No. 061724

IN THE FOURTH DISTRICT COURT OF APPEAL,
DIVISION ONE

OF THE

STATE OF CALIFORNIA

SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION,
Petitioner

v.

SUPERIOR COURT OF CALIFORNIA,
SAN DIEGO- CENTRAL DIVISION

Respondents.

PUBLIC EMPLOYEES RELATIONS BOARD (PERB),

Real Party in Interest

Petition from the Superior Court of the County of San Diego
220 West Broadway, Department C-63
San Diego, CA 92101
Hon. Luis R. Vargas, Judge
(619) 450-7063
Case No. 37-2012-00092205-CU-MC-CTL

OPPOSITION

of Interested Parties,
CATHERINE A. BOLING, T.J. ZANE AND
STEPHEN B. WILLIAMS

TO PETITION FOR WRIT OF MANDATE
WITH IMMEDIATE RELIEF REQUESTED FROM CHALLENGED
ORDER UNLAWFULLY INTERFERING WITH PERB'S
JURISDICTION

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CERTIFICATE OF INTERESTED PARTIES (CRC § 8.208)

Pursuant to CRC §§ 8.208(e)(1) or (2), the following organizations have been identified as interested parties in this matter:

Deputy City Attorneys Association of San Diego
(Pending Complaint before PERB regarding CPR Initiative)

AFSCME Local 127, AFL-CIO
(Pending Complaint before PERB regarding CPR Initiative)

Int'l Association of Firefighters, Local 145
(Pending Complaint before PERB regarding CPR Initiative)

DATED: April 20, 2012

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COMES NOW, Real Parties in Interest/Interested Persons Catherine A. Boling, T.J. Zane and Stephen B. Williams ("Proponents") who file this Preliminary Opposition to the request for a Writ of Mandate brought by the San Diego Municipal Employees Association ("MEA" or "Petitioner") to allow the Public Employment Relations Board ("PERB") to conduct pre-election administrative proceedings in excess of their jurisdiction and in violation of the Constitutional Rights of Proponents as follows:

I.

INTRODUCTION

This Preliminary Opposition addresses an extraordinary request to allow a pre-election administrative proceeding to challenge the placement on the ballot of a qualified, citizen-sponsored, charter amendment. According to official records, the Comprehensive Pension Reform Charter Amendment ("CPR Initiative") was submitted with approximately 115,000 valid signatures.[1] The only issue brought forward by PERB and MEA is that the City Council must halt the election process and "meet and confer" with all recognized bargaining groups and bargain to conclusion prior to placing the measure on the ballot under the Meyers, Milias, Brown Act. Neither challenges the actual substance of the measure.

The legal theory put forward by Petitioner is that the charter amendment falls into a new category of citizen-sponsored ballot measures, one that has transmuted into a City Council-sponsored measure because the measure has the political support of three elected officials. Since the late

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[1] Petitioner has submitted an eleven volume set of Exhibits. The Exhibits do not contain the many of the Exhibits and Declarations supporting the position of the Proponents. For example, a copy of Official Records regarding the validation of the CPR Initiative as a qualified measure for the June Ballot is missing. (Petitioner's Exhibits, *e.g.* 5:60:01325:14-17 (Volume:Tab No.:Bate Stamped Page No.:Line(s)); Letter from the San Diego County Registrar of Voters Certifying that the requisite number of signatures had been submitted.)

Governor Hiram Johnson championed direct democracy in the early 1900s, initiatives have been considered either citizen-sponsored (people's reserved power) or sponsored by the legislative body. Petitioner MEA and Real Party in Interest PERB now seek to create a third category where, even though the requisite number of signatures are gathered by the Proponents, an Initiative can be converted into a legislative body-sponsored measure because elected officials publically support the charter amendment. Even though approximately 115,000 signatures were gathered by the Proponents, it is argued that the personal support they received from three elected officials somehow converts the measure into a City Council-sponsored measure. Petitioner cites no authority for this unique argument but argues PERB authority trumps the reserved power of the citizens to propose legislation.

As demonstrated herein, the constitutional right of citizens to propose charter amendments is not subject to the jurisdiction of PERB. The Legislature, in implementing procedures to control the manner of conducting elections, left no room for City Council discretion to refuse to place a measure on the ballot while "meet and confer" procedural rules are followed. The City Council had only two choices, either adopt the measure or place it on the ballot. Either choice requires the City Council to act without altering the language of the charter amendment as it was circulated and signed by approximately 115,000 voters.

Judge Vargas exercised his judicial discretion in a manner consistent with tried and true methods for dealing with legal questions surrounding ballot measures. Routinely, Courts will defer review of ballot measures to see if they are adopted by the voters before expending scarce judicial resources on legal review. This same principle of judicial economy should be applied to administrative proceedings that, at a minimum, require a radical change in the law to grant PERB jurisdiction.

Throughout these short, multiple proceedings, both PERB and MEA have attempted to exclude participation of the three Proponents who oversaw the gathering of the approximately 115,000 signatures. When PERB and MEA were denied *ex parte* relief to halt the election, PERB immediately set a pre-election administrative hearing where the Proponents are not a party. Proponents ask this Court to allow them to participate in the defense of their right to participate in the democratic process.

The Writ presents no real policy argument for why PERB should be allowed to hear this matter pre-election. The Writ talks about the precedent setting nature of the CPR Initiative and PERB, in its prayer for relief, asks for permanent relief to prevent future citizen measures from being placed on the ballot. (P.E., 1:1:00010.) In other words, the main reason for a pre-election hearing is apparent. It is to gain a political platform to tear down support for the measure or similar measures in the future.

To help understand PERB and MEA motives, a review of the administrative hearing subpoenas is instructive. MEA was given permission by PERB to delve into the private contacts between the Mayor and any supporter of the CPR Initiative from November 2010 onward. (*i.e.* P.E., 11:119:02932-02935; Subpoena Duces Tecum to Mayor Jerry Sanders.) The administrative hearing would be an attempt to force elected officials to testify as to political contacts in support of a ballot measure. Allowing this pre-election hearing to go forward under these conditions would give MEA a political platform to challenge the elected officials who supported the CPR Initiative prior to the election in addition to allowing a PERB administrative law judge to weigh in on the legality of the measure while the public is deciding how to vote. The result would be to chill current and future political activities of elected officials and private citizens to propose direct legislation.

Over time, the legal justification for PERB's authority has changed. The original PERB Superior Court action alleged that, on information and belief, the Proponents were secret "agents" of the City. Next, the argument was that *Seal Beach*, *infra*, applies to citizen-sponsored measures despite specific language in the case to the contrary. Finally, the current writ before this Court argues that the Proponents are "'surrogate' citizens" and "professional political activists". Therefore, the rules are claimed to be different for the Proponents when gathering 115,000 signatures because of these labels that somehow make them less than regular citizens. (*See, Petition for Writ of Mandate with Immediate Relief Requested from Challenged Order Unlawfully Interfering with PERB's Jurisdiction* ("Writ"), pp. 6, 15.)

The order of the Superior Court is subject to review under the abuse of discretion standard. The Superior Court may exercise its discretion to control its calendar. Here, this was done in a typical manner for election cases, post-election review. In addition, nowhere in the Writ filed by MEA is there a stated reason why pre-election review by PERB is necessary. Proponents believe that the reason that PERB took this step is to give MEA a platform to raise legal questions about the Comprehensive Pension Reform Charter Amendment prior to the public vote. The only purpose for a pre-election hearing is to influence the public before the June 5, 2012 election. Judge Vargas' order prevents the illegal expenditure of public funds by PERB to give MEA a political platform to influence the electorate at public expense. This Writ should be summarily denied.

II.

STATEMENT OF FACTS

On September 30, 2011, Plaintiff T.J. Zane (Zane), a proponent of the CPR Initiative, delivered to the City Clerk a petition with 145,027 signatures. (P.E., 5:60:01325:7-9.) In the filing, Zane attested to the fact

the petition submitted contains at least 94,346 signatures, the number legally required to qualify the initiative for the ballot. Also on September 30, 2011, the City Clerk delivered the CPR Initiative to the County Registrar of Voters, to finish verifying the signatures. (P.E., 5:60:01325:10-13.)

On November 11, 2011, the City Clerk received a letter from the County Registrar of Voters certifying that the proponents of the CPR Initiative had submitted the requisite number of signatures to qualify it for the ballot. (P.E., 5:60:01325:14-17.) On December 5, 2011, the City Council adopted a resolution declaring its intent to submit the CPR Initiative to the voters (San Diego Resolution R-307155 (December 5, 2011)). (P.E., 5:60:01325:18-20.) On January 30, 2012, the City Council introduced and adopted an ordinance calling a Municipal Special Election on Tuesday, June 5, 2012, to submit one or more ballot propositions to the qualified voters of the City, and consolidate the Municipal Special Election with the California State Primary election to be held on the same date. (San Diego Ordinance O20127 (January 30, 2012); P.E., 5:60:01325:21-23.)

On February 9, 2012, PERB Board issued an order to file an action in San Diego Superior Court to prevent the CPR Initiative from being placed on the June 2012 Ballot. (P.E., 1:1:1-10.) On February 14, 2012, PERB Board filed an action in San Diego Superior Court to halt the vote on Proponents' CPR Initiative without naming the Proponents as Real Parties in Interest. PERB sought a temporary restraining order on February 21, 2012 which was denied. At the same hearing, Proponents sought an expedited hearing on a Motion to Intervene, which was denied. The Court set a date for Proponents' intervention motion on April 20, 2012 on the regular motion calendar. (P.E., 4:36:00878-00879.) On February 28, 2012, PERB ordered an administrative hearing on the complaint filed by MEA to be held on April 2, 2012. (P.E., 5:52:01278:10.)

In order to seek a halt to the PERB administrative process, Proponents filed an action on March 5, 2012, seeking to halt the PERB administrative process that is outside of their jurisdiction, a gift of public funds, and an interference with the constitutional rights of the Proponents. On March 15, 2012, the Proponents sought an *ex parte* order to halt the administrative hearing set for April 2, 2012, before a PERB administrative law judge. The City of San Diego joined in that request to enjoin the hearing which included the issuance of various subpoenas seeking personal information from elected officials regarding all contacts with the Proponents of the CPR Initiative. (P.E., 11:119:02932:36-02937:41.) The request was denied without prejudice, and Proponents' case was reassigned to Judge Dato. On March 19, 2012, Proponents filed a peremptory challenge that they had first attempted to file in the PERB action on February 17, 2012 when the original PERB TRO was heard and the Proponents were denied an expedited hearing on their intervention motion. (P.E., 3:16:00588-00589.)

With the peremptory challenge, both actions were transferred to Judge Vargas. On March 27, 2012, Judge Vargas heard the stay requested by the City of San Diego. Proponents were not a party to the stay motion because of the delayed date of the intervention motion set previously. The stay (TRO) was granted, and MEA filed its writ with this Court.

III.

PERB HAS NO JURISDICTION OVER A CITIZEN-SPONSORED INITIATIVE

While it is unclear which theory that the Petition is based upon, it is clear that the Meyers, Milias, Brown Act ("MMBA") does not govern a citizen-sponsored initiative that went through the signature gathering process to qualify for the ballot. The MMBA specifically regulates the actions of "legislative bodies" while they conduct labor relations. Under

Government Code section 3505, the "governing body of a public agency" is required "meet and confer" with recognized employee representatives. When a legislative body is acting on a citizen-sponsored initiative, it is acting in a different capacity. Elections Code section 9214(b) requires the governing body to "immediately" place a qualified initiative on the ballot "without alteration", in accordance with election procedures established by the state. The legislative body cannot do both of these functions. It cannot stop the electoral process and refer the matter to labor negotiators to "meet and confer" and bargain in good faith until bargaining is exhausted. Elections law requires that it be placed on the ballot "immediately". (Elections Code § 9214(b).)

Even if the matter was referred to the "meet and confer" process, what would the City meet and confer about? They have no legal authority to amend the measure. The purpose of the "meet and confer" process is to exchange ideas and proposals and to bargain in "good faith". How could the City bargain in "good faith" when it has no discretion in the matter? The electoral process was not intended to be modified by the MMBA for a citizen-sponsored measure.

This initiative power is granted directly from the California Constitution. (Cal. Const. Art. XI § 3.) In the case of an initiative dealing with compensation, the duty is even more specific. The Constitution grants plenary authority to charter cities to allow them to amend their charter, without alteration, to regulate compensation, which include pension benefits (Cal.Const. Art XI § 5(b) ; *City of Downey v. Board of Administration* (1975) 47 Cal.App.3d 621, 629.) When a charter city's enactment falls within one of these core areas governed by 5(b), including compensation, it supersedes any conflicting state statute. (*Cobb v. O'Connell* (2005) 134 Cal.App.4th 91; *in re Work Uniform Cases* (2005) 133 Cal.App.4th 328, 335.)

The CPR Initiative is not subject to the meet and confer process in that it was neither sponsored nor circulated by the City of San Diego. The legislative body of the City of San Diego never hired or retained the Proponents to circulate an initiative that had approximately 115,000 valid signatures. (P.E., 4:38:00886:13-887:18; Verified Complaint for Injunctive Relief, filed March 5, 2012, 4:13-5:18, ¶¶. 11 & 12.) In essence, MEA and PERB seek administrative and judicial relief on the theory that the proponents of the initiative are "agents" of the City. However, the only documents that shed light on the issue are certified public records showing that the CPR Initiative is a citizen-sponsored initiative. (P.E., 3-27:00708-00710, 00712, 00730, 00732-00733.)

Essentially, MEA and PERB falsely accuse Proponents of being agents of the City and, by extension, of using public funds to sponsor a ballot measure. (*Stanson v. Mott* (1976) 17 Cal.3d 206.) *Stanson* found that "campaign" materials and activities may not be paid for by public funds. By bringing this administrative process forward, Defendant PERB are ignoring verified official documents showing that the initiative in question was citizen-sponsored and not a product of City action.

Allowing the PERB administrative proceeding to go forward prior to the election will cause the Proponents irreparable harm. It is presumed that First Amendment conduct, even if harmed for a small amount of time, is entitled to protection and is considered irreparable. (*Ketchens v. Reiner* (1987) 194 Cal.App.3d 470, 480.) PERB's administrative action attempts to harm the First Amendment rights of Proponents in several respects. First, PERB is actively participating in the campaign by, after placement on the ballot of the Initiative, seeking to make a legal determination over and above its jurisdiction that the Initiative was illegally placed on the ballot. (See, *Vargas v. City of Salinas* (2009) 46 Cal. 4th 1, 23-26.) PERB has allowed MEA to delve into the private lives of the elected officials that

support the CPR Initiative. Records and testimony are ordered from the Mayor about his personal contacts with the Proponents from November, 2010 to the present. (P.E., 4:38: 00888:15-00889:15.) Seeking personal contacts of elected officials with like-minded constituents demonstrates that the purpose of the administrative proceedings is to investigate the conduct of the Proponents and their political allies rather than to achieve some lawful, governmental purpose. The specter of illegality and the threat of disclosure of private conversations during a political campaign chills the free speech rights of the proponents, and makes it more difficult to conduct a political campaign. No matter how brief the political restrictions are, such conduct violates the free speech rights and petition rights of the Proponents. No legitimate purpose for a pre-election administrative hearing exists.

IV.

THE POWER OF INITIATIVE TO ALLOW CITIZEN-SPONSORED MEASURES IS UNFETTERED BY THE MMBA AND PERB HAS NO JURISDICTION TO INVESTIGATE OR HOLD HEARINGS

The PERB complaint filed by MEA does not directly attack the right of a citizen to propose a charter amendment. Instead, they attempt to create a legal fiction that the Proponents are "agents" of the City. The administrative complaint and the subsequent administrative and legal actions by PERB are based on this false premise. This false premise is magnified by PERB's prayer in its suit to bar future citizen-sponsored measures without including "meet and confer" requirements. (P.E., 1:1:00010.)

The reason they create this unrealistic "agency" argument is that MEA and PERB are both aware that the MMBA "meet and confer" procedural requirements have never been applied to a citizen-circulated initiative. While the Courts have correctly applied the procedural

requirements of the MMBA to a council-sponsored initiative, it is clear that the Courts will not apply the procedural rules of the MMBA to a citizen-sponsored initiative. (*See, People ex. rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 599-601.)

In the *Seal Beach* case, the Supreme Court made clear that its holding was limited to requiring a City Council to "meet and confer" with recognized bargaining groups prior to placing a council-sponsored charter amendment on the ballot. (*Id. at p. 599, fn. 8.*) Footnote 8 specifically states that the holding does not apply to a citizen-sponsored measure. The language in the case makes clear that the procedural requirements of the MMBA do not impinge upon a City Council's right to propose legislation. The language in the MMBA was directed at the "legislative body" and a city council must follow "meet and confer" requirements before they place their own initiative on the ballot. (Gov. Code § 3504.)

Instead, PERB and MEA have attempted to ignore the fact that the three proponents gathered approximately 115,000 valid signatures at their own expense and with the help of other citizens to place the measure on the ballot. They try to use support for their efforts received from a small number of elected officials to try to interfere with Proponents' constitutional rights. The Writ before this Court and the attached record contain no evidence that the City of San Diego drafted; gathered signatures, and submitted the CPR Initiative for voter approval. If the City had authorized the gathering of the signatures, it would be a gift of public funds and the City actors would likely be personally liable for the costs. (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1.) Also, PERB does not explain how a City official has to give up his or her free speech rights to support an initiative. Essentially, the PERB/MEA argument is that the public support by the Mayor and a minority of two Council members for the CPR Initiative has transmuted a citizen-sponsored initiative into a city-sponsored

measure. The premise is a frivolous argument without any legal or factual support.

A. Only City Council Measures Are Not Exempt From Basic Procedural Rules When Placing Measures On The Ballot.

The application of the MMBA to a council-sponsored initiative is not unusual. Council procedural requirements cannot be dispensed with because a city council chooses to legislate via the ballot box. Under the California Environmental Quality Act ("CEQA"), a city council-sponsored initiative must still comply with the procedural requirements to determine the environmental impacts of a ballot measure. (Pub. Resources Code §§ 21000-21178.) An initiative generated and placed on a ballot by a city council is considered a discretionary project. As a discretionary project, it is subject to the procedural requirements of CEQA and environmental review is required. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165.) The same is not true of a citizen-sponsored initiative. Citizen-sponsored measures with a potential impact on the environment are exempt from the procedural requirements of CEQA. (*Stein v. Santa Monica* (1980) 110 Cal.App.3d 458; 14 Cal. Code Regs. § 15378(B)(3).) As explained below, the electoral process does not give a city council the time or the legal ability to require CEQA compliance prior to placing a citizen-sponsored measure on the ballot.

In the *Sierra Madre* case, the Attorney General weighed in on the importance of distinguishing between citizen and council-sponsored initiatives. The Supreme Court discussed the distinctions as follows:

> "As the Attorney General suggests, the distinction between initiatives generated by a city council and voter-sponsored initiatives serves a significant governmental policy. Voters who are advised that an initiative has been placed on the ballot by the city council will assume that the city council has done so only

> after itself making a study and thoroughly considering the potential environmental impact of the measure. For that reason a pre-election EIR should be prepared and considered by the city council before the council decides to place a council-generated initiative on the ballot. By contrast, voters have no reason to assume that the impact of a voter-sponsored initiative has been subjected to the same scrutiny and, therefore, will consider the potential environmental impacts more carefully in deciding whether to support or oppose the initiative." (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 190.) (*emphasis added.*)

The distinction between the two types of measures is instructive here. The voters will assume that the City Council, prior to placing a measure on the ballot, will go through necessary procedural steps applicable to city councils. However, with a citizen-sponsored measure, the public is aware that the same procedural steps cannot be taken. The procedural steps for environmental review and the procedural requirements of MMBA are both imposed on the governing body, not the public. (*See:* Gov. Code § 3504.)

The same is true of land use measures and the public hearing requirements typically associated with governmental impacts on property rights. (*Associated Homebuilders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 596.) The Supreme Court stated as follows:

> "Procedural requirements which govern council action ... generally do not apply to initiatives, any more than the provisions of the initiative law govern the enactment of ordinances in council. No one would contend, for example, that an initiative of the people failed because a quorum of councilmen had not voted upon it, any more than one would contend that an ordinary ordinance of a council failed because a

> majority of voters had not voted upon it." (*Id.*, at p. 594, fn. omitted.)

Procedural rules governing council action do not apply to citizen-sponsored measures covering the same subject. While post-election procedural conditions may apply, the Courts continue to draw distinctions between the two types of measures. (*Building Industry Assn. v. City of Camarillo* (1986) 41 Cal.3d 810.)

In the *Camarillo* case, the Supreme Court applied a post-election procedural rule to litigation involving a citizen-sponsored measure, but did not apply a pre-election procedural rule that applies to City Councils. The Court applied Evidence Code § 669.5, which shifts the burden of proof to the City in any challenge of an ordinance alleged to place severe restrictions on needed housing, regardless of how it is adopted (city council approved or citizen initiative). However, the Supreme Court refused to require a citizen-sponsored measure to have to comply with pre-election procedural requirements that would show that the legislation does not illegally restrict housing opportunities. (Gov. Code § 65863.6.) A city council-sponsored measure would have to comply with the Government Code's procedural requirements showing the measure did not interfere with housing opportunities.

The differing treatment between the two requirements is consistent with the manner in which courts treat citizen-sponsored measures. They are not subject to pre-election rules applicable to city councils such as notice and hearing requirements; CEQA compliance; developing potential restrictions on housing; procedural requirements for land use approvals; and the "meet and confer" requirements under MMBA.

Even with these restrictions preventing the application of pre-election procedural barriers to citizen-sponsored initiatives, PERB, a state agency, with oversight responsibilities over the "meet and confer" requirements applicable to local governments in labor relations have taken

the unprecedented step of trying to pretend that the CPR Initiative is a "so-called citizens' initiative". (P.E., 1:1:00005:1-9.) Even when presented with certified evidence taken from official records that the CPR Initiative is a valid, citizen-sponsored measure, they continue to act as if they have jurisdiction over the electoral process and rush to hold an administrative hearing to declare it invalid. Case law is clear that pre-election procedural steps applicable to city councils do not apply to citizen-sponsored initiatives and only election laws govern the placement of initiatives on the ballot.

B. State Election Laws Do Not Make Allowance For Procedural Hurdles Applicable To City Council Actions.

The procedural process for charter amendments is a "statewide concern" and is controlled by the Constitution and state implementing election laws. (*District Election, etc., Com. v. O'Conner* (1978) 78 Cal.App.3d 261, 271.) The basic requirements for charter elections are found in the Elections Code. (Elections Code §§ 9255-9269.) The Elections Code also has general rules applicable to all initiatives, including charter measures. (Elections Code §§ 9200-9226; *see, generally, Jeffery v. Superior Court (City of Huntington Beach)* (2004) 102 Cal.App.4th 1, 7 (applying Elections Code § 9214 to a charter amendment.).) One of those requirements is that the City Council must either adopt a circulated initiative or place it on the ballot without alteration. (Elections Code §9214(a) & (b) .)

The City Council is given only one other choice. It can send the measure to its staff for a report, to be brought back within thirty days, of its fiscal or other impacts. (Elections Code § 9212.) Once it receives the report from its staff, it must still either place the measure on the ballot or adopt it without change. (*Save Stanislaus Area Farm Economy v. Board of Supervisors* (1993) 13 Cal.App.4th 141, 148-149.) If it is going to place it

on the ballot, it must do so "immediately" and without alteration. (Elections Code § 9214(b).)

There is no option for the "meet and confer" process or any other process not set out above. If the city council wants to do anything to study or delay the measure, it has thirty days to seek information about the measure. The reporting requirements under 9212 do not give the city council time to engage in the "meet and confer" process; CEQA analysis or any other procedural requirement imposed on council actions. If a city council desires to place a competing measure on the ballot, it must first comply with any procedural requirements that the citizen-sponsored measure does not have to follow. In fact, in the case that found CEQA applies only to council-sponsored initiatives, the Court addressed this inequity argument as follows:

> Amici curiae City and County of San Francisco and others argue that requiring CEQA compliance for city-council-generated initiatives will handicap a city in responding to a voter-sponsored land use initiative by offering its own alternative because the process of CEQA compliance cannot be completed before the voter-sponsored initiative must be placed on the ballot. It is not within the province of the court to create exceptions to the CEQA mandate that discretionary projects that may have a substantial impact on the environment be subjected to CEQA review, however. And, as noted above, if a city or county believes the voter-sponsored initiative is ill-advised because it will have an adverse impact on the environment, it may refer the matter for an abbreviated environmental review pursuant to Elections Code sections 9111 and 9112. That review may then be made available to the voters. Contrary to the assertion of the City and County of San Francisco, mandatory CEQA review for city or county-generated initiatives that may affect the environment need not

> silence the voices of cities and counties on controversial issues. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 190.) (*emphasis added.*)

The distinction between citizen and council-sponsored measures can lead to perceived inequities between the two alternative methods of bringing issues to the ballot. However, those types of issues are left to the Legislature to decide, not the Courts. If the Legislature wishes to prolong the citizen-sponsored initiative process and add procedural roadblocks, it can do so with future legislation. Of course, those procedural roadblocks would have to pass constitutional muster. Except for the thirty day study period under 9212, the Legislature has chosen not to add any barriers to the public's access to the ballot. (Stats. 1994, c. 920 (S.B. 1547), § 2.)

The MEA and PERB have chosen to attempt a "Hail Mary" pass to argue, against the verified public record, that the CPR Initiative is a City of San Diego measure rather than a true citizen measure. The reason for this tactical choice is that they are painfully aware that the CPR Initiative is not subject to the "meet and confer" procedural requirements. There is no theory in law or equity that allows an administrative agency to control the placement on the ballot of a People's Charter Amendment that is certified by elections officials to qualify for the ballot. No matter what personal involvement that elected officials have had in supporting the CPR Initiative, it cannot change the fact that the CPR Initiative received approximately 115,000 signatures from registered voters in the City of San Diego. It must remain on the ballot and not be subject to frivolous attacks from the State on behalf of public sector labor unions.

V.

CONCLUSION

This Writ seeks to require a constitutionally-intrusive administrative hearing to go forward before an election. As a citizen-sponsored measure,

it is, without a doubt, outside of PERB's jurisdiction. MEA seeks a favorable forum to question the legality of the CPR Initiative and question elected officials about their contacts with private citizens. They do not question the substance of the measure. They attempt to apply a procedural rule conflicts with the California Constitution and the California Election laws on the subject. They are attempting to make new law that allows an administrative body to ignore the clearly defined procedures under the Election Code to interfere with a public election.

Rather than waiting until after the election, MEA and PERB have chosen to ignore certified public records showing that the CPR Initiative is a citizen-sponsored measure so that it can hold its hearings and trumpet to the public that they should not vote for the measure. They have no legal theory that allows PERB, this Court, or any other Court to ignore 115,000 valid signatures that placed the Charter Amendment on the ballot. PERB is proceeding down a road to deny a free and fair vote of the people on a Charter Amendment that exercises the plenary power of the People to control "compensation" paid for through tax dollars. (Cal. Const. Art. XI, § 5(b) .)

Giving MEA a public forum, at taxpayer's expense would violate every principle of direct democracy. This Writ should be denied.

DATED: April 20, 2012

LOUNSBERY FERGUSON ALTONA & PEAK

KENNETH H. LOUNSBERY
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CERTIFICATE OF WORD COUNT

I certify pursuant to CRC § 8.204(c)(1) that Real Parties in Interest, Catherine A. Boling, T.J. Zane and Stephen B. Williams' Opposition to the San Diego Municipal Employees Association's Petition for Writ of Mandate and Immediate Stay is proportionally spaced, has a typeface of 13 points or more, and contains 5,020 words, excluding the cover, the tables, signature bloc and this certificate, which is less than permitted by the Rules of Court. Counsel relies on the word count feature of the word processing program used to prepare the brief.

DATED: April 20, 2012

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