



January 31, 2024

Hon. Patricia Guerrero, Chief Justice  
and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

Re: Application for Permission to file an Amicus Curiae Letter Brief  
in Opposition to the Emergency Petition For Writ Of Mandate in  
*Legislature Of The State Of California v. Shirley N. Weber*,  
S281977. (CRC 8.200(c).)

Dear Chief Justice Guerrero and Associate Justices:

***Importance of Issue and Interest of Amicus Curiae***

Reform California with Carl DeMaio – Ballot Measure Committee (hereinafter Reform California), founded in 2003, is a 527 political action committee currently registered as a candidate-controlled ballot measure committee with the State of California. Reform California has over 400,000 opt-in active subscribers to its news service, has over 35,000 active volunteers, and received contributions from over 51,000 supporters across the state.

Reform California helped collect tens of thousands of the signatures from registered voters to qualify the TPA Citizens' Initiative for a vote on the statewide ballot. Any decision to grant the Emergency Petition for Writ of Mandate would cause injury to Reform California by depriving our campaign of the value of the investment we made in qualifying the initiative for a public vote.

Reform California urges the Court to DENY the Emergency Petition for Writ of Mandate in this case and resolve an issue of statewide importance. A judgement in favor of Petitioner would strip California citizens of their cherished and constitutionally protected rights to place initiatives on the ballot and vote on initiatives to check the power of their government and improve how their government operates.

The issue this case presents is one of pure law – whether the “Taxpayer Protection and Government Accountability Act” or “TPA Citizens’ Initiative” constitute a “revision” to the state constitution. It does not.

Rather the TPA Citizens’ Initiative simply seeks to refine and clarify the requirements of existing state constitutional provisions related to taxation that were similarly imposed by previous citizen initiatives. Enactment of the TPA Citizens’ Initiative would not impair essential government functions.

### ***Why Petition Should Be Denied***

***A decision by this court to remove the TPA Citizens’ Initiative from the ballot would facilitate an abuse of power by state politicians and would irreparably harm and eliminate constitutionally protected rights of citizens to place initiatives on the ballot to check the power of their government.***

In 1911 California citizens won the right to use ballot initiatives to propose and enact reforms to how state government operates. Since this cherished constitutional right was created, the citizens’ initiative has empowered California voters and checked the power of state politicians.

The citizens’ initiative is predominantly used to advance reforms that the Governor and members of the legislature oppose. In fact, the current California Attorney General states on his website “The ballot initiative process gives California citizens a way to propose laws and constitutional amendments without the support of the Governor or the Legislature.”

The court must view arguments made by Petitioner – who are the Governor and a handful of members of the Legislature – from that point of view of parties that are not seeking to protect the state constitution from an improper amendment, but rather parties that vehemently oppose the policy reforms contained in said amendment.

Petitioner claims to be concerned about harm to the integrity of the state constitution if the TPA Citizens’ Initiative passes.

To the contrary, the only harm that can come to the state constitution is if the Court grants the Petition.

Granting the petition will set a dangerous precedent to allow politicians to strip citizens of their initiative rights merely by arguing to a friendly court that each initiative the politicians oppose goes too far and is too sweeping in nature and therefore constitutes an improper “revision” to the constitution.

If the court grants this Petition, only the politicians will have easy and unchecked access to place items on the ballot – something the original “Progressive” initiative reform movement in 1911 sought to change.

Finally, granting the petition will send a message to citizens that they should not bother to sign petitions because politicians can easily convince this Court to block any public vote on the initiative.

## **I. The California Taxpayer Protection Initiative does not constitute a “revision” to the state constitution.**

Petitioner argues “the Measure is a qualitative revision because it would alter the fundamental structure of California’s government and the foundational powers of its branches.”

The court must explore this question not only examining the reforms contained in the TPA Citizens’ Initiative itself but also comparing the initiative in dispute to other initiatives that were allowed in the past.

### **1. The TPA Citizens’ Initiative is of similar nature and impact to numerous previous initiatives that were readily allowed in the past.**

In recent decades, numerous citizen initiatives have made changes similar in nature and reach to the state constitution and were not deemed to be revisions of the state constitution.

Supporters of the TPA Citizens’ Initiative were motivated to draft and qualify their initiative because politicians – and the courts – have created and exploited loopholes in previous tax reform provisions placed inside the state constitution through previous initiatives.



Specifically Proposition 13 (1978), required that increases in state taxes be adopted by not less than two-thirds of the members elected to each house of the Legislature.

Proposition 218 (1986) required that increases in local taxes be approved by the voters – and required that special taxes could only be approved by a two-thirds vote of the people. Prop 218 also contained significant reforms to stop politicians from calling a tax a “fee” to avoid voting requirements in the state constitution previously imposed by voters.

Proposition 26 (2010) once again attempted to clarify the definition of a “fee” versus a “tax” to prevent politicians from evading and violating initiative-imposed constitutional rights to a two-thirds vote of the governing body and/or a public vote on these charges.

All three of these citizen initiatives were deemed appropriate and overwhelmingly supported by voters. Petitioner has failed to show the court how the TPA Citizens’ Initiative is somehow substantially different than these previous initiatives.

The court should also compare the TPA Citizens’ Initiative to Proposition 4 (1979) which limited the ability of the state legislature and local governments to spend in excess of the so-called Gann spending limit.

Putting aside the tax reform theme of the TPA Citizens’ Initiative, it is important to note that Petitioner has endorsed and campaigned for other initiatives that enacted substantial change to how our government operates and those initiatives were not considered “revision” measures.

For example, Petitioner strongly supported Proposition 20 (2010) that stripped the legislature of the power to draw the lines for legislative districts and put that responsibility under an independent commission in the administrative realm of state government.

Petitioner also supported Proposition 25 (2010) that reduced the required votes in the state legislature from two-thirds to a mere majority.

Finally, Petitioner supports the validity of Proposition 98 (1988) that limits the ability of the state legislature to spend less than a certain amount General Fund revenues on education.

The court must examine the TPA Citizens' Initiative in the context of these and other previous citizen initiatives that have been accepted as appropriate under the right to initiative contained in the state constitution.

2. **The TPA Citizens' Initiative cannot be deemed a "revision" because it merely enacts important refinements to existing state constitutional provisions enacted by previous citizen initiatives.**

The TPA Citizens' Initiative is not a "revision" measure because it simply seeks to refine and clarify the requirements of existing state constitutional provisions related to taxation that were similarly imposed by previous citizen initiatives.

- a) **Ballot Title Requirements:** The TPA Citizens' Initiative restores the integrity of voting rights requirements in Prop 13 and Prop 218 by requiring that any tax measure presented on the ballot must contain an honest ballot title that reveals the nature of the tax being proposed in a more transparent manner. While Prop 13 and Prop 218 (along with other reform measures) require certain tax increases be put before voters, politicians – with help from the courts – have deceived voters with misleading ballot titles that make no mention of a measure containing a tax increase. By depriving voters of a title that makes the tax hike proposal transparent, the politicians are by effect depriving voters of their constitutionally protected rights to vote on these matters. The TPA Citizens' Initiative merely restores these constitutionally protected rights by mandating that the tax increase be made clear in the title of the measure printed on the ballot.
- b) **Definition of Exempt Charges:** The TPA Citizens' Initiative clarifies provisions in Prop 218 and Prop 26 by providing a much clearer definition of what a "fee" is to prevent politicians from misclassifying a tax as a fee to deprive citizens of their existing constitutionally-protected rights. Numerous court cases have been brought in the last thirty years to dispute whether a charge is a tax or a fee under existing language in the state constitution. The TPA Citizens' Initiative seeks to put those disputes to rest. The court

should consider the simplicity of the clear definition established by the TPA Citizens' Initiative in rejecting Petitioner's claim that this definition is somehow so unconventional as to constitute a "revision" to the way government operates.

- c) **Public Voting Requirements:** The TPA Citizens' Initiative restores the two-thirds vote requirement for special taxes that voters originally imposed through Prop 218. In doing so, the TPA Citizens' Initiative is responding to the fatally flawed *California Cannabis Coalition v. City of Upland* (2017) case that stripped voters of their constitutionally protected two-thirds vote threshold on all special taxes. In addition, the TPA Citizens' Initiative extends a right to vote on all statewide tax increases. While this would add one additional category of tax increases subject to voter approval, it is hardly different in nature or function than the voting rights on other categories of taxes established by Prop 13 and Prop 218. In addition, the TPA Citizens' Initiative is establishing this voting right because state politicians have routinely enacted costly and unfair tax hikes that a super-majority of voters oppose. For example, take California Senate Bill 1 (SB 1) in 2017 authored by State Senator Jim Beall, which significantly raised car and gas taxes. The state legislature enacted these unpopular tax hikes and voters had to resort to collecting over 1 million signatures to force a public vote to repeal these tax hikes – during which time citizens were required to pay a tax they did not support. Then, the politicians put a deceptive title on the repeal initiative to deceive voters. Had the TPA Citizens' Initiative been in place with a public vote requirement with an honest ballot title, Californians would have rejected this tax increase. The TPA Initiative is the citizens' remedy to prevent this from happening again – and it is exactly consistent with the reason why we have the right to citizen initiatives in our state constitution – to check corruption of our politicians displayed during the the fight over SB 1 (the car and gas tax hikes) in the 2018 election.



d) **Voting Requirements of the Legislature:** Petitioner argues that the TPA Citizens' Initiative is a "revision" by requiring the state legislature to approve fees by a simple majority vote of the legislature. To the contrary, the TPA Citizens' Initiative simply makes changes in existing voting requirements to make the imposition of fees more transparent and accountable throughout the legislative process. Currently, fee-based revenues are included in the budget for each state agency and the legislature has the duty to vote to approve or reject fee-based revenues through the annual state budget process. The TPA Citizens' Initiative seeks to provide the public with more transparency on the imposition of fees by requiring that the legislature vote on the component fees that generate that revenue. This refinement to the existing state budget process is hardly a burden that constitutes a revision. Moreover, the state legislature already has the power to prohibit the executive branch from charging fees or requiring the executive branch to impose new fees. For example, in 2022 the state legislature recently passed (and Petitioner strongly supported) Assembly Bill 205 (AB 205) that mandates that the Public Utilities Commission modify their fees and rate structure to charge Californians higher fees based on their household income. Similarly, the state legislature recently passed Senate Bill X1-2 (SBx1-2) to delegate its legislative authority to impose a tax on oil companies by instructing the California Energy Commission to adopt an "excess profits penalty" fee. In both the case of AB 205 and SBx1-2 the legislature is instructing the administrative state to impose a fee – something Petitioner erroneously argues should be purely the purview of the executive branch. By requiring a vote by the state legislature on fees, the TPA Citizens' Initiative is doing nothing that is not already happening routinely on a case-by-case basis and is merely attempting to make the imposition of fees more transparent and hold politicians accountable for the policies they support.

Limitations on the power of the legislature or the executive branch to do something does not automatically constitute a revision. The voter-approved citizen initiatives

cited previously all limited the power of the legislature and the executive branch and/or required a more deliberate process for certain actions to be taken.

The court should not be surprised that Petitioner argues that the TPA Citizens' Initiative will have a substantial impact. By design, it is intended to limit their ability to impose taxes without more transparency and accountability and without complying with the intent of previously adopted tax reform measures. We agree that is a burden for politicians who want the easy ability to get more money from taxpayers.

Nevertheless, the court should conclude that the requirements of the TPA Citizens' Initiative are within the right of voters to impose on the existing processes in state and local government for consideration of tax increases.

## **II. The California Taxpayer Protection Initiative does present a risk of impairing essential government functions.**

The Petitioner claims that adoption of the TPA Citizens' Initiative would impair essential government functions. The Petitioner has failed to provide the court with convincing evidence on this argument to substantiate the revocation of the citizens' right to vote on the TPA Citizens' Initiative.

Indeed, the court must reconcile the Petitioner's unsubstantiated claim with the notion that California already has the most oppressive existing tax burden of any state in the nation.

The reality is state and local governments in California have more than enough money to fulfill their duties for providing essential government functions. In fact, state and local government in California has gone far beyond "essential government functions" to create unnecessary government programs for functions that should be private matters, not government obligations.

The court must also consider that the previously referenced initiatives all imposed similar requirements that Petitioner now claims will lead to impairment of essential government functions – and yet implementation of those previous initiatives provide ample refutation of Petitioner's argument.

California Proposition 4 (Prop 4) (1979) limited what government could spend on all functions of government and Prop 98 (1988) mandated a lion's share of state



government funding go to education programs to the limitation of all other functions of state government – and yet we see no impairment on essential functions.

California Proposition 13 (Prop 13) (1979) and Prop 218 (1986) imposed voter approval requirements on taxes – and yet we see no impairment on essential functions.

Prop 218 (1986) and Prop 26 (2010) imposed limitations on fees and special charges by state and local government – and yet we see no impairment on essential functions.

The only impairment on functions that is raised in connection with the TPA Citizens' Initiative is the fact that California working families have had their essential functions impaired by out-of-control levels of taxation. Blocking a vote on the TPA Citizens' Initiative will lead to additional taxes and additional impairment of essential functions by working families in our state.

### **III. The TPA Citizens' Initiative is needed to prevent the unlawful and unconstitutional abuse of power by state and local politicians.**

Any decision by this court to block the TPA Citizens' Initiative would constitute an abuse of power by state politicians to the detriment of citizens.

California courts have a poor track record on protecting citizen initiative rights. Recently California courts invalidated a citizens' initiative, Proposition B (San Diego 2012), that reformed government pension benefits by incorrectly ruling that the measure was a government initiative rather than a citizens' initiative.

At its heart, the TPA Citizens' Initiative is about holding state and local politicians accountable. The TPA Citizens' Initiative is needed because of a pattern of politicians completely disregarding the existing constitutional rights of California citizens relating to taxation.

State and local politicians have used deceptive ballot titles to strip voters of a fair vote on tax increases. If a voter does not understand that a measure constitutes a tax increase because it is not spelled out clearly in the ballot title, they are not really given a chance to vote on the tax increase.

Politicians have repeatedly imposed illegal taxes on citizens and avoided existing constitutionally mandated voting rights by merely calling a tax a "fee." Politicians

have also evaded accountability to the public on their policies by delegating imposition of costly fees to administrative agencies.

Taking advantage of the flawed *California Cannabis Coalition v. City of Upland* decision, politicians are now colluding with wealthy special interests to disguise their tax increase proposals as citizen initiatives to avoid existing constitutionally mandated voting rights.

California courts are partially responsible for the need for the TPA Citizens' Initiative, by repeatedly opening loopholes for politicians to enact tax increases outside of the procedures intended by voters through previous tax reform initiatives.

If state and local politicians were not violating these existing constitutionally protected voting rights, the TPA Citizens' Initiative may not have been as necessary. However, the infringement on citizens' rights is so great that the citizens feel the need to strengthen and clarify existing constitutional provisions relating to taxation.

The court should not deprive voters of an opportunity to protect their existing constitutional rights on taxation by considering this important ballot initiative in the 2024 election.

### ***Conclusion***

For the reasons stated in this amicus curiae brief, this Court should reject the Emergency Petition for Writ of Mandate.

Respectfully submitted,



Carl DeMaio

*Amicus Curiae* Reform California –  
Ballot Measure Committee  
In Support Of Respondent

Proof of Service attached

No party or attorney to this litigation authored the attached amicus brief or any part thereof. No one other than Reform California made a monetary contribution toward the preparation or submission of the brief.

**BRIEF FORMAT CERTIFICATION PURSUANT TO  
RULE 8.204 OF THE CALIFORNIA RULES OF COURT**

Pursuant to Rule 8.204 of the California Rules of Court, I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 3107 words as counted by the Microsoft Word 365 processing program used to generate the brief.

Dated: January 30, 2024

A handwritten signature in blue ink, reading "Carl DeMaio", is written over a horizontal line.

CARL DEMAIO



## **PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 18295 High Mesa Court, San Diego CA 92127.

On January 30, 2024, I served a true copy of the following document(s):

**Reform California's Application for Permission to file an  
Amicus Curiae Letter Brief in Opposition to the  
Emergency Petition For Writ Of Mandate in  
*Legislature Of The State Of California v. Shirley N. Weber, S281977.***

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*Pursuant to Rule 8.29 of the  
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I declare, under penalty of perjury, that the foregoing is true and correct.  
Executed on January 30, 2024, in San Diego, CA.

  
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Carl DeMaio