofit corporation. HJTA represents the interests of taxpayers against waste, fraud, and abuse and has represented the public interest in this Court, the other appellate districts, the California Supreme Court and the United States Supreme Court.

18. Petitioner, JON COUPAL, (“Coupal”) is and at all times mentioned in this petition was a resident, citizen, taxpayer, and a voter in the State of California. As a voter, Coupal has standing to bring this action pursuant to Elections Code section 13314(a)(1).

19. Respondent DEBRA BOWEN (“Bowen”) is the California Secretary of State. As the Secretary of State, Bowen has a ministerial non-discretionary duty to administer the provisions of the Elections Code, to see that elections are efficiently conducted and that state election laws are enforced, and not to violate the laws of the State, of California. (See Gov. Code, § 12172.5.)

20. Real Party In Interest, LEGISLATURE OF THE STATE CALIFORNIA, (“the Legislature”) is the constitutionally authorized legislative body of the State of California.

### **JURISDICTION**

21. Pursuant to Elections Code section 13314(a)(1), “Any elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter ....” An “elector” means any person who is a United States citizen 18 years of age or older and a resident of an election precinct at least fifteen (15) days prior to an election.” (Elec. Code, § 321.) Any voter or taxpayer may seek a

writ of mandate pursuant to Code of Civil Procedure sections 1085 - 1086, and Elections Code 13314, alleging that a public official has, or is about to, violate a present and ministerial duty.

22. The California Constitution, Code of Civil Procedure and case law authority provide that original writs of mandate may be taken in the California Court of Appeal. (Cal. Const., art. VI, § 10; Code Civ. Proc., §§ 1085, 1086; and see *Andal v. Miller* (1994) 28 Cal.App.4th 358, 361.)

23. The relief sought in this petition is within the jurisdiction of this Court.

#### **NEED FOR WRIT RELIEF**

24. Petitioners have no plain, speedy and adequate remedy at law, other than the relief sought in this petition. As a matter of law, the Legislature has unlawfully enacted SB 1272, and ordered Bowen to take action to place its “advisory measure” on a special election ballot, consolidated in all respects with the upcoming general election ballot. Without this Court’s immediate action, Bowen will assign proposition numbers, request ballot arguments and rebuttal arguments, ask the Attorney General to prepare a ballot title and summary and ballot label, and ask for an analysis of the “advisory measure” of the Office of the Independent Legislative Analyst. Bowen will, thereafter, cause these ballot materials to be printed in the official “Voter Information Guide” mailed to all registered voters in the State of California, and counties will print ballots including



Proposition 49.

**IRREPARABLE INJURY IS MANIFEST**

25. If a writ is not issued, the Petitioners and all voters will suffer irreparable injury to their constitutional rights and statutory rights with all the attendant harm to the electoral process described by our Supreme Court.

26. Therefore, this petition serves a pressing and vital public interest, which if not addressed presently, will recur, and foreseeably so, countless times in the future. That is: the Legislature will be licensed to continue to place similar “advisory measures” on the ballot for purposes that may or may not be truly “advisory” but may be for illegitimate purposes, like attempting to influence the make-up of the voting electorate at a particular election. California law clearly dictates the procedure for elections and in this particular circumstance.

27. This Court may grant a temporary stay pending review of the writ, whether it requests oral argument or not. The Legislature, will not suffer any harm, since Proposition 49 has no legal or practical effect. Indeed, the Legislature has already lawfully expressed its desire to Congress with AJR1.

28. This case meets the procedural prerequisites for issuance of a peremptory writ of mandate in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Andal v. Miller*, supra, 28 Cal.App.4th at p. 368.)

29. Dealing with these issues now, as pressing as they are for the parties here, are even more so for the public given the impact on our election process and the exercise of legislative power within the confines of the United States Constitution and the State Constitution.

30. The Court's efforts here will have immediate impact and will, in actuality, preserve the ballot as it was meant to be presented to voters at the forthcoming election.

31. A stay until this instant Court can hear and decide the present writ, preferably by August 11, 2014, and in any event not later than August 28, 2014, is practical and reasonable.

#### **PRAYER FOR RELIEF**

Wherefore, Petitioners hereby request:

1) That a writ of mandate and extraordinary stay issue under seal of this Court commanding Bowen, and her officers, agents and all other persons acting on her behalf to desist and refrain from taking any further action relative to the placing of Proposition 49 on the November 4, 2014, statewide ballot, and further directing Bowen and the Legislature to show cause before this Court, at a time and place then or thereafter specified by Court order, why an order should not be entered invalidating SB 1272;;

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- 2) An award of attorney's fees and costs, and
- 3) Such other relief that the Court deems just and proper.

Dated: July 22, 2014

Respectfully Submitted,

BELL, McANDREWS & HILTACHK, LLP

By:   
THOMAS W. HILTACHK

*Attorneys for Petitioners*  
HOWARD JARVIS TAXPAYERS  
ASSOCIATION and JON COUPAL

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

### I. INTRODUCTION:

This case has nothing to do with the United States Supreme Court decision in *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310. Indeed, the issues decided in that Supreme Court case have no relevance to California law or California state elections.<sup>3</sup> Rather, this case concerns the unprecedented and unlawful attempt by real party, the Legislature, to ask the California electorate a question. As indicated more fully below, the Legislature has “legislative power.” It may only exercise that power and any power incidental to the exercise of legislative power under our state Constitution.

Proposition 49 is not the exercise of legislative power. Indeed, the California Supreme Court has held that a nearly identical “advisory measure” was not lawful when proposed by the people exercising their reserved legislative power under the initiative. That same analysis applies

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<sup>3</sup> At issue in *Citizens United*, was whether the corporate and union ban on “contributions” under federal law which had been previously upheld by the Supreme Court in *Austin v. Michigan Chamber of Commerce* (1990) 494 U.S. 652, could constitutionally apply to corporate and union “independent expenditures” and “issue advocacy/electioneering communications.” The Court held that the First Amendment protected such activity even if conducted by corporations and labor unions. However, in California, state law had long provided and still does provide for unlimited and largely uninhibited “independent expenditures” and “issue advocacy” by corporations and labor unions. (Gov. Code §§ 85303(c); 85310; 85312). In fact, voters narrowly rejected a “contribution” ban on corporations and labor unions in 2012 when Proposition 32 was defeated.

to the Legislature.

Assuming *arguendo*, that the Legislature possesses the power to ask the electorate questions using the statewide ballot, SB 1272 was not lawfully enacted. Its attempt to override many of the statutory deadlines in the Elections Code (including the 131-day deadline in Elections Code section 9040), was not enacted as an “urgency statute” and the attempt to “call an election” on the same day as the statewide general election is unlawful. The governor is empowered to call special statewide elections for measures under the constitution and statute. If this legislative gambit is lawful, then the 131-day deadline and all the other Elections Code provisions that provide for fair and impartial elections are meaningless. At a minimum, the Legislature must enact urgency legislation if it desires to override the existing provisions of the Elections Code, as it has done in the past in those rare occasions in which it was unable to act in a timely way on a legislative measure prior to the 131-day statutory deadline.

Petitioners respectfully request this Court’s immediate intervention to protect the integrity of our statewide elections.

## **II. FACTS:**

The California General Election is scheduled to be held on November 4, 2014. Its date is fixed by statute (Elec. Code §§ 324, 1001). In addition to the candidates who will stand for election on that date, there are a number of ballot measures that have qualified for the ballot. All of

these measures qualified for the ballot prior to the 131-day deadline provided for in Elections Code section 9040.<sup>4</sup> In this case, the deadline to qualify a measure for the November 4, 2014, ballot was June 26, 2014.

Assembly Joint Resolution 1 (“AJR1”) was introduced in the Assembly on December 12, 2012; over two (2) years ago. As introduced, the resolution calls upon Congress to call a constitutional convention to proposed amendments to the constitution, pursuant to Article V of the United States Constitution, in light of the Supreme Court’s decision in *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310. AJR1 was finally adopted by the assembly on January 30, 2014, and then by the Senate on June 23, 2014. It was designated as Chapter 77 and filed with Bowen on June 27, 2014.

SB 1272 was introduced in the Senate on February 21, 2014. As introduced, it proposed to amend an Elections Code provision relating to write-in candidates. It was amended on March 28, 2014, in the Senate to propose an “advisory measure” to be placed on the ballot in November of 2016. The question posed to the voters in that version of SB 1272 is the same as Proposition 49. On April 8, 2014, the bill was amended again, but this time to pose the question in connection with the November 2014

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<sup>4</sup> For initiative measures, the constitution also includes the same 131-day deadline to qualify for the ballot. (Cal. Const. Art. II, § 8(c).)

general election ballot. Inexplicably, the Legislature was unable to approve SB 1272 until July 3, 2014.

The final version of SB 1272 purports to “call an election” within the meaning of Article IV. Section 3 of the bill provides:

A special election is hereby called to be held throughout the state on November 4, 2014. The special election shall be consolidated with the statewide general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election and only one form of ballot shall be used.

The governor did not sign SB 1272. Rather, the governor issued a letter to the state Senate on July 15, 2014, which noted: “To be clear, this bill and the advisory vote it requires has no legal effect whatsoever.... But we should not make it a habit to clutter our ballots with nonbinding measures as citizens rightfully assume that their votes are meant to have legal effect.” However, the governor did not veto SB 1272 either. Thus, it became operative on July 15, 2014 (12 days after presentment) pursuant to Article IV, Section 10(b)(3) of the California Constitution.

Thereafter, Bowen designated the ballot question as “Proposition 49.” Ballot materials, including a ballot title and summary and ballot label, analysis, and ballot arguments are all being prepared now for Proposition 49 in great haste and at great taxpayer expense.

### **III. ARGUMENT:**

#### **A. THE BALLOT IS RESERVED FOR THE ENACTMENT OF “LEGISLATION” AND IS NOT TO BE USED AS A PUBLIC OPINION POLL.**

The desire to use the ballot box as a vehicle to provide direction to Congress regarding a matter of national importance is not new. In 1984, a petition was circulated among the voters to place a proposed initiative on the ballot that among other things “urged” Congress to propose and submit to the several states an amendment to the United States Constitution to require that the federal budget be balanced, and included a proposed “application” to the Congress for a constitutional convention pursuant to Article V of the United States Constitution.

The Secretary of State had certified that the petition included enough valid signatures of registered voters to qualify for the November 1984 general election ballot. The California Supreme Court, upon an original writ filed with the court, issued a peremptory writ of mandate “commanding respondents not to take any action, including the expenditure of public funds, to place the proposed Balanced Budget Initiative on the November 6, 1984, general election ballot.” (*American Federation of Labor-Congress of Industrial Organizations v. Eu* (1984) 36 Cal.3d 687, 716.)

The court based its holding on the resolution of two issues of law relevant here.



We have concluded that the initiative, to the extent that it applies for a constitutional convention or requires the Legislature to do so, does not conform to article V of the United States Constitution. Article V provides for applications by the “Legislatures of two-thirds of the several States,” not by the people through the initiative; it envisions legislators free to vote their best judgment, responsible to their constituents through the electoral process, not puppet legislators coerced or compelled by loss of salary or otherwise to vote in favor of a proposal they may believe unwise.

We also conclude that the measure exceeds the scope of the initiative power under the controlling provisions of the California constitution (art. II, § 8 and art. IV, § 1). The initiative power is the power to adopt “statutes” - to enact laws - but the crucial provisions of the balanced budget initiative do not adopt a *statute* or enact a law. They adopt, and mandate the Legislature to adopt, a *resolution* which does not change California law and constitutes only one step in a process which might eventually amend the federal Constitution. Such a resolution is not an exercise of legislative power reserved to the people under the California Constitution (emphasis in original).

(*Id.* at 694.)

The real party (the initiative proponent) argued that even if the proposed initiative did not enact law, the court should “let the people’s voice be heard” so that the voters could “express their views” and perhaps provide instruction to the Legislature who might respond by proposing its own resolution to Congress. (*Id.* at 695.) The court stated:

This argument misunderstands the purpose of the initiative in California. It is not a public opinion poll. It is a method of enacting legislation, and if the proposed measure does not enact legislation, or if it seeks to compel legislative action which the electorate has no power to compel, it should not be on the ballot.

(*Id.*)

**B. PROPOSITION 49 ENACTS NO LAW. IT HAS NO LEGAL AFFECT UNDER ARTICLE V OF THE UNITED STATES CONSTITUTION, AND IT IS UNNECESSARY AS THE LEGISLATURE HAS ALREADY REQUESTED CONGRESS TO CONVENE A CONSTITUTIONAL CONVENTION WITH ITS RECENT ENACTMENT OF AJR1.**

Proposition 49 is even less “law” than the initiative rejected in *American Federation of Labor- Congress of Industrial Organizations v. Eu*.

The initiative included proposed statutes to implement and enforce its attempt to apply to Congress for a Constitutional Convention (*Id.* at 693.)

Proposition 49 simply asks the voters a question:

Shall the Congress of the United States propose, and the California Legislature ratify, an amendment or amendments to the United States Constitution to overturn *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that the rights protected by the United States Constitution are the rights of natural persons only?

Thus, it is undeniable that the people could not have placed Proposition 49 on the ballot. It proposes no law. It has no legal affect as it does not comply with Article V of the United States Constitution. As indicated more fully below, neither can the Legislature.

**C. THE LEGISLATURE HAS “LEGISLATIVE” POWER INCLUDING ALL POWER INCIDENTAL TO THE EXERCISE OF “LEGISLATIVE” POWER. IT DOES NOT HAVE POWER TO ASK THE VOTERS A QUESTION ON A STATEWIDE BALLOT.**

Under the California Constitution all “political power” is inherent in the people. (Cal. Const. Art. II, § 1.) The constitution vests “legislative power” in the Legislature, (Cal. Const. Art. IV, § 1) but “reserves” such power to the people through the exercise of initiative and referendum. (*Id.*; Cal. Const. Art. II, §§ 8, 9.) In this regard, the people’s exercise of “legislative power” and the Legislature’s exercise of “legislative power” is deemed to be coextensive. (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 675 [“[T]he power of the people through the statutory initiative is coextensive with the power of the Legislature.”].) That is, the people and the Legislature possess the same power. Indeed, the constitution provides that “the Legislature may make no law except by statute, and may enact no statute except by bill.” (Cal. Const. Art. IV, § 8(b).) It seems axiomatic that if the people do not have the power to place Proposition 49 on the ballot, than neither does the Legislature.

The Legislature will, undoubtedly, argue that it possesses more than just the power to make law, and that is true. This Court has acknowledged that the Legislature also has power “incidental or ancillary” to its lawmaking function. Most cases analyzing the extent of legislative power occur in the context of a challenge based on “separation of powers” under Section 3 of Article III of the Constitution.

In *Zumbrun Law Firm v. California Legislature*, this Court upheld the Legislature’s power to enter into a contract for the protection and security of the Capital building and its members, holding that: “the Legislature has the power to engage in activity that is incidental or ancillary to its lawmaking functions. (*Parker v. Riley, supra*, 18 Cal.2d at p. 89 [upholding the creation of a Commission made up of members of the Legislature].)” (*Zumbrun Law Firm v. California Legislature* (2008) 165 Cal.App.4th 1603, 1614).

In one case concerning the scope of the people’s exercise of initiative power over the Legislature, this Court held that the power to organize itself and establish rules for the conduct of its legislative function were the exclusive province of the Legislature, and not the people. (*People’s Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 325).

In *People’s Advocate*, this Court instructed that “we look to the history of the parliamentary common law against which the fundamental

charter of our state government was enacted” to determine whether a specific action is incidental to the Legislature's appropriate legislative function (*Id.* at 322.) Petitioners are unaware of any common law history suggesting that the Legislature is empowered to use the ballot as a method of asking the electorate a question. Such would seemingly be an anathema to the idea that elected legislators serve as representatives of the electorate empowered to act on their behalf and in their stead. Indeed, the initiative and referendum power were created, not as an adjunct to representative democracy, but as means of going around the legislative process. (*Amador Valley Joint Unified Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228.)

Even if the Legislature were to suggest that “taking the temperature” of the electorate is incidental to or somehow furthers the Legislature’s decision-making process, it cannot do so here. The Legislature has already passed a resolution requesting Congress to call a constitutional convention to consider amending the First Amendment, in the form of AJR1.<sup>5</sup>

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<sup>5</sup> Petitioners are aware of two Propositions (9 & 10) in 1933 (a special election called to deal with the Great Depression). The Propositions were styled as questions seeking the voters consent to divert gas tax funds to pay off previously voter-approved transportation bonds. It is not clear if the Propositions were “legislative” in character or merely “advisory.” Because the subject matter was the expenditure of public funds and those funds were proposed to be used to pay down voter-approved bond debt, it appears that the measures were “legislative.” However, even if “advisory,” the measures were at least “incidental” to the legislative function, as the Legislature was attempting to deal with the financial fallout from the Great Depression and was seeking permission to use tax proceeds in a particular way.

**D. THE CONSTITUTION EMPOWERS THE LEGISLATURE TO PROPOSE CERTAIN “LEGISLATIVE MEASURES” TO THE PEOPLE INCLUDING THE CONSTITUTIONAL AMENDMENTS, BOND MEASURES, AND AMENDMENTS TO PRIOR ENACTED INITIATIVE AND REFERENDUM.**

The constitution does empower the Legislature to place its own measures on the ballot. In each instance, the enumerated measure is legislative in character. First, the Legislature may propose amendments to the California Constitution. (Cal. Const. Art. XVIII, §§ 1 and 4.) Proposition 44 on the upcoming general election ballot is a lawful example of this type of legislative measure. Second, the Legislature may propose a statute authorizing the issuance of bond debt. (Cal. Const. Art. XVI, § 2 (a).) Proposition 43 is a lawful example of this type of legislative measure. Lastly, the Legislature can propose repeal or amendment of previously enacted initiative and referendum measures. (Cal. Const. Art. II, § 10(c).)

The Elections Code is consistent with and implements the Legislature’s constitutional power to place these types of legislative measures on the ballot. Article 4 of Chapter 1 of Division 9 of the Elections Code is dedicated to legislative measures. For example, section 9040 provides:

Every constitutional amendment, bond measure, or other legislative measure submitted to the people by the Legislature shall appear on the ballot of the first statewide election occurring at

least 131 days after the adopted of the proposal  
by the Legislature.

The term “measure” as used in section 9040 is also used throughout the Elections Code. For example, in the same context regarding the 131-day deadline for initiative measures, section 9016(b) provides: “an initiative measure shall not be submitted to the voters at a statewide election held less than 131 days after the date the measure is certified for the ballot.”)

The word “measure” is also defined in section 329 to mean “any constitutional amendment or other proposition submitted to a popular vote at any election.” Thus, the Elections Code is consistent with the notion that the Legislature and people have coextensive power to propose “measures” and as we know from the holding in *American Federation of Labor-Congress of Industrial Organizations v. Eu*, such “measures” must propose a law.

The ballot question authorized by Proposition 49 does not propose “legislation.” It is not a constitutional amendment, bond measure, or repeal or amendment of a prior enacted initiative or referendum (i.e., a “legislative measure”) and thus, it may not be placed on the ballot. In the words of Governor Brown, it is nothing but “clutter.” However, its appearance on the ballot is more harmful than messy. As the Supreme Court has warned on more than one occasion, the presence of unlawful measures on the ballot: (1) “steals attention, time, and money from the numerous valid

propositions on the same ballot,” (2) will also “confuse some voters and frustrate others,” and, (3) “tends to denigrate the legitimate use of the initiative procedure.” (*American Federation of Labor- Congress of Industrial Organizations v. Eu* (1984) 36 Cal.3d 687, 697; *Senate v. Jones* (1999) 21 Cal. 4th 1142, 1154.

The court should not assume that SB 1272 is a one-time occurrence. Leaving it on the ballot could result in a flood of “advisory measures” in the future. Indeed, at least one other such bill is currently pending in the Legislature. (See, SB 1402 de Leon.) It is easy to imagine the Legislature placing an “advisory measure” on the ballot to “compete” with a voter-sponsored initiative on the same subject. Such an act would create voter-confusion and impact the enactment of valid voter-sponsored initiative measures. For example, Proposition 46 relates to medical malpractice lawsuits and lifts the current cap on damage awards significantly. What if Proposition 49 were styled as a question: “Should the Legislature raise the cap on damages awarded under medical malpractice claims by allowing for increases based on the cost of living? How might such a measure affect the outcome of Proposition 46?

**E. EVEN IF THE LEGISLATURE COULD PLACE AN  
“ADVISORY MEASURE” ON THE BALLOT, SB 1272  
WAS NOT LAWFULLY ENACTED.**

Assuming *arguendo*, that the Legislature possesses the power to ask the electorate questions using the statewide ballot, SB 1272 was not



lawfully enacted. Its attempt to override many of the statutory deadlines in the Elections Code, including the 131-day deadline in Elections Code 9040, was not enacted as an “urgency statute” and the attempt to “call an election” on the same day as the statewide general election is unlawful.

The governor is empowered to call special statewide elections for measures under the constitution and statute. (Cal. Const. Art. II, §§ 8(c) and 9(c) “The Governor may call a special statewide election for the measure;” Elec. Code § 12000. “For each statewide election, the Governor shall issue a proclamation calling the election;” See also, Elec. Code § 1003 “special election called by the Governor.”) If this legislative gambit is lawful, then the 131-day deadline, and all the other Elections Code provisions that provide for fair and impartial elections, are meaningless. At a minimum, the Legislature must enact urgency legislation if it desires to override the existing provisions of the Elections Code, as it has done in the past in those rare occasions in which it was unable to act in a timely way on a legislative measure prior to the 131-day statutory deadline.

Indeed, that is exactly how the Legislature has placed legislative measures on the ballot after the statutory deadline in the past. The last time the Legislature missed the deadline was for the November 2008 general election.

Proposition 1A (a constitutional amendment) was placed on the ballot by urgency statute, thereby allowing the Legislature to override the

statutory deadline and enacting a new election procedure for that legislative measure to go into effect immediately. (See, e.g. 2008 Chap. 267 (AB 3034) § 11 [exempting it from Elections Code section 9040, among others] and § 14 [declaring it an “urgency statute” and going into immediate effect].) This method of legislative enactment and exemption from the 131-day statutory deadline is perfectly lawful.<sup>6</sup>

SB 1272 was not passed as an “urgency statute.” It did not receive a two-thirds vote of the Legislature and there is no declaration stating any necessity that it go into immediate effect. Rather, SB 1272 purports to have its Elections Code override provisions go into immediate effect by “calling an election” pursuant to Article IV of the Constitution. In this case, SB 1272 calls a “special election” to be conveniently held on the same day as the general election. This extraordinary action not only evaded the constitutional requirement that two-thirds of the Legislature consent to

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<sup>6</sup> Over the last 20 years, Petitioners found numerous similar examples of the use of “urgency statutes” to place a legislative measure on the ballot after the 131-day deadline found in Elections Code section 9040, including: 1994 Props. 1A – Earthquake Bond Act (1994 Chap. 15 § 11; 1B School Bond Act (1994 Chap. 19 § 6; 1C Higher Ed Bond Act (1994 Chap. 18 § 5; 1996 Prop 203 School Bond Act (1996 Chap. 1 § 5); 1998 Prop 1A School Bond Act (1998 Chap. 407 § 37); 2004 Prop. 57 Econ. Recovery Bond Act (2003 Chap. X, § 9). A few constitutional amendments were also placed on the ballot after the 131-day deadline over this time period and as a result were passed with a two-thirds vote as that is required for passage under Article XVIII.

enact an “urgency statute,” it unlawfully called a statewide special election on the same day as the statewide general election.<sup>7</sup>

It is undeniable that Section 8(c) of Article IV of the Constitution provides that “[s]tatutes calling elections...shall go into effect immediately upon their enactment.” That provision was added as part of the Constitutional amendment adding the referendum power in 1911. Its companion provision is found in Section 9(a) of Article II (“The referendum power is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.”) Petitioners are unaware of any case law interpreting those provisions as it relates to “statutes calling elections.”

However, to the extent that the Legislature is empowered to enact a statute calling an election, it seems logical that it can do so only in connection with its enumerated power to place a legislative measure on the ballot. Thus, if the Legislature desired to call a special election for the consideration of a proposed constitutional amendment, bond measure, or repeal or amendment of a previously enacted initiative or referendum, it could do so and that decision to call such an election would become effective immediately and would not itself be subject to a voter challenge

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<sup>7</sup> Elections Code section 356 defines the term “special election” to mean “an election, the specific time for the holding of which is not prescribed by law.”

by referendum.

The Legislature will likely argue that it is authorized to interpret Article IV, a matter to which extraordinary deference is required by the separation of powers doctrine. This claim would be wrong. It is the Court's duty to interpret the constitution and determine if the actions of the Legislature comport with its provisions and protections.

However, deference does not mean complete forbearance. “[A] challenge to the constitutionality of an act is inherently a judicial rather than political question and neither the Legislature, the executive, nor both acting in concert can validate an unconstitutional act or deprive the courts of jurisdiction to decide questions of constitutionality.” (*California Radioactive Materials Management Forum v. Department of Health Services*, *supra*, 15 Cal.App.4th at p. 869.) Because this lawsuit seeks an adjudication of the constitutionality of the state budget act, a judicial function which does not usurp the functions of the two other coordinate branches, the constitutional question was justiciable.

(*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1214-15.)

Where the Legislature has attempted to bypass the ordinary process of overriding existing provision of the Elections Code, all designed to protect the fair administration of the conduct of elections, the court's determination is warranted.

**F. THIS COURT HAS ORIGINAL JURISDICTION TO DECIDE THIS MATTER.**

This Court has original jurisdiction to consider election writ matters under Article VI, section 10 of the Constitution, Code of Civil Procedure §1085 and Elections Code § 13314. Extraordinary relief is available in these circumstances notwithstanding the pendency or absence of a superior court proceeding. (*Andal v. Miller* (1994) 28 Cal.App.4th 358, 360, citing *Farley v. Healey* (1967) 67 Cal.2d 325, 326–327; *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, fns. 1–2.)

The Elections Code provides judicial authority to correct errors made in the preparation of official election/voter materials as a result of unlawful conduct. Elections Code section 13314 provides in part:

(a)(1) Any elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet, or other official matter, or that any neglect of duty has occurred, or is about to occur.

(2) A peremptory writ of mandate shall issue only upon proof of both of the following: (A) *that the error, omission, or neglect is in violation of this code or the Constitution*, and (B) that issuance of the writ will not substantially interfere with the conduct of the election. (*Italics added.*)

Because Bowen is presently preparing the official Voter Information Guide (which will include Proposition 49), and will then transmit it to the

State Printer on or shortly after August 11, 2014, thereafter certifying the final list of candidates for the ballot on August 28, 2014, which will signal the county elections officials that they can commence with the printing of ballots in their counties, an extraordinary stay is warranted to stay the matter until this Court can consider the matter. If a temporary stay is not issued, Petitioners, and all voters, will suffer irreparable injury to their constitutional rights and statutory rights with respect to the Legislature's manipulation of the upcoming election, in disregard of the constitution and statutes.

The Court may grant a temporary stay pending review of the writ, whether it requests oral argument or not. The Legislature will not suffer any harm until such time, as Proposition 49 is of no legal consequence and the Legislature has already expressed to Congress its desire regarding the subject matter with the enactment of AJR1. The case meets the procedural prerequisites for issuance of a peremptory writ of mandate in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Andal v. Miller, supra*, 28 Cal. App. 4th at p. 368.)

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IV. **CONCLUSION:**

Petitioners respectfully request the Court's immediate action to preserve the integrity of the ballot.

Dated: July 22, 2014

Respectfully Submitted,

BELL, McANDREWS & HILTACHK, LLP

By:   
THOMAS W. HILTACHK

*Attorneys for Petitioners*  
HOWARD JARVIS TAXPAYERS  
ASSOCIATION and JON COUPAL

**CERTIFICATE OF COMPLIANCE**

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) and 8.360(b)(1) of the California Rules of the Court, the enclosed brief of HOWARD JARVIS TAXPAYERS ASSOCIATION and JON COUPAL is produced using 13-point Times New Roman type including footnotes and contain approximately 8,164 words, which is less than the total words permitted by the rules of the court. Counsel relies on the word count of the computer program, Microsoft Word 2010, used to prepare this brief.

Dated: July 22, 2014

BELL, McANDREWS & HILTACHK, LLP

By: \_\_\_\_\_



CHARLES H. BELL, JR.  
THOMAS W. HILTACHK

*Attorneys for Petitioners*  
HOWARD JARVIS TAXPAYERS  
ASSOCIATION and JON COUPAL



**VERIFICATION**

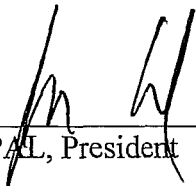
STATE OF CALIFORNIA       )  
  )  
COUNTY OF SACRAMENTO    )

I, JON COUPAL, am President of HOWARD JARVIS TAXPAYERS ASSOCIATION, Petitioner in this action. I have read the foregoing **PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF – IMMEDIATE STAY REQUESTED ELECTION MATTER PRIORITY** and know its contents. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, I believe them to be true.

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

Executed this 22<sup>nd</sup> day of July, 2014, at Sacramento, California.

HOWARD JARVIS TAXPAYER ASSOCIATION

  
\_\_\_\_\_  
JON COUPAL, President

**VERIFICATION**

STATE OF CALIFORNIA       )  
  )  
COUNTY OF SACRAMENTO    )

I, JON COUPAL, am a Petitioner in this action. I have read the foregoing **PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF – IMMEDIATE STAY REQUESTED ELECTION MATTER PRIORITY** and know its contents. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief and, as to those matters, I believe them to be true.

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

Executed this 22<sup>nd</sup> day of July, 2014, at Sacramento, California.

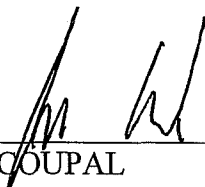
  
\_\_\_\_\_  
JON COUPAL

EXHIBIT A

## CHAPTER \_\_\_\_\_

An act to submit an advisory question to the voters relating to campaign finance, calling an election, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1272, Lieu. Campaign finance: advisory election.

This bill would call a special election to be consolidated with the November 4, 2014, statewide general election. The bill would require the Secretary of State to submit to the voters at the November 4, 2014, consolidated election an advisory question asking whether the Congress of the United States should propose, and the California Legislature should ratify, an amendment or amendments to the United States Constitution to overturn *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, and other applicable judicial precedents, as specified. The bill would require the Secretary of State to communicate the results of this election to the Congress of the United States.

This bill would declare that it is to take effect immediately as an act calling an election.

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known and may be cited as the Overturn Citizens United Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) The United States Constitution and the Bill of Rights are intended to protect the rights of individual human beings.

(b) Corporations are not mentioned in the United States Constitution and the people have never granted constitutional rights to corporations, nor have we decreed that corporations have authority that exceeds the authority of "We the People."

(c) In *Connecticut General Life Insurance Company v. Johnson* (1938) 303 U.S. 77, United States Supreme Court Justice Hugo Black stated in his dissent, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations."

(d) In *Austin v. Michigan Chamber of Commerce* (1990) 494 U.S. 652, the United States Supreme Court recognized the threat

to a republican form of government posed by “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.”

(e) In *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, the United States Supreme Court struck down limits on electioneering communications that were upheld in *McConnell v. Federal Election Commission* (2003) 540 U.S. 93 and *Austin v. Michigan Chamber of Commerce*. This decision presents a serious threat to self-government by rolling back previous bans on corporate spending in the electoral process and allows unlimited corporate spending to influence elections, candidate selection, policy decisions, and public debate.

(f) In *Citizens United v. Federal Election Commission*, Justices John Paul Stevens, Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor noted in their dissent that corporations have special advantages not enjoyed by natural persons, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets, that allow them to spend huge sums on campaign messages that have little or no correlation with the beliefs held by natural persons.

(g) Corporations have used the artificial rights bestowed on them by the courts to overturn democratically enacted laws that municipal, state, and federal governments passed to curb corporate abuses, thereby impairing local governments’ ability to protect their citizens against corporate harms to the environment, consumers, workers, independent businesses, and local and regional economies.

(h) In *Buckley v. Valeo* (1976) 424 U.S. 1, the United States Supreme Court held that the appearance of corruption justified some contribution limitations, but it wrongly rejected other fundamental interests that the citizens of California find compelling, such as creating a level playing field and ensuring that all citizens, regardless of wealth, have an opportunity to have their political views heard.

(i) In *First National Bank of Boston v. Bellotti* (1978) 435 U.S. 765 and *Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley* (1981) 454 U.S. 290, the United States Supreme Court rejected limits on contributions to ballot measure campaigns

because it concluded that these contributions posed no threat of candidate corruption.

(j) In *Nixon v. Shrink Missouri Government PAC* (2000) 528 U.S. 377, United States Supreme Court Justice John Paul Stevens observed in his concurrence that “money is property; it is not speech.”

(k) A February 2010 Washington Post-ABC News poll found that 80 percent of Americans oppose the ruling in *Citizens United*.

(l) Article V of the United States Constitution empowers and obligates the people of the United States of America to use the constitutional amendment process to correct those egregiously wrong decisions of the United States Supreme Court that go to the heart of our democracy and the republican form of self-government.

(m) The people of California and of the United States have previously used ballot measures as a way of instructing their elected representatives about the express actions they want to see them take on their behalf, including provisions to amend the United States Constitution.

SEC. 3. A special election is hereby called to be held throughout the state on November 4, 2014. The special election shall be consolidated with the statewide general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election and only one form of ballot shall be used.

SEC. 4. (a) Notwithstanding Section 9040 of the Elections Code, the Secretary of State shall submit the following advisory question to the voters at the November 4, 2014, consolidated election:

“Shall the Congress of the United States propose, and the California Legislature ratify, an amendment or amendments to the United States Constitution to overturn *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending, to ensure that all citizens, regardless of wealth, may express their views to one another, and to make clear that the rights protected by the United States Constitution are the rights of natural persons only?”

(b) Upon certification of the election, the Secretary of State shall communicate to the Congress of the United States the results of the election asking the question set forth in subdivision (a).

(c) The provisions of the Elections Code that apply to the preparation of ballot measures and ballot materials at a statewide election apply to the measure submitted pursuant to this section.

SEC. 5. (a) Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, 9082, and 9094 of the Elections Code or any other law, the Secretary of State shall submit Section 4 of this act to the voters at the November 4, 2014, statewide general election.

(b) Notwithstanding Section 13115 of the Elections Code, Section 4 of this act and any other measure placed on the ballot by the Legislature for the November 4, 2014, statewide general election after the 131-day deadline set forth in Section 9040 of the Elections Code shall be placed on the ballot, following all other ballot measures, in the order in which they qualified as determined by chapter number.

(c) The Secretary of State shall include, in the ballot pamphlets mailed pursuant to Section 9094 of the Elections Code, the information specified in Section 9084 of the Elections Code regarding the ballot measure contained in Section 4 of this act.

SEC. 6. This act calls an election within the meaning of Article IV of the Constitution and shall go into immediate effect.

**Senate Bill No. 1272**

\_\_\_\_\_  
Passed the Senate July 3, 2014

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_  
Passed the Assembly June 30, 2014

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_  
This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2014, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



Approved \_\_\_\_\_, 2014

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*Governor*

## EXHIBIT B



OFFICE OF THE GOVERNOR

JUL 15 2014

To the Members of the California State Senate:

I am allowing Senate Bill 1272 to become law without my signature.

This bill places an advisory question on the November ballot to ask voters if Congress should amend the United States Constitution to overturn *Citizens United v. Federal Election Commission*.

To be clear, this bill and the advisory vote it requires has no legal effect whatsoever. The only way to overturn a Supreme Court decision such as *Citizens United* is by the process outlined in Article V of the United States Constitution. In fact, the California State Legislature recently took action in this regard by approving a joint resolution calling upon Congress to convene a Constitutional convention for this very purpose.

I understand the motivation behind the enthusiastic support of this bill. In fact, I too believe that *Citizens United* was wrongly decided and grossly underestimated the corrupting influence of unchecked money on our democratic institutions.

But we should not make it a habit to clutter our ballots with nonbinding measures as citizens rightfully assume that their votes are meant to have legal effect. Nevertheless, given the Legislature's commitment on this issue, even to the point of calling for an unprecedented Article V Constitutional Convention, I am willing to allow this question to be placed before the voters.

By allowing SB 1272 to become law without my signature, it is my intention to signal that I am not inclined to repeat this practice of seeking advisory opinions from the voters. Also, I am announcing my action on this bill today so that this advisory question will be included in the principal ballot pamphlet, avoiding the significant costs of a supplemental pamphlet.

Sincerely,

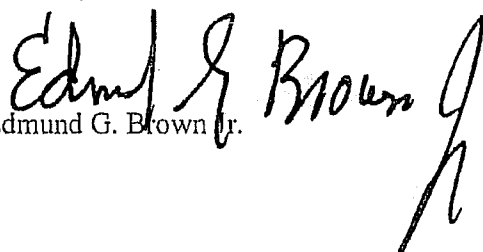
  
Edmund G. Brown Jr.

EXHIBIT C

**Assembly Joint Resolution No. 1**

**RESOLUTION CHAPTER 77**

Assembly Joint Resolution No. 1—Relative to a federal constitutional convention.

[Filed with Secretary of State June 27, 2014.]

**LEGISLATIVE COUNSEL'S DIGEST**

AJR 1, Gatto. Federal constitutional convention: application.

This measure would constitute an application to the United States Congress to call a constitutional convention pursuant to Article V of the United States Constitution for the sole purpose of proposing an amendment to the United States Constitution that would limit corporate personhood for purposes of campaign finance and political speech and would further declare that money does not constitute speech and may be legislatively limited.

This measure would state that it constitutes a continuing application to call a constitutional convention until at least  $\frac{2}{3}$  of the state legislatures apply to the United States Congress to call a constitutional convention for that sole purpose. This measure would also state that it is an application for a limited constitutional convention and does not grant Congress the authority to call a constitutional convention for any purpose other than for the sole purpose set forth in this measure.

WHEREAS, Corporations are legal entities that governments create and the rights that they enjoy under the United States Constitution should be more narrowly defined than the rights afforded to natural persons; and

WHEREAS, Corporations do not vote in elections and should not be categorized as persons for purposes related to elections for public office and ballot measures; and

WHEREAS, The United States Supreme Court, in *Citizens United v. Federal Election Commission* (2010) 130 S.Ct. 876, held that the government may not, under the First Amendment to the United States Constitution, suppress political speech on the basis of the speaker's corporate identity; and

WHEREAS, Article V of the United States Constitution requires the United States Congress to call a constitutional convention upon application of two-thirds of the legislatures of the several states for the purpose of proposing amendments to the United States Constitution; now, therefore, be it

*Resolved by the Assembly and the Senate of the State of California, jointly,* That the Legislature of the State of California, speaking on behalf of the people of the State of California, hereby applies to the United States Congress to call a constitutional convention pursuant to Article V of the

United States Constitution for the sole purpose of proposing an amendment to the United States Constitution that would limit corporate personhood for purposes of campaign finance and political speech and would further declare that money does not constitute speech and may be legislatively limited; and be it further

*Resolved*, That this constitutes a continuing application to call a constitutional convention pursuant to Article V of the United States Constitution until at least two-thirds of the legislatures of the several states apply to the United States Congress to call a constitutional convention for the sole purpose of proposing an amendment to the United States Constitution that would limit corporate personhood for purposes of campaign finance and political speech and would further declare that money does not constitute speech and may be legislatively limited; and be it further

*Resolved*, That this application is for a limited constitutional convention and does not grant Congress the authority to call a constitutional convention for any purpose other than for the sole purpose set forth in this resolution; and be it further

*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader of the United States Senate, the Minority Leader of the United States Senate, and to each Senator and Representative from California in the Congress of the United States.

**Assembly Joint Resolution No. 1**

\_\_\_\_\_  
Adopted in Assembly January 30, 2014

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_  
Adopted in Senate June 23, 2014

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_  
This resolution was received by the Secretary of State this  
\_\_\_\_ day of \_\_\_\_\_, 2014, at \_\_\_\_\_  
o'clock \_\_\_\_M.

\_\_\_\_\_  
*Deputy Secretary of State*

EXHIBIT D



AMENDED IN ASSEMBLY JUNE 4, 2014

AMENDED IN SENATE APRIL 10, 2014

SENATE BILL

No. 1402

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Introduced by Senator De León

February 21, 2014

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An act to amend Section 84307.5 of the Government Code, relating to the Political Reform Act of 1974 *submit an advisory question to the voters relating to immigration reform, calling an election, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1402, as amended, De León. ~~Political Reform Act of 1974: campaign funds. Immigration reform: advisory election.~~

*This bill would call a special election to be consolidated with the November 4, 2014, statewide general election. The bill would require the Secretary of State to submit to the voters at the November 4, 2014, consolidated election an advisory question asking whether the Congress of the United States should immediately reform our immigration laws and pass comprehensive immigration reform that includes a path to citizenship for immigrants meeting certain requirements, as specified, and whether the President of the United States should halt deportations of parents whose children were born in the United States until that new immigration law is passed. The bill would require the Secretary of State to communicate the results of this election to the Congress of the United States.*

*This bill would declare that it is to take effect immediately as an act calling an election.*

~~Existing provisions of the Political Reform Act of 1974 prohibit a spouse or domestic partner of an elected officer or a candidate for~~

~~elective office from receiving compensation from campaign funds held by a controlled committee of the officer or candidate for services rendered in connection with fundraising, as specified.~~

~~This bill would instead prohibit a spouse or domestic partner of an elected officer or a candidate for elective office from receiving compensation, in exchange for any services rendered, from campaign funds held by a controlled committee of the officer or candidate.~~

~~A violation of the act's provisions is punishable as a misdemeanor. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a  $\frac{2}{3}$  vote of each house and compliance with specified procedural requirements.~~

~~This bill would declare that it furthers the purposes of the act.~~

~~Vote:  $\frac{2}{3}$  majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes-no.~~

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares all of the*
- 2     *following:*
- 3     (a) *The United States of America was founded on principles of*
- 4     *freedom and opportunity, and on the tenet that all men and women*
- 5     *are created equal.*
- 6     (b) *The nation's history has been indelibly shaped by waves of*
- 7     *immigration.*
- 8     (c) *The current immigration system in the United States is*
- 9     *antiquated, riddled with inefficiencies, and incapable of meeting*
- 10    *the challenges of the 21st century and our changing economy.*
- 11    (d) *Immigrants are a major engine for the state's economic*
- 12    *growth. Approximately 1 in 10 workers in California is an*
- 13    *undocumented immigrant, totaling 1.85 million workers.*
- 14    *Immigrants are vital for California's industries, including*
- 15    *technology, agriculture, hospitality, and services.*

1     (e) *The undocumented immigrant population in the United States*  
2 *is currently 11.7 million and is expected to continue growing in*  
3 *the absence of immigration and regulatory reform.*

4     (f) *Almost one-quarter (23 percent) of the nation's*  
5 *undocumented immigrants reside in California.*

6     (g) *Thousands of families have been separated because of the*  
7 *enforcement of immigration laws that do not recognize the*  
8 *complexities of mixed-status families. Each year, more than*  
9 *350,000 immigrants face deportation proceedings.*

10    (h) *Nearly one-half of undocumented immigrants in the United*  
11 *States are parents of minor children, and 77 percent of these*  
12 *children are United States citizens.*

13    (i) *Since 1998, about 600,000 children who are United States*  
14 *citizens have had a parent detained or deported. Currently, there*  
15 *are at least 5,100 children in the child welfare system because*  
16 *their parents are under immigration custody or have been deported.*  
17 *This number is expected to rise to 15,000 in the next five years.*

18    SEC. 2. *A special election is hereby called to be held*  
19 *throughout the state on November 4, 2014. The special election*  
20 *shall be consolidated with the statewide general election to be*  
21 *held on that date. The consolidated election shall be held and*  
22 *conducted in all respects as if there were only one election and*  
23 *only one form of ballot shall be used.*

24    SEC. 3. (a) *Notwithstanding Section 9040 of the Elections*  
25 *Code, the Secretary of State shall submit the following advisory*  
26 *question to the voters at the November 4, 2014, consolidated*  
27 *election:*

28    *"Shall the Congress of the United States reform our immigration*  
29 *laws and immediately pass comprehensive immigration reform*  
30 *that includes a path to citizenship to those immigrants who learn*  
31 *English, pass a background check, and pay back taxes, and shall*  
32 *the President of the United States halt the deportations of*  
33 *noncriminal mothers and fathers whose children were born in the*  
34 *United States, which separate families, until that new immigration*  
35 *law is passed?"*

36    (b) *Upon certification of the election, the Secretary of State*  
37 *shall communicate to the Congress of the United States the results*  
38 *of the election asking the question set forth in subdivision (a).*

1     (c) *The provisions of the Elections Code that apply to the*  
2 *preparation of ballot measures and ballot materials at a statewide*  
3 *election apply to the measure submitted pursuant to this section.*

4     SEC. 4. *This act calls an election within the meaning of Article*  
5 *IV of the Constitution and shall go into immediate effect.*

6     SECTION 1. ~~Section 84307.5 of the Government Code is~~  
7 ~~amended to read:~~

8     84307.5. ~~A spouse or domestic partner of an elected officer or~~  
9 ~~a candidate for elective office shall not receive, in exchange for~~  
10 ~~services rendered, compensation from campaign funds held by a~~  
11 ~~controlled committee of the elected officer or candidate for elective~~  
12 ~~office.~~

13     SEC. 2. ~~No reimbursement is required by this act pursuant to~~  
14 ~~Section 6 of Article XIII B of the California Constitution because~~  
15 ~~the only costs that may be incurred by a local agency or school~~  
16 ~~district will be incurred because this act creates a new crime or~~  
17 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
18 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
19 ~~the Government Code, or changes the definition of a crime within~~  
20 ~~the meaning of Section 6 of Article XIII B of the California~~  
21 ~~Constitution.~~

22     SEC. 3. ~~The Legislature finds and declares that this bill furthers~~  
23 ~~the purposes of the Political Reform Act of 1974 within the~~  
24 ~~meaning of subdivision (a) of Section 81012 of the Government~~  
25 ~~Code.~~