

Filed
Superior Court of California,
Sacramento
02/13/2024
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By _____, Deputy
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16 PROTECT KIDS CALIFORNIA and
17 JONATHAN ZACHRESON

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF SACRAMENTO**

20 PROTECT KIDS CALIFORNIA and
21 JONATHAN ZACHRESON,
22 Individually and on behalf of PROTECT
23 KIDS CALIFORNIA

24 Petitioners,

25 v.

26 ROB BONTA, in his official capacity as
27 Attorney General of the State of
28 California and DOES 1-50, inclusive,

Respondents.

Case No.

ELECTION MATTER PRIORITY (CCP §35)

VERIFIED PETITION FOR:

- (1) WRIT OF MANDATE (ELECTION CODE § 13314)
- (2) DECLARATORY RELIEF
- (3) VIOLATION OF FREE SPEECH (CAL. CONST., ART. 1, SEC. 2)
- (4) VIOLATION OF FREE SPEECH (U.S. CONST., AMEND. I)

BY FAX

1
2 Department:

3 Judge:

4 Action filed:

5 Trial date: None set

6 For causes of action against Respondent Rob Bonta, in his official capacity as Attorney
7 General of the State of California (“Respondent”), and DOES 1-50, inclusive, and each of them
8 (hereinafter, collectively “Respondents”), Petitioners Protect Kids California and Jonathan
9 Zachreson (hereinafter, collectively “Petitioners”) allege:

10 **PARTIES**

11 1. Petitioner Protect Kids California, a 527 organization, is a committee formed
12 under A Students First California Committee, a legal entity.

13 2. Petitioner Jonathan Zachreson (“Zachreson”) is a resident of Placer County,
14 California, a registered California voter, and the proponent of ballot initiative No. 23-0027A2,
15 currently entitled “Restricts Rights of Transgender Youth. Initiative Statute” (“Initiative”).

16 3. Petitioner Zachreson is a member of the Executive Committee for Protect Kids
17 California.

18 4. Petitioners have standing to seek this writ of mandate as the proponents of the
19 Initiative, and Zachreson as an elector under Elections Code section 13314(a)(1).

20 5. Respondent Rob Bonta is a resident of the State of California, conducts business
21 in the County of Sacramento, is the Attorney General of the State of California, and is being
22 sued in his official capacity.

23 6. Petitioners sue Respondents DOES 1 through 50, inclusive, by fictitious names.
24 Petitioners do so because the true names and/or capacities of DOES 1 through 50 are unknown
25 to Petitioners, or in the alternative, Petitioners are unaware of what roles such Respondents may
26 have played in carrying out the wrongdoing described herein. When the true names, capacities
27 and/or facts establishing the fictitiously named Respondents’ culpabilities are ascertained,
28

1 Petitioners will amend this Petition to so specify. For now, Petitioners are informed and believe,
2 and thereon allege, each fictitiously named Respondent is responsible in the same manner,
3 means or degree for the events and occurrences described herein and proximately caused, or
4 materially contributed to the proximate cause of, Petitioners' harm as herein alleged.

5 7. Petitioners are informed and believe, and thereon allege, at all times relevant
6 hereto, and in doing the acts and /or engaging in the omissions alleged herein, all Respondents,
7 including DOES 1 through 50, inclusive, and each of them, in addition to acting for himself,
8 herself, or itself or themselves, and on his, her or its individual behalf, were the agent(s),
9 servant(s), employee(s), partner(s), joint venture(s), co-conspirator(s), aiders and abettor(s),
10 representative(s), surety(ies), and/or alter egos of some or all of the other Respondents for the
11 purpose of carrying out Respondents' intended unlawful purpose, with the knowledge, consent,
12 authority, and/or ratification of Respondents.

13 14 **II. JURISDICTION AND VENUE**

15 8. This Court has personal jurisdiction over Respondent in accordance with the
16 Code of Civil Procedure section 395, on the grounds that the wrongful conduct described herein
17 was committed, and injuries were sustained, in Sacramento County, California. Petitioners have
18 standing to bring this action pursuant to Elections Code section 13314, and venue is proper
19 under Elections Code section 11314(b).

20 **III. PREFERENTIAL HEARING SCHEDULING**

21 9. Pursuant to Civil Code of Procedure section 35, proceedings related to ballot
22 measures are given precedence. Section 35 states:

23 (a) Proceedings in cases involving the registration or denial of registration of
24 voters, the certification or denial of certification of candidates, the certification or
25 denial of certification of ballot measures, election contests, actions under Section
26 20010 of the Elections Code, and actions under Chapter 2 (commencing with
27 Section 21100) of Division 21 of the Elections Code **shall be placed on the
28 calendar in the order of their date of filing and shall be given precedence.**

(b) This section shall remain in effect only until January 1, 2027, and as of that
date is repealed, unless a later enacted statute, that is enacted before January 1,
2027, deletes or extends that date. (Code of Civ. Pro. § 35, emphasis added).

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IV. GENERAL ALLEGATIONS

10. On September 25, 2023, Petitioners submitted and filed with Respondent Rob Bonta the ballot initiative entitled “Protect Kids of California Act of 2024,” Initiative 23-0027A2, which titled each section therein as follows: “Protect Kids of California Act of 2024,” along with the “Protect Girls’ Sports and Spaces Act” and the “Protect Children from Reproductive Harm Act.”

11. Pursuant to Elections Code section 9001(a), Petitioners requested a circulating title and summary of the chief purpose and points of the Initiative. A true and correct copy of Petitioners’ September 25, 2023 submission is attached as Exhibit A.

12. On October 30, 2023, Petitioners submitted and filed amended language for the Initiative and requested a circulating title and summary using the amended language. A true and correct copy of the Petitioners’ request and final language is attached as Exhibits B and B-1.

13. On November 14, 2023, the California Legislative Analyst Office provided the Respondent with its analysis of the Initiative. A true and correct copy of that letter is attached as Exhibit C.

14. On November 29, 2023, Respondent’s office prepared a title and summary of the chief purpose and points for the Protect Kids of California Act of 2024. (Exhibit D.)

15. Respondent’s prepared title and summary is as follows:

RESTRICTS RIGHTS OF TRANSGENDER YOUTH. INITIATIVE STATUTE. • Requires public and private schools and colleges to: restrict gender-segregated facilities like bathrooms to persons assigned that gender at birth; **prohibit transgender female students (grades 7+) from participating in female sports.** Repeals law allowing students to participate in activities and use facilities consistent with their gender identity. • Requires schools to notify parents whenever a student under 18 asks to be treated as a gender differing from school records **without exception for student safety.** • **Prohibits gender-affirming health care** for transgender patients under 18, even if parents consent or treatment is medically recommended. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Potentially minor savings in state and local health care costs of up to millions of dollars annually from no longer paying for prohibited services for individuals under the age of 18. These savings could be affected by many other impacts, such as individuals seeking treatment later in life. Minor administrative and

1 workload costs to schools, colleges, and universities, up to several millions of
2 dollars initially. Potential, but unknown, cost pressures to state and local
3 governments related to federal fiscal penalties if the measure results in federally
4 funded schools, colleges, universities, or health care providers being deemed out
5 of compliance with federal law. (23-0027A2, emphasis added.) (Exhibit D.)

6 16. Respondent’s prepared title and summary of the Initiative violates Elections
7 Code sections 9004(a) and 9051, as it is branded with a misleading, false, and prejudicial title,
8 and contains an inaccurate, blatantly argumentative, and prejudicial summary.

9 17. Respondent’s title and summary do not accurately state the “chief purposes and
10 points of the proposed measure,” as required under Elections Code section 9004(a).

11 18. Respondent’s title and summary are not a “true and impartial statement of the
12 purpose of the measure” as required by Elections Code section 9051(e). Rather, Respondent’s
13 title and summary are “likely to create prejudice ... against the proposed measure.” *Id.*

14 19. Respondent’s lack of impartiality related to the subject matter of the Initiative
15 made it impossible for Petitioners to receive a true, neutral, and unprejudiced statement. For
16 several years Respondent has repeatedly revealed his personal bias against requiring school
17 transparency with parents on the issue of a child’s publicly expressed gender confusion and
18 demonstrated his vested interest in defeating the Initiative.

19 20. On August 28, 2023, Respondent filed a civil rights action in *The People of the*
20 *State of California, ex rei, Rob Bonta, Attorney General of the State of California v. Chino*
21 *Valley Unified School District* (“CVUSD lawsuit”) (Case No. CIV SB 2317301), the subject
22 matter of which is precisely on an issue addressed in the Initiative. A true and correct copy of
23 the CVUSD lawsuit is attached as Exhibit E.

24 21. On December 13, 2023, Respondent intervened as an amicus in a second
25 California lawsuit case entitled *Mae M. v. Komrosky* (Case No. CVSW2306224) involving
26 Temecula Valley Unified School District (“TVUSD”). This case directly relates to a competing
27 aspect of the Initiative. A true and correct copy of the TVUSD amicus brief is attached as
28 Exhibit F.

1 (b) Issued a press release on September 26, 2023 and letter to all California
2 Superintendents for each of the California School Districts and school board members, claiming
3 that the *Mirabelli* lawsuit and injunction order is limited, and that the Department of Justice’s
4 position is that schools are **not** to inform parents if their children are struggling with gender
5 issues or experiencing gender dysphoria. Exhibit I is a true and correct copy of the September
6 26, 2023 press release.

7 (c) Threatened a lawsuit on December 26, 2023, against Escondido Unified
8 School District Superintendent Luis Rankins-Ibarra if his school district informed parents of
9 their transgender identity while at school. *See Exhibit J*, at ¶ 3. Exhibit J is a true and correct
10 copy of an excerpt from Mr. Rankins-Ibarra’s testimony from the *Mirabelli* lawsuit.

11 (d) Led 16 attorneys general in filing a January 8, 2024 amicus brief in
12 support of a school’s decision to covertly facilitate the social transition of an 11-year-old girl
13 into a male identity by withholding information about the child’s gender expression from the
14 child’s mother. (*Regino v. Staley et al.*, 2:23-cv-00032-JAM-DMC (E.D. Cal. Jul. 10, 2023)). A
15 true and correct copy of the press release announcing Respondent’s amicus in support of
16 defendants the Chico Unified School District (“CUSD”) is attached as Exhibit K. In that case,
17 Aurora Regino, a single mother, sued CUSD for secretly treating her daughter as a boy without
18 Ms. Regino’s knowledge or consent. After Ms. Regino removed her daughter from the school
19 the young girl abandoned the male persona. *See Exhibit L*, a true and correct copy of an excerpt
20 from Our Duty’s amicus brief filed in the Florida case of *Littlejohn v. School Board of Leon*
21 *County*4:2021cv00415 (U.S. Distr. FL October 18, 2021).

22 (e) Filed an amicus brief on December 11, 2023, supporting a school’s right
23 to maintain secrets from parents against TVUSD for a new policy requiring parental notification
24 if their student is struggling with gender issues or experiencing gender dysphoria. (*See Exhibit*
25 M.) Respondent had previously issued a public rebuke of TVUSD’s parental notification
26 policy. A true and correct copy of the August 23, 2023 press release is attached as Exhibit N.

27 (f) Issued a statement on September 15, 2023, condemning the Dry Creek
28 Joint Elementary School District, a K-8 school, for passing a policy requiring parental

1 notification if their student is struggling with gender issues or experiencing gender dysphoria. A
2 true and correct copy of Respondent’s press release is attached as Exhibit O.

3 (g) Issued a statement on September 7, 2023, attacking the Rocklin Unified
4 School District for its parental notification policy that closely mirrors Petitioners’ Initiative. A
5 true and correct copy of the press release is attached as Exhibit P.

6 (h) Issued a denouncement on August 25, 2023, to the Anderson Union High
7 School District for its parental notification policy that requires parental notification if their child
8 is asking to be treated as a sex that does not align with their biological sex. A true and correct
9 copy of the press release is attached as Exhibit Q.

10 (i) Issued a press release on August 11, 2023, opposing the Murrieta Valley
11 Unified School’s parental notification policy, a policy which has the same effect as a main
12 aspect of the Initiative. A true and correct copy of the press release is attached as Exhibit R.

13 24. Respondent has an obvious and oft-expressed preference in defending school
14 secrecy regarding trans-identifying children, incentivizing him to ensure that the Initiative be
15 presented in a negative light with unfavorable wording in order to guarantee it does not garner
16 sufficient signatures or succeed on the ballot. Respondent’s vested interest made it impossible
17 for him to provide a neutral title and summary.

18 25. Any success of the Initiative in qualifying for the ballot would also adversely
19 affect Respondent’s lawsuit against CVUSD, Respondent’s positions as amicus in the *Regino*
20 and *Mae* matters, and Respondent’s status and interests as a named defendant in the *Mirabelli*
21 lawsuit.

22 26. Respondent’s animus towards parents being made aware of their children’s
23 gender dysphoria—even when that dysphoria places those children at a higher risk of self-
24 harm—has been apparent in his public statements and his legal actions, and his bias and conflict
25 of interest now extend to his deliberately false and negative wording of the Initiative’s title and
26 summary.

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1 **B. Sex-Based Bathrooms and Changing/Shower Rooms**

2 27. Respondent’s disdain for private changing rooms, bathrooms and sports that are
3 solely accessible to females (humans whose bodies are developed to produce large gametes) is
4 equally apparent, making it predictable for him to provide a partial, purposely-confusing title
5 and summary on this aspect of the Initiative. To that end, Respondent:

6 (a) Announced, on November 29, 2021, his joinder in the amicus brief in a
7 Florida case advocating for a trans-identified female’s use of male restrooms at school. A true
8 and correct copy of Respondent’s press release is attached as Exhibit S.

9 (b) Announced, on November 29, 2023, his joinder in an amicus brief in an
10 Idaho case in support of students choosing their bathrooms based upon a gender identity that
11 only they know. A true and correct copy of Respondent’s press release is attached as Exhibit T.

12 **C. Sex-Based Sports**

13 28. Respondent’s conduct also consistently demonstrates his commitment to
14 mandating the inclusion of male bodies in female sports teams, with no regard for the safety of
15 females, their comfort, or their loss of opportunities. For example, Respondent has:

16 (a) Announced, on October 12, 2023, his joinder in an amicus brief in the
17 Ninth Circuit in the Arizona case of *Doe v. Horne* (9th Cir. Case Nos. 23-16026, 23-16030;
18 D.Ariz. Case No. 4:23-cv-00185-TUC-JGZ) and support of placing males on female sports
19 teams and dispensing with biological reality to replace it with a belief of “femaleness.” A true
20 and correct copy of Respondent’s press release is attached as Exhibit U.

21 (b) Announced in July of 2023 that he restricted state-funded travel to
22 Missouri, Wyoming, and Nebraska because these states passed laws to ensure Title IX continues
23 to comply with its intent of protecting female sports, adding to the list of other states (Georgia,
24 Arizona, Indiana, Louisiana and Utah in 2022, and North Dakota, Montana, Arkansas, Florida
25 and West Virginia in 2021) that he had previously restricted state travel to due to their laws
26 prohibiting gender interventions on minors and excluding biological males from participating as
27 females on sports teams. A true and correct copy of Respondent’s press releases are attached as
28 Exhibits V and W.

1 (c) Issued a press release on April 4, 2023 with the title “Attorney General
2 Bonta Stands Up Against Absurd Legislative Attack on Transgender Schoolchildren,”
3 announcing that he had joined an amicus brief in a West Virginia case to advocate for a student
4 with a male body to participate in a girls’ cross-country and track team based upon gender
5 identity. A true and correct copy of Respondent’s press release is attached as Exhibit X.

6 (d) Announced on November 11, 2022, that he joined an amicus brief in
7 *A.M. v. Indianapolis Public Schools* (Case No. 22-cv-01075-JMS-DLP) to support a male who
8 wants to play softball on a female team, based upon his belief that he is a girl. A true and
9 correct copy of Respondent’s press release is attached as Exhibit Y.

10 (e) Issued a press release on October 15, 2021 that he joined an amicus brief
11 in a Connecticut case in which female track team members sued because of discrimination due
12 to two male runners taking titles designated for females. A true and correct copy of
13 Respondent’s press release is attached as Exhibit Z.

14 **D. Protections Against Sex-Change Interventions on Children**

15 29. Respondent has publicly denounced any constraints on minor children engaging
16 in irreversible medical interventions to change their body to resemble a body that does not align
17 with their biological sex. His public pronouncements made it clear that Respondent would not
18 and cannot overcome his implicit and explicit bias so as give a neutral, accurate, and complete
19 title and summary. Respondent has:

20 (a) Issued a press release on December 13, 2023, announcing that he is the
21 lead party in the amicus brief in a lawsuit to overturn an Arkansas law titled “Save Adolescents
22 from Experimentation (SAFE) Act.” The Arkansas SAFE Act safeguards children from
23 irreversible medical interventions that sterilize children and remove un-diseased body parts of
24 children. A true and correct copy of Respondent’s press release is attached as Exhibit AA.

25 (b) Announced on December 4, 2023, that he is filing a second amicus brief
26 in a Florida matter to support the claimants who want to overturn the ban on Medicaid coverage
27 for the (1) elective removal of healthy genitals, sex organs and secondary sex characteristics of
28 children, (2) suppression of natural puberty, and (3) administration of cross-sex hormones

1 despite Florida’s systematic review of the evidence that concluded that there was a paucity of
2 evidence demonstrating a benefit of those interventions on children.² A true and correct copy of
3 Respondent’s press release is attached as Exhibit BB.

4 (c) Publicized on November 16, 2023, that he is the lead attorney filing an
5 amicus brief in the legal challenge to Oklahoma’s ban on medical interventions that alter a
6 child’s body to appear as the opposite sex. A true and correct copy of Respondent’s press
7 release is attached as Exhibit CC.

8 (d) Announced on September 27, 2023, that he is the lead attorney general on
9 the amicus brief in the Indiana case addressing whether children should be permitted to have
10 their puberty stopped, use cross-sex hormones or undergo surgeries to their secondary sex
11 characteristics. A true and correct copy of Respondent’s press release is attached as Exhibit DD.

12 (e) Issued a press release on August 17, 2022, announcing that he is leading
13 the group of attorneys general filing an amicus brief in an Alabama case in support of enjoining
14 and repealing the Alabama’s Vulnerable Child Compassion and Protection Act, a law passed to
15 protect minors from puberty blockers, cross-sex hormones, and surgeries on healthy secondary
16 sex characteristics. A true and correct copy of Respondent’s press release is attached as Exhibit
17 EE.

18 **E. Respondent’s Summary Does Not Provide the Chief Purpose of the Initiative**

19 30. Pursuant to Elections Code section 9004, “the Attorney General shall prepare a
20 circulating title and summary of the chief purposes and points of the proposed measure.”

21 31. Respondent completely ignored a chief purpose of the Initiative, which is to
22 define the terms “female” and “male.” The importance and effect of Respondent’s decision to
23 exclude this purpose from circulating title and summary of the Initiative cannot be overstated.

24 32. Neither “female” nor “male” are defined in any California code or regulation, as
25 is admitted by the California Legislative Analyst Office. (*See Exhibit C, p. 3.*)

26
27 ² Florida Agency for Health Care Administration available at <https://ahca.myflorida.com/let-kids-be-kids>
28 (accessed February 9, 2024).

1 33. Defining the terms “male” and “female” is a chief purpose of the Initiative and it
2 is completely ignored by Respondent.

3 34. This aspect of the Initiative is of supreme importance. While historically the
4 definitions of female and male were commonly understood, the advent of new gender ideology
5 theories requires a clear definition of these terms, as other state legislative initiatives have
6 recognized:

7 (a) The state of Oklahoma passed a law defining “female,” doing so by
8 executive order on August 1, 2023. A true and correct copy of Oklahoma’s Executive Order
9 2023-20 is attached as Exhibit FF.

10 (b) Tennessee’s law Senate Bill 1440 effective July of 2023 recognized the
11 immutable differences between man and woman codifying into law the biological definition of
12 “female” and “male.” A true and correct copy of law is attached as Exhibit GG.

13 (c) Kansas passed a law entitled “Establishing the women’s bill of rights to
14 provide a meaning of biological sex . . . “ that defines “female” and “male” using scientific
15 definitions of the terms in April of 2023. A true and correct copy of law is attached as Exhibit
16 HH.

17 (d) Montana also enacted legislation that provides a biological definition for
18 females and males. A true and correct copy of Montana’s law is attached as Exhibit II.

19 35. Neither the circulating title nor the summary prepared by Respondent mention
20 this chief aspect of the Initiative – namely defining “female” and “male”.

21 **F. Respondent’s Circulating Title Violates the Elections Code**

22 36. Pursuant to Elections Code section 9051(e), Respondent is required to “give a
23 true and impartial statement of the purpose of the measure in such language that the ballot title
24 and summary shall neither be an argument, *nor be likely to create prejudice*, for or against the
25 proposed measure.” (Emphasis added.) Respondent’s title is neither true nor impartial. Instead,
26 it is an argument intended, and does prejudice the voters of California against both signing and
27 supporting the petition.

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1 37. The title presented by Petitioners is “PROTECT KIDS OF CALIFORNIA ACT
2 OF 2024.” The title prepared by Respondent is “RESTRICTS RIGHTS OF TRANSGENDER
3 YOUTH. INITIATIVE STATUTE.” The contrast is immediately apparent: Petitioners’ title
4 *affirmatively* denotes that the Initiative will protect kids, while Respondent’s title *negatively*
5 paints the Initiative as restricting kids’ rights. The diametrically opposed characterizations of the
6 Initiative reveal Respondent’s desire to create prejudice against the Initiative, contravening state
7 law.

8 38. Additionally, Respondent’s framing of the Initiative itself as a “restriction”
9 instead of a “protection” is a striking anomaly in the context of legislation and initiatives, which
10 are customarily written with affirmative or unbiased language:

11 (a) California enacted a prohibition on youth smoking, titled the “Stop
12 Tobacco Access to Kids Enforcement Act,” not the “Restricts Rights of Youth Smokers Act.”
13 (*See* Business and Professions Code §22950.)

14 (b) Title IX, the federal civil rights law prohibiting sex-based discrimination,
15 was titled the “Education Amendments of 1972,” not the “Restricts Rights of Males to Play in
16 Female Sports Act.” (*See* 20 U.S.C. §162, *et seq.*)

17 (c) The 2022 referendum that continued banning the sale of flavored tobacco
18 to minors, a proposition supported by Governor Gavin Newsom and the Democratic Party, was
19 named by Respondent the “Referendum Challenging a 2020 Law Prohibiting Retail Sale of
20 Certain Flavored Tobacco Products.” This is a neutral, straightforward title.³

21 (d) In 2023, a California legislator introduced Assembly Bill 734 (“AB734”),
22 a bill to preclude children under the age of 12 from playing tackle football. AB734 was given
23 the nondescript title “Youth Tackle Football” instead of “Restricts Rights of Children to Play
24 Football.”

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28 [https://ballotpedia.org/California_Proposition_31,_Flavored_Tobacco_Products_Ban_Referendum_\(2022\)#cite_note-sos-7](https://ballotpedia.org/California_Proposition_31,_Flavored_Tobacco_Products_Ban_Referendum_(2022)#cite_note-sos-7)

1 (e) On January 29, 2024, Respondent announced his support for a bill called
2 “*Protecting Kids from Social Media Addiction Act*” (emphasis added) to prohibit social media
3 and online platforms from sending minors addictive social media feeds and notifications during
4 overnight or school hours without the consent of a parent or guardian (Assembly Bill 1949,
5 hereinafter “AB1949”). Exhibit JJ is a true and correct copy of the January 29, 2024 press
6 release. Not only is AB1949’s title positive and *identical* in form and structure to Petitioners’
7 proposed language, but Respondent’s support of AB1949 as titled and summarized shows his
8 bias against Petitioners’ Initiative. Respondent is willing to acknowledge and protect a parent’s
9 and guardian’s right to dictate what social media content their minor child consumes, but not
10 their right to know that their child is experiencing gender dysphoria.

11 39. The aforementioned examples illustrate the standard legislative practice of
12 preparing a bill title that either engenders public support by utilizing positive language about the
13 impacts of the bill or a bill title that uses neutral language to avoid framing restrictions or
14 limitations in a negative way. This is particularly true for acts which affect children.

15 40. Respondent knows full well the importance of language in persuading the public.
16 Respondent believes that social media is harmful to children, so he is supporting a bill called
17 “Protecting Kids from Social Media Addiction Act,” which is strikingly similar to the name of
18 Petitioners’ Title for the Initiative – “Protect Kids of California Act.” But in this case,
19 Respondent rejected the phrase he otherwise approved of, and he did so due to his explicit and
20 systemic bias against any safeguards for biological females; the rights for children to grow up
21 with their natural unaltered bodies; and the well-settled, fundamental, constitutionally protected
22 rights and duties of parents and guardians to care for their children without state interference.

23 41. Framing an issue as a “restriction” or a “protection” is a widely known strategy
24 to bias public opinion against or for a particular issue.

25 42. The Public Policy Institute of California (“PPIC”) conducted a survey of 1,539
26 California adult residents from January 13-20, 2023. The results, published by PPIC in
27 February of 2023, indicated that 74% of adults surveyed supported laws to “*protect* transgender
28 individuals from *discrimination*,” even though a subsequent national Gallup poll in May 2023

1 found that 69% of voters agreed that transgender athletes should only be allowed to play on
2 sports teams that match their birth gender.⁴ The most likely explanation for broad majority
3 support of these contrasting ideas is the influence of the affirmative language used in the PPIC
4 poll. Thus, replacing Petitioners’ title with language describing that the Initiative “restricts
5 rights” is a deliberate attempt by the Respondent to create prejudice based on well-known
6 strategies to manipulate public opinion.

7 43. In 2021, the Public Broadcasting Service (“PBS”) commissioned a poll asking
8 respondents if they “support or oppose legislation that would *prohibit* gender transition-related
9 medical care for minors;” 66% opposed the legislation.⁵ However, in a separate poll in 2022,
10 78.7% agreed that “underage minors should be required to wait until they are adults to use
11 puberty blockers and undergo permanent sex change procedures.”⁶ Once again, language which
12 uses a negative framework such as “prohibit” creates prejudice against the issue, just as
13 Respondent’s title to “restrict rights” creates prejudice against the Initiative.

14 44. Research conducted on the overall issue of language used to frame a ballot
15 initiative also confirms the results of the sample polls. Multiple studies have confirmed that
16 framing of the language in a ballot initiative to restrict rights “drastically reduced” support for

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22 ⁴ PPIC Statewide Survey: Californians and Their Government, February 2023; available at
23 <https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-government-february-2023/>
(accessed January 29, 2024 [emphasis added]); Jeffrey Jones, *More Say Birth Gender Should Dictate Sports*
24 *Participation*, available at <https://news.gallup.com/poll/507023/say-birth-gender-dictate-sports-participation.aspx>
(accessed February 8, 2024).

25 ⁵ See “New poll shows American overwhelmingly oppose anti-transgender laws,” PBS News Hour, April
26 16, 2021; available at <https://www.pbs.org/newshour/politics/new-poll-shows-americans-overwhelmingly-oppose-anti-transgender-laws>
(accessed January 29, 2024 [emphasis added]).

27 ⁶ See The Trafalgar Group & Convention of States Action, Nationwide Issues Survey, October 2022;
28 available at <https://www.thetrafalgargroup.org/wp-content/uploads/2022/10/COSA-Minors-Full-Report-1014.pdf>
(accessed January 29, 2024).

1 one measure, and that even experienced voters are susceptible to framing effects.⁷ The same
2 effect occurs with ballot titles.⁸

3 45. Thus, replacing Petitioners’ title with language describing that the Initiative
4 “restricts rights” is a deliberate attempt by Respondent to create prejudice based on well-known
5 strategies to manipulate public opinion. Respondent’s drafting of the circulating title to create
6 prejudice against the Initiative is a wholesale violation of Elections Code section 9051(e).

7 46. Respondent has a history of preparing misleading and prejudicial initiative titles
8 and is no doubt aware of the research and effects of biased language to improperly influence the
9 initiative process in California.

10 47. This pattern of bias is notorious and widely acknowledged in the press, including
11 in editorials from the Los Angeles Times, San Diego Union Tribune, San Jose Mercury News,
12 and San Francisco Chronicle.

13 48. In October 2023, the San Francisco Chronicle Editorial Board suggested to
14 “transfer the power to write ballot measure titles and summaries – *which play a critical role in*
15 *influencing voters* - from the elected, *partisan* attorney general...” since “[h]aving a partisan
16 official – who since 1999 has been a Democrat – control perhaps the most consequential
17 language on the ballot is a clear conflict of interest.”⁹ (emphasis added.)

18 49. To date, 23 states in the nation have passed legislation that safeguards children’s
19 natural bodies, sexual function, and ability to procreate. The titles of the acts or laws are all

21 ⁷ Rossier, Voter experience and ballot language framing effects: Evidence from a survey experiment, 102
22 Social Science Quarterly 2955, Sept. 15, 2021, <https://doi.org/10.1111/ssqu.13068>; Craig M. Burnett & Vladimir
23 Kogan, *When Does Ballot Language Influence Voter Choices? Evidence from a Survey Experiment*, 32 Political
24 Communication 109 (2010, last revised 2014), available at <https://ssrn.com/abstract=1643448> (accessed on Feb. 8,
2024) (finding that “the language used to describe a ballot measure does indeed have the potential to affect election
outcomes, including measures dealing with contentious social issues affecting individual rights”).

25 ⁸ See Jeff Hastings & Damon Cann, *Ballot Titles and Voter Decision Making on Ballot Questions*, 46 State
26 & Local Gov’t Rev. 118, (2014), available at <https://doi.org/10.1177/0160323X14535410> (accessed on Feb. 8,
2024).

27 ⁹ San Francisco Chronicle Editorial Staff, *California Desperately needs ballot measure reform. Will*
28 *Democrats ever find the courage to do it?*” date October 14, 2023 available at
<https://www.sfchronicle.com/opinion/editorials/article/california-ballot-measure-reform-democrats-18360315.php>
(accessed on February 5, 2024).

1 framed in a neutral or positive manner – highlighting that the bills are protecting children.
2 (Declaration of C. Erin Friday (“Friday Decl.”), ¶4)(See also, Request for Judicial Notice.)

3 50. The title and summary are of utmost importance and can tip the scale. According
4 to the National Conference of State Legislatures, “[t]he ballot title and summary are arguably
5 the most important part of an initiative in terms of voter education. Most voters never read more
6 than the title and summary of the text of initiative proposals. Therefore, it is of critical
7 importance that titles and summaries be concise, accurate and impartial.” “Ballot Title,”
8 Ballotpedia, https://ballotpedia.org/Ballot_title#cite_note-1 (citing National Conference of State
9 Legislatures, <https://web.archive.org/web/2/http://www.ncsl.org/programs/legismgt/elect/PrepTtl>
10 [Summ.htm](http://www.ncsl.org/programs/legismgt/elect/PrepTtlSumm.htm)).

11 51. Besides the plain language in the circulating title and summary, Respondent’s
12 concerted public campaign against the issues covered by the Initiative also makes it clear that he
13 crafted the circulating title to prejudice the public against the Initiative. While a legislative
14 solution would be ideal, judicial review is still appropriate when, as in this case, Respondent has
15 demonstrated a clear bias and has selected an overtly prejudicial circulating title in order to
16 ensure that voters believe, falsely, that the Initiative is an effort to “restrict rights” instead of an
17 effort to “protect children.”

18 52. Respondent’s circulating title is also misleading in that it claims the Initiative
19 restricts rights that do not currently exist. For example, although Respondent often publicly
20 claims that a requirement to notify parents about a student’s request to change their gender at
21 school violates a student’s right to privacy, there is no law that provides a right to privacy for a
22 minor with respect to their gender identity and parents. In fact, the inverse is true, with courts
23 still now and frequently affirming that “[a] parent’s right to make decisions concerning the care,
24 custody, control, and medical care of their children is one of the oldest of the fundamental
25 liberty interests that Americans enjoy.” (See, the order in *Mirabelli* lawsuit, at pg. 2.) A true
26 and correct copy of the court’s order is attached as Exhibit KK.

27 53. It is also disingenuous and nonsensical to argue that a child has an expectation of
28 privacy against their parents with regard to their gender identity in a public-school setting where

1 countless other students, teachers and even parents are aware of it. To claim that the Initiative
2 “restricts rights” of transgender youth in this context is not only misleading, but flies in the face
3 of privacy law and caselaw – namely, one must first have an expectation of privacy before a
4 privacy right is infringed. (*Id.*, at 17-19.)

5
6 **G. Respondent’s Unlawful Title and Summary Are Actually
Misleading and Unfairly Deter Potential Supporters of the Initiative**

7 54. On January 14, 2024, Korey Wells emailed Protect Kids California asking “How
8 do you expect this to have any chance to win with a title that says ‘restrict rights? Where is
9 your lawsuit challenging this title? . . . nobody will support something that’s framed as a
10 negative.” (Friday Decl., at ¶¶ 7-8.)

11 55. When Mr. Wells read the title and summary, he was alarmed. It was not until he
12 read the entire Initiative that he understood that the Initiative is about “protecting children with
13 mental health issues, protecting families, preserving parents’ long-standing fundamental,
14 constitutionally-protected rights to take care of their children, and following the science.”
15 (Declaration of Korey Wells (“Wells Decl.”) at ¶ 5.)

16 56. Mr. Wells supports the Initiative and embarked on gathering signatures from his
17 contacts; however, many refused to sign and/or donate because they did not believe that the
18 substance of the Initiative could be so different from the title and summary. (*Id.*, at ¶ 7.)

19 57. Mr. Wells believes that the title and summary mislead voters, is fallacious and
20 purposely designed with negative language. (*Id.*, at ¶ 8.)

21 58. Robert Lee contacted Scott Davison, a member of the Protect Kids California
22 Executive Team about the title and summary of the Initiative. (Declaration of Robert Lee (Lee’s
23 Decl.) at ¶ 3.) Lee, having read the Initiative that was submitted to the Attorney General,
24 supported all of the aspects of the Initiative and believed it was thoughtfully crafted and would
25 gain widespread support. (*Id.*, at ¶¶ 4-5.)

1 59. Lee spoke with many people who were enthusiastic to support it once the time
2 came, but once he read the title and summary provided by Respondent, he was concerned that
3 this official description would cause the Initiative to fail. (*Id.*, at ¶¶ 6-7.)

4 60. Many people with whom Lee spoke changed their minds about signing the
5 Initiative because of the title and summary, and it was clear that very few people approve of the
6 idea of “restricting rights” of anyone, despite favorable polling for the Initiative. (*Id.*, at ¶¶ 8-9.)

7 61. According to Lee, Respondent’s title and summary subvert the true intent of the
8 Initiative, which is to protect the rights of children, and his experience is that most voters have
9 and will only read the Title. (*Id.*, at ¶¶ 10-11). Lee believes that most Californians will only
10 read the Official Title, and the Respondent effectively edits the message of the Initiative in a
11 conscious attempt to cause the Initiative to fail.” (*Id.*, at ¶¶ 10-11.)

12 62. The totality of the evidence indicates that Respondent both intended and did
13 create a misleading and biased title for the Initiative to create prejudice against the Initiative,
14 despite countless options for a “true and impartial statement” that would satisfy the statutory
15 requirement.

16 63. Furthermore, alternative and lawful titles include, but are not limited to,
17 “Preserves Sex-Based Spaces, Natural Bodies and Defines the Sexes”; “Parental Notification,
18 Sex-Based Spaces, Sex Changes and Definition of the Sexes”; and “Treatment and Definition of
19 Two Sexes.” There are countless other titles that would have been neutral, including the
20 original title proffered by Petitioners, which is in keeping with many other laws enacted in
21 California that protect kids’ physical health and prevent irreversible medical harms.

22 64. Respondent’s title is clearly a violation of Section 9051(e), as it is neither true
23 nor impartial and is clearly intended to create prejudice against the Initiative.

24 **H. Respondent’s Summary Violates the Elections Code**

25 65. Respondent purposefully uses terms that are confusing to the average registered
26 voter in order to create ambiguity and doubt. Petitions which are difficult to understand are
27 often rejected.

28 ///

1 66. Respondent’s summary is unclear and confusing in its use of the term
2 “transgender female.” Specifically, Respondent’s circulating summary states that the Initiative
3 would “prohibit transgender female students (grade 7+) from participating in female sports.”
4 That could be interpreted to mean that biological females – that is, individuals born with bodies
5 developed to produce large gametes – who identify as transgender cannot play on sports teams
6 with other biological females. Thus, a biological female cannot play on female sports teams if
7 that biological female identifies as a male. This is the antithesis of what the Initiative does.

8 67. The confusion with the use of the term “female” is more glaring given that the
9 measure defines “female” as “a person whose body is developed for production of large
10 gametes whether or not eggs are produced. Female humans typically have a vagina at birth and
11 XX chromosomes.” (See Exhibit B-1.) Therefore, the summary and the Initiative use differing
12 and inconsistent definitions of “female.” This type of inconsistency is a clear and convincing
13 proof such that this court must mandate that Respondent revise the summary to use correct and
14 understandable terminology.

15 68. The California legislature is well aware of the confusion and the need to clarify
16 terms when passing regulations related to transgender individuals. *California Code of*
17 *Regulations*, title 4, section 831 states: “(a) transgender female (**male to female**) athletes who
18 are not undergoing hormone therapy and without gonadectomy are eligible for licensure and
19 participation in men's events.” (Emphasis added.) The parenthetical – “male to female” –
20 clarifies the Regulations, recognizing that the term “transgender female” needs an explanation.

21 69. There are 185 California regulations that use the term “female,” and they all
22 appear to use the term to relate to those persons or animals whose bodies are developed for
23 production of large gametes whether or not eggs are produced. (See Friday Decl., ¶5.) This
24 evidences that the most common understanding of the term “female” relates to biological sex
25 rather than gender identity.

26 70. There are 153 California statutes that use the term “female.” The usage of the
27 term “female” in these statutes relate to those humans with biological female bodies whose
28 bodies are developed to produce large gametes, e.g., Welfare and Institutions Code § 1753.7

1 [addresses female and menstrual products]; Insurance Code § 790.03 [references life insurance
2 annuities for females]; Penal Code § 318.6 [addresses exposure of female breasts]; and Penal
3 Code § 273.4 [penalizes female genital mutilation, which means “the excision or infibulation of
4 the labia majora, labia minora, clitoris, or vulva”—body parts only related to females]. (See
5 Friday Decl., ¶6.)

6 71. Some citizens reviewing the summary of the Initiative have already expressed
7 confusion as to Respondent’s use of the term “transgender female”. (See Friday Decl., at ¶10.)

8
9 **I. Respondent’s Unlawful Summary Is Actually**
Misleading Potential Supporters of the Initiative

10 72. Respondent’s circulating summary inaccurately states that schools must notify
11 the parents when a student under the age of 18 asks to be treated as a gender that differs from
12 his or her school records “**without exception for student safety.**” (See Exhibit D.)

13 Respondent’s statement that the Initiative provides no exceptions to parental notification
14 requirements is false and misleading, as demonstrated by the plain language of the Initiative.

15 73. The Initiative directly states that it does not obviate the confidentiality provisions
16 set forth in the Education Code section 49602, Family Code section 6924, and Health and
17 Safety Code section 124260, and that all these codes remain in effect. These existing codes
18 specifically provide for confidentiality between a student or child aged 12 and above and a
19 school counselor or other mental health counselor if such counselor believes that there is a
20 reason to hide the child-counselor conversation from the parents. Education Code section 49602
21 states in relevant part, “Notwithstanding the provisions of this section, a school counselor shall
22 not disclose information deemed to be confidential pursuant to this section to the parents of the
23 student when the school counselor has reasonable cause to believe that the disclosure would
24 result in a clear and present danger to the health, safety, or welfare of the student.”

25 74. The Initiative does not revise or repeal California’s mandated reporting codes for
26 abuse and neglect. These provisions of California law require that, when there is an indication

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1 of abuse of the child, the school’s mandated reporters are obligated to report such abuse or
2 neglect. (See Pen. Code § 11165, et seq.). Therefore, **there are exceptions for student safety.**

3 75. Respondent’s summary states that the measure “[p]rohibits gender-affirmative
4 care for transgender patients under 18[.]” (See Exhibit D.) This statement by Respondent is also
5 patently false.

6 76. “Gender-affirmative care” includes both mental health care and medical
7 interventions. Cal. Fam. Code § 3453.5 states:

8
9 (a) A law of another state that authorizes a state agency to remove a child from
10 their parent or guardian based on the parent or guardian allowing their child to
11 receive **gender-affirming health care** or **gender-affirming mental health care**
is against the public policy of this state and shall not be enforced or applied in a
case pending in a court in this state.

12 (b) For the purpose of this subdivision, “**gender-affirming health care**”
13 and “**gender-affirming mental health care**” shall have the same meaning as
14 provided in Section 16010.2 of the Welfare and Institutions Code.” (Emphasis
added.)

15 77. The Welfare and Institutions Code section 16010.2 also distinguishes “gender
16 affirming health care” from “gender affirming mental health care.”

17
18 78. Respondent’s summary misleads the public and is inaccurate and false. The
19 Initiative does not prohibit any minor from obtaining gender-affirmative mental health care.

20 **FIRST CAUSE OF ACTION**

21 (Mandamus, Elections Code section 13314)
22 (Against Respondent and DOES 1-50)

23 79. Petitioners restate, reallege, and incorporate by reference each and every
24 allegation contained in all prior paragraphs as though fully set forth herein.

25 80. Pursuant to the Elections Code, prior to the circulation of an initiative for
26 signatures, the Attorney General is obligated to prepare a title and summary of the proposed
27 measure. (Cal. Elec Code §§ 9002, 9004; see also Cal. Const., art. II, § 10, subdivision (d).)

28 ///

1 81. The title and summary prepared for circulation must be true and impartial, and
2 cannot be argumentative or likely to create prejudice against the proposed initiative. (Cal. Elec.
3 Code §§ 9004, 9051.)

4 82. Respondent failed to satisfy any of these criteria.

5 83. “[O]bjectively inaccurate and false information and calculated untruths that
6 substantially mislead and misinform a reasonable voter is unlawful under the Elections Code.”
7 (*Forty-Niners v. Nishioka*, 75 Cal. App. 637, 643 (1999).)

8 84. “The ballot box is the sword of democracy.” (*Id.*) “Courts have a duty to
9 ‘jealously guard the peoples right of initiative and referendum’” (*Id.*, at 644 (internal citations
10 omitted).) “[C]ourts are charged to construe the Elections Code to favor the people’s awesome
11 initiative power, ‘the statutes [are] designed to protect the elector from confusing or misleading
12 information . . . so as to guarantee the integrity of the process.’” (*Id.* (internal citations
13 omitted).)

14 85. Ballot titles and summaries that follow “essentially verbatim recitations of the
15 operative terms of the measure” and that use words that are subject to common understanding
16 are looked upon with favor. (*Lungren v. Superior Court*, 48 Cal.4th 435, 440-441(1996).)

17 86. The main purpose of the title and summary is to provide the citizens with
18 accurate information that is not misleading. (*Becerra v. Superior Court of Sacramento County*,
19 19 Cal.App.5th 967 (2017).) Clear and understandable language must be used. (*Yes on 25 et al v.*
20 *Superior Court* 189 Cal.App.4th at 1452 (2010).)

21 87. Respondent’s partisanship and his explicit and implicit bias are abundantly clear
22 from his actions related to treatment of gender confused students, children, males and their
23 families. He has joined more than 14 lawsuits as Attorney General with positions that directly
24 contradict the purpose and effect of this Initiative, and is even a party-in-interest due to his
25 status as a plaintiff and amicus in two California lawsuits related to schools’ parental
26 notification policies, in which he is opposing policies that stop schools from socially
27 transitioning students without parental notice or consent. His conflict of interest is undeniable.

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1 88. Respondent’s circulating title and summary were crafted to cause confusion,
2 distortion, and prejudice against the Initiative. Respondent’s calculated and unlawful use of
3 negative and deceptive language have been and are impeding Petitioners from obtaining support
4 for the Initiative. To wit:

5 (a) Respondent’s title is not an “impartial statement,” but rather an attempt to
6 unfairly paint the Initiative in a negative light and create prejudice against the measure as one
7 which “restricts rights,” the opposite of Petitioners’ submitted title to “protect kids.”
8 Additionally, Respondent’s circulating title is misleading, as it claims that the Initiative
9 “restricts rights” when several of those purported rights do not exist.

10 (b) Respondent’s circulating summary completely ignores and omits that the
11 Initiative will define the terms “female” and “male” – terms that are not defined in the
12 California codes—and which definitions are one of the chief purposes of the Initiative.

13 (c) Respondent has a vested interest in the outcome of the Initiative as he is a
14 plaintiff, a defendant and party to multiple amicus briefs that all oppose the purpose and intent
15 of the initiative. His implicit and explicit bias, conflict of interest, and prejudice cannot be, and
16 were not, overcome.

17 (d) Respondent purposefully used language that is not readily understood by
18 the public. “Transgender female” is vague and designed to prejudice the electorate. The
19 California codes do not use this term and the California Regulations assist in the understanding
20 of these words by adding “male to female” in a parenthetical.

21 (e) Respondent is deceptive in his summary related to school notification,
22 falsely stating in his summary that there is no exception for student safety. The Initiative clearly
23 does not affect three codes that permit counselors to withhold information from the parents
24 about gender identity issues where the child is in a clear and present danger. Nor does the
25 Initiative obviate the mandated reporting obligations of schools for suspected abuse.

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1 (f) Respondent misleads the public with his summary that provides that all
2 gender-affirming health is prohibited for patients under the age of 18. The Initiative safeguards
3 children from only medical health care, and does not address gender-affirming mental health
4 care.

5 89. Respondent's circulating title and summary violate Elections Code sections 9004
6 and 9051 and, therefore, Respondent's unlawful actions must be immediately declared to be null
7 and void ab initio.

8 90. Petitioners have been, are being, and will continue to be harmed by
9 Respondent's actions by, *inter alia*, being deprived of support of the Initiative by way of
10 signatures, volunteer signups, and donations.

11 91. Petitioners have no plain, speedy, administrative, or adequate remedy at law
12 and will suffer irreparable harm if the Court does not find that Respondent's title and summary
13 violate Elections Code sections 9004 and 9150 *et seq.* and are, thus, illegal and void. Petitioners
14 and the California voters will be barred from exercising their rights to create initiatives provided
15 to them by the Elections Code.

16 92. For all of the reasons set forth above, a writ should be issued under Elections
17 Code section 13314 enjoining Respondent from taking any further action on his November 29,
18 2023 title and summary for the Initiative, including any reporting of his actions to any other
19 governmental office, body, or entity, including the Secretary of State.

20 93. Petitioners will be irreparably harmed if this writ of mandamus is not issued
21 enjoining Respondent from continuing to use the Initiative's current circulating title and
22 summary, and Petitioners will be irreparably harmed if a peremptory writ is not issued at the
23 conclusion of this litigation requiring Respondent to revise the Initiative's title and summary.

24 94. Further, given the timing of this challenge, the time that remains for
25 Petitioners to collect the signatures necessary to place the Initiative on the ballot (180 days from
26 Respondent's title and summary under the Elections Code sections 9014(b) and 9035), issuance
27 of this writ of mandamus would not interfere with conducting of the election.

28 ///

1 (e) Respondent has a direct and vested interest in the outcome of the
2 Initiative because he is a plaintiff, defendant, or amicus in multiple lawsuits in which he
3 opposes the purposes, intent, and effects of the Initiative. Therefore, Respondent's implicit and
4 systematic bias and prejudice cannot be, and were not, overcome.

5 (f) Respondent is deceptive in his summary related to school notification,
6 falsely stating in the summary that there is no exception for student safety. The Initiative
7 clearly does not affect three codes that permit counselors to withhold information from the
8 parents about gender identity issues where the child is in a clear and present danger. Nor does
9 the Initiative obviate the mandated reporting obligations of schools for suspected abuse.

10 (g) Respondent misleads the public with his summary that provides that all
11 gender-affirming health care is prohibited for patients under the age of 18. The Initiative
12 safeguards children only in the context of medical health care, and does not address gender-
13 affirming mental health care.

14 (h) Respondent knows exactly how a title and summary can influence a
15 voter, and he has unlawfully wielded his power and office to adversely affect Petitioners'
16 Initiative.

17 93. Petitioners have suffered, are suffering, and will continue to suffer irreparable
18 harm if Respondent's biased, partial, and misleading title and summary continued to be used,
19 driving away otherwise supportive donors, signors, and volunteers that would assist Petitioners
20 with their ballot efforts.

21 94. A judicial determination of these issues is necessary and appropriate because
22 such a declaration will clarify the parties' rights and obligations, permit them to have certainty
23 regarding those rights and potential liability, and avoid a multiplicity of actions. An actual and
24 present controversy exists with respect to the disputes between Petitioners and Respondent, as
25 alleged above.

26 95. Petitioners have no plain, speedy, administrative, or adequate remedy at law and
27 will suffer irreparable harm if the Court does not declare that Respondent's circulating title and
28 summary violate Elections Code sections 9004 and 9150 *et. seq.* and are thus illegal and void.

1 Petitioners and the California voters will be barred from exercising their rights to create
2 initiatives provided to them by Elections Code.

3 96. Petitioners will be irreparably harmed if this writ of mandamus is not issued
4 enjoining Respondent from continuing to use the Initiative's current title and summary, and also
5 if a peremptory writ is not issued at the conclusion of this litigation requiring Respondent to
6 revise the Initiative's title and summary.

7 97. Petitioners are informed and believe, and thereupon allege that Respondent
8 disputes the foregoing averments.

9 98. Petitioners desire a judicial determination and declaration of the parties'
10 respective rights and duties under the Elections Code, specifically that Respondent is in
11 violation of the Elections Code section 9051, and is required to comply with section 9051, and
12 is foreclosed from providing the current title and summary to the Secretary of State pursuant to
13 Elections Code section 9004(b).

14 99. A judicial determination and declaration is necessary and appropriate at this time
15 so that Petitioners may exercise their rights and duties, including their petition rights, under the
16 California Constitution, United States Constitution, and the California Elections Code; and so
17 that Respondent may no longer act in violation of nor fail to act in conformance with such laws
18 and requirements.

19
20 **THIRD CAUSE OF ACTION**
21 (Violation Under California's
22 Constitution - Free Speech)
23 (Against Respondent and DOES 1-50)

24 100. Petitioners restate, reallege, and incorporate by reference each and every
25 allegation contained in all prior paragraphs as though fully set forth herein.

26 101. California Constitution Article I section 2 provides that "[e]very person may
27 speak freely, write, and publish his or her sentiments on all subjects. . . A law may not restrain
28 or abridge liberty of speech or press." (Cal. Const. Art. I § 2.)

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1 102. Government action, including that which may influence the outcome of an
2 election, falls within First Amendment and free speech rights, and the government may not
3 “take sides” in the electoral process, including with ballot initiatives. (*See, Citizens for*
4 *Responsible Gov’t v. City of Albany*, 56 Cal.App.4th 1199, 1227-28 (1997).)(*Citizens for*
5 *Responsible Gov’t*)

6 103. “The use of the ballot or the ballot form to favor a particular side in the election
7 directly conflicts with the legislative intent to submit the measure to the voters in a concise and
8 neutral manner.” (*Id.*)

9 104. The initiative petition circulation “is core political speech for which First
10 Amendment protection is at its zenith, political speech in the election arena is still subject to
11 regulation to promote fair and honest elections.” (*San Francisco Forty-Niners v. Nishioka* 75
12 Cal.App.4th 637, 647 (1999) (internal citation omitted).)

13 105. While the state has a legitimate and compelling interest in preserving the
14 integrity of the ballot measure process, this compelling interest does not permit the government
15 to trample upon a proponent’s right to engage in constitutionally and statutorily protected
16 involvement in one of the most sacrosanct democratic processes.

17 106. Respondent has no compelling government interest for providing a biased and
18 misleading title and summary language. Respondent wielded his power to place impediments in
19 the path of Petitioners’ Initiative because the measure is directly against Respondent’s agenda,
20 and his interests as a plaintiff, defendant, and amicus in numerous recent and pending lawsuits.

21 107. Forcing Petitioners to utilize false, misleading, confusing, and biased language of
22 Respondent for a petition that they proffered to the electorate is unconstitutional compelled
23 speech.

24 108. The government cannot force an individual to “speak the government’s
25 message.” (*See Rumsfeld v. Forum for Academic & Institutional Rights, Inc.* 547 U.S. 47, 63
26 (2006).)

27 109. In California, courts have recognized that, in the context of ballot initiatives,
28 “[g]overnment action which may tend to influence the outcome of an election operates in an

1 area protected by the guarantee of ... freedom of speech.” (*See, supra., Citizens for Responsible*
2 *Gov’t*, 56 Cal.App.4th at 1227-28.) And “the guarantee of freedom of speech prohibits
3 governmental action favoring a particular political opinion.” (*Id.*) Thus, in a case where “ballot
4 language favored the perspective of the proponents of the measure,” the court held illegal “the
5 inclusion of language, overtly favoring a partisan position, which implicated interests protected
6 by the constitutional guarantee of ... freedom of expression.” (*Id.*)

7 110. Social science research has shown that framing a ballot title as taking away rights
8 compared to protecting rights causes a significant decrease in support for the initiative. (*See* Jeff
9 Hastings & Damon Cann, *Ballot Titles and Voter Decision Making on Ballot Questions*, 46
10 *State & Local Gov’t Rev.*, issue 2 (2014).) The same is true for ballot text. (*See* Craig M.
11 Burnett & Vladimir Kogan, *When Does Ballot Language Influence Voter Choices? Evidence*
12 *from a Survey Experiment*, 32 *Political Communication* 109 (2015) [finding that “the language
13 used to describe a ballot measure does indeed have the potential to affect election outcomes,
14 including measures dealing with contentious social issues affecting individual rights”]; Ted D.
15 Rossier, *Voter Experience and Ballot Language Framing Effects: Evidence from a Survey*
16 *Experiment*, 201 *Social Science Quarterly* 2955 (2021).)

17 111. Respondent’s decision makes it harder for ballot proponents to share their
18 message and get signatures. (*See* Friday Decl. ¶10; Wells’ Decl., ¶¶ 7-8, and Lee ¶¶6-12.)

19 112. By infringing the soliciting of signatures and compelling ideological speech,
20 Respondent’s actions doubly trigger strict scrutiny and his actions cannot survive that lofty bar.

21 113. There is no compelling government interest in providing biased and misleading
22 title and summary language, putting a thumb on the scale of the issue, as Respondent did with
23 his blatantly biased title and summary that were designed to and does create prejudice against a
24 measure that he has a direct and vesting interest in the measure’s failure.

25 114. Respondent’s actions are also not narrowly tailored to achieve any interest, let
26 alone a compelling one. That is because there is a less constitutionally intrusive means for
27 Respondent to accomplish the compelling government interest of aiding voters in understanding
28 ballot initiatives: provide a neutral, impartial, and true ballot title and summary.

1 115. Further, “California could inform [voters] about [the state’s viewpoint on the
2 initiatives] without burdening a speaker with unwanted speech.” (*Nat’l. Inst. of Family & Life*
3 *Advocates v. Becerra*, 138 S. Ct. 2361, 2376 (2018).) “Most obviously, it could inform the
4 [voters themselves] with a public-information campaign.” (*Id.* [internal quotation marks and
5 citations omitted].) Perhaps voters would have a tepid response to such a campaign, but “a tepid
6 response does not prove that an advertising campaign is not a sufficient alternative.” (*Id.*)
7 Regardless, “**California cannot co-opt the [ballot summary and title] to deliver its message**
8 **for it.**” (*Id.* [emphasis added].)

9 116. Nor would it fix this constitutional violation for the Attorney General to argue
10 that persons soliciting signatures can use their own speech to counter the Attorney General’s
11 speech. Respondent’s biased bell cannot be unring. Petitioners are losing potential supporters
12 before they even know they exist, and even if they do reach them, it is virtually impossible for a
13 lay person to comprehend – let alone believe – that *the* government official charged with
14 upholding the State’s constitutions and laws would so brazenly violate them. Even the voices of
15 one thousand well-intentioned, informed and trained signature gatherers cannot overcome the
16 impact of Respondent’s official title and summary. (*See e.g. Meyer v. Grant*, 486 U.S. 424
17 (1988).)

18 117. For all of the reasons set forth above, Respondent has violated Petitioners’ First
19 Amendment rights in his provision of a false, incomplete, biased, and deceptive title and
20 summary. Respondent has compelled speech the speech of Petitioners by foisting a partisan
21 title that is designed to adversely affect Petitioners’ chances of success.

22 118. Petitioners have been, are being, and will continue to be harmed by
23 Respondent’s actions by, *inter alia*, being deprived of support of the Initiative by way of
24 signatures, volunteer signups, and donations.

25 119. Petitioners have no plain, speedy, administrative, or adequate remedy at law
26 and will suffer irreparable harm if the Court does not find that Respondent’s title and summary
27 violate Elections Code sections 9004 and 9150 *et seq.* and are, thus, illegal and void. Petitioners

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1 and the California voters will be barred from exercising their rights to create initiatives provided
2 to them by the Elections Code.

3 120. For all of the reasons set forth above, a writ should be issued under Elections
4 Code section 13314 enjoining Respondent from taking any further action on his November 29,
5 2023 title and summary for the Initiative, including any reporting of his actions to any other
6 governmental office, body, or entity, including the Secretary of State.

7 121. Petitioners will be irreparably harmed if this writ of mandamus is not issued,
8 enjoining Respondent from continuing to use the Initiative's current title and summary, and a
9 peremptory writ is not issued at the conclusion of this litigation requiring Respondent to revise
10 the Initiative's title and summary.

11 122. Further, given the timing of this challenge, the time that remains for
12 Petitioners to collect the signatures necessary to place the Initiative on the ballot (180 days from
13 Respondent's title and summary under the Elections Code sections 9014(b) and 9035), issuance
14 of this writ does not interfere with conduct of the election.

15 123. Petitioners are entitled to and hereby request temporary, preliminary, and
16 permanent injunctive relief enjoining Respondent from taking further actions related to the
17 Initiative consistent with his title and summary of November 29, 2023 and ordering Respondent
18 to replace the Initiative's current title and summary with that submitted by Petitioners.

19 124. Because Respondent's ballot title and summary violate the California
20 Constitution's Free Speech Clause, they are illegal and void, and the Petition should be granted.

21
22 **FOURTH CAUSE OF ACTION**
23 (First Amendment Violation **Under United States**
24 **Constitution - - Free Speech**)
25 (Against Respondent and DOES 1-50)

26 125. Petitioners restate, reallege, and incorporate by reference each and every
27 allegation contained in all prior paragraphs as though fully set forth herein.

28 126. The First Amendment of the United States Constitution prohibits government
infringement of the right to free speech. (*See* U.S. Const., amend. I.) That amendment is

1 incorporated against the states through the United States Constitution’s Fourteenth Amendment.
2 (*See Prete v. Bradbury*, 438 F.3d 949, 961(9th Cir. 2006).)

3 127. In *Meyer, supra*, 486 U.S. at 422 n.5, the Supreme Court recognized that “the
4 solicitation of signatures for a petition involves protected speech.” Furthermore, the mere fact
5 that Petitioners “remain free to employ other means to disseminate their ideas does not take
6 their [preferred means of] speech through [the initiative process] outside the bounds of First
7 Amendment protection.” (*Id.* at 424.)

8 128. “[E]ven though the initiative and referendum process is not guaranteed by the
9 United States Constitution, [California]’s choice to reserve it does not leave the state free to
10 condition its use by impermissible restraints on First Amendment activity.” (*Am. Const. L.*
11 *Found., Inc. v. Meyer*, 120 F.3d 1092, 1100 (10th Cir. 1997) (*aff’d sub nom. Buckley v. Am.*
12 *Const. L. Found., Inc.*, 525 U.S. 182 (1999); *see also Taxpayers United for Assessment Cuts*,
13 994 F.2d 291, 295 (6th Cir. 1993) [holding that while the federal Constitution does not mandate
14 states provide initiative procedures, if they do, the states cannot impose restrictions that violate
15 the federal Constitution]; *Henry v. Connolly*, 910 F.2d 1000, 1004 (1st Cir.1990).)

16 129. Political speech and ideological speech are protected by the First Amendment.
17 (*Schad v. Mount Ephraim* 452 U.S. 61, 65 (1981); *see Wilson v. Superior Court* 13 Cal.3d 651,
18 658 (1975).)

19 130. In California, courts have recognized that, in the context of ballot initiatives,
20 “[g]overnment action which may tend to influence the outcome of an election operates in an
21 area protected by the guarantee of ... freedom of speech.” (*Citizens for Responsible Gov’t v.*
22 *City of Albany*, 56 Cal.App.4th 1199, 1227-28 (1997).) And “the guarantee of freedom of
23 speech prohibits governmental action favoring a particular political opinion.” (*Id.*) Thus, in a
24 case where “ballot language favored the perspective of the proponents of the measure,” the
25 court held illegal “the inclusion of language, overtly favoring a partisan position, which
26 implicated interests protected by the constitutional guarantee of ... freedom of expression.” (*Id.*)

27 131. The state may not compel people “to be an instrument for fostering public
28 adherence to an ideological point of view he finds unacceptable.” (*Wooley v. Maynard*, 430 U.S.

1 705, 715 (1977).) “In doing so, the State ‘invades the sphere of intellect and spirit which it is the
2 purpose of the First Amendment to our Constitution to reserve from all official control.’” (*Id.*,
3 [quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)].)

4 132. “[D]irect regulation of the petition process” triggers strict scrutiny. (*Wirzburger*
5 *v. Galvin*, 412 F.3d 271, 277 (1st Cir. 2005).)

6 133. Respondent is violating these foundational constitutional principles by
7 compelling ballot proponents to solicit signatures on forms that carry biased and misleading
8 information stemming from Respondent’s “ideological point of view.”

9 134. According to the National Conference of State Legislatures, “[t]he ballot title and
10 summary are arguably the most important part of an initiative in terms of voter education. Most
11 voters never read more than the title and summary of the text of initiative proposals. Therefore,
12 it is of critical importance that titles and summaries be concise, accurate and impartial.”¹⁰

13 135. Social science research has shown that framing a ballot title as taking away rights
14 compared to protecting rights causes a significant decrease in support for the initiative. (*See* Jeff
15 Hastings & Damon Cann, *Ballot Titles and Voter Decision Making on Ballot Questions*, 46
16 *State & Local Gov’t Rev.*, issue 2 (2014).) The same is true for ballot text. (*See* Craig M.
17 Burnett & Vladimir Kogan, *When Does Ballot Language Influence Voter Choices? Evidence*
18 *from a Survey Experiment*, 32 *Political Communication* 109 (2015) [finding that “the language
19 used to describe a ballot measure does indeed have the potential to affect election outcomes,
20 including measures dealing with contentious social issues affecting individual rights”]; Ted D.
21 Rossier, *Voter Experience and Ballot Language Framing Effects: Evidence from a Survey*
22 *Experiment*, 201 *Social Science Quarterly* 2955 (2021).)

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25 ¹⁰ “Ballot Title,” Ballotpedia, https://ballotpedia.org/Ballot_title#cite_note-1 (citing National Conference
26 of State Legislatures,
27 <https://web.archive.org/web/2/http://www.ncsl.org/programs/legismgt/elect/PrepTtlSumm.htm>) (accessed on Feb.
28 8, 2024.)

1 136. Respondent’s decision makes it harder for ballot proponents to share their
2 message and get signatures. (See Friday Decl. ¶10; Wells’ Decl., ¶¶ 7-8, and Lee’s Decl. ¶¶6-
3 12.)

4 137. By infringing Petitioners’ soliciting of signatures and by using government
5 power to compel ideological speech, the Respondent’s actions doubly trigger strict scrutiny. His
6 actions cannot clear that lofty bar.

7 138. A government action “can survive strict scrutiny only if it advances ‘interests of
8 the highest order’ and is narrowly tailored to achieve those interests.” (*Fulton v. City of Phila.*,
9 141 S. Ct. 1868, 1881 (2021) [quoting *Church of the Lukumi Babalu Aye, Inc., v. City of*
10 *Hialeah*, 508 U.S. 520, 546 (1993)].)

11 139. Had Respondent drafted an unbiased title and a neutral, accurate ballot summary
12 he would have met a compelling government interest in providing that information to voters
13 who may struggle to digest complicated and long ballot initiatives and may never read them
14 other than the title and summary before voting. There is nothing facially wrong with the
15 election code that authorizes and requires Respondent to “give a true and impartial statement of
16 the purpose of the measure in such language that the ... Title and summary shall neither be an
17 argument, nor be likely to create prejudice, for or against the proposed measure.” Elections.
18 Code § 9004(a).

19 140. There is no compelling government interest in providing biased and misleading
20 title and summary language or putting a thumb on the scale of an issue of public import, as
21 Respondent did with his blatantly biased title that was designed to and does create prejudice
22 against a measure that he has a direct and vesting in failing.

23 141. Respondent’s actions are also not narrowly tailored to achieve any lawful
24 government interest, let alone a compelling one. That is because there is a less constitutionally
25 intrusive means for him to accomplish the compelling government interest of aiding voters in
26 understanding ballot initiatives: provide a neutral, impartial, and true ballot title and summary.

27 142. Petitioners cannot overcome the impact of Respondent’s official title and
28 summary. Further, “California could inform [voters] about [the state’s viewpoint on the

1 initiatives] without burdening a speaker with unwanted speech.” (*Nat’l. Inst. of Family & Life*
2 *Advocates v. Becerra*, 138 S. Ct. 2361, 2376 (2018).) “Most obviously, it could inform the
3 [voters themselves] with a public-information campaign.” (*Id.* [internal quotation marks and
4 citations omitted].) Perhaps voters would have a tepid response to such a campaign, but “a tepid
5 response does not prove that an advertising campaign is not a sufficient alternative.” (*Ib.*)
6 Regardless, “**California cannot co-opt the [ballot summary and title] to deliver its message**
7 **for it.**” (*Id.*) (emphasis added.)

8 143. Nor does it fix this constitutional violation for the Attorney General to argue that
9 those soliciting signatures can use their own speech to counter the Attorney General’s speech.
10 Respondent’s biased bell cannot be unrung. Petitioners are losing potential supporters before
11 they even know they exist and even if they do reach them, it is virtually impossible for a lay
12 person to comprehend – let alone believe – that *the* government official charged with upholding
13 the State’s constitutions and laws would so brazenly violate them. Even the voices of one
14 thousand well-intentioned, informed and trained signature gatherers cannot overcome the
15 impact of the Attorney General’s official title and summary. (*See e.g. Meyer, supra.* 486 U.S.
16 424.)

17 144. Petitioners have been, are being, and will continue to be harmed by
18 Respondent’s actions by, *inter alia*, being deprived of support of the Initiative by way of
19 signatures, volunteer signups, and donations.

20 145. Petitioners have no plain, speedy, administrative, or adequate remedy at law
21 and will suffer irreparable harm if the Court does not find that Respondent’s title and summary
22 violate the First Amendment and are thus illegal and void. Petitioners and the California voters
23 will be barred from exercising their rights provided to them by the Elections Code to create and
24 fairly advocate for ballot initiatives and propositions.

25 146. For all of the reasons set forth above, a writ should be issued under Elections
26 Code section 13314 enjoining Respondent from taking any further action on his November 29,
27 2023 title and summary for the Initiative, including any reporting of his actions to any other
28 governmental office, body, or entity, including the Secretary of State.

1 (b) re-title and revise the title and summary of the Initiative to be neutral and
2 impartial, and to include the chief purpose; or

3 (c) replace the Initiative's title and summary with a title and summary
4 provided by the Court that is accurate, unbiased, objective, and correctly identifies the chief
5 purposes and accurate points and chief purposes of the proposed measure in a manner that is not
6 written to influence the electorate against the measure;

7 4. For an Order restarting the 180-day time period for the gathering of the requisite
8 number of signatures from the date of the order, and permitting any of the valid signatures that
9 were obtained prior to the Court's Order to be counted towards the requisite signatures,
10 provided those signatures are valid in the normal course of in the registrars and State's
11 certification procedures;

12 5. For an Order finding that Respondent violated Petitioners' First Amendment
13 rights under the California Constitution, the United States Constitution, or both;

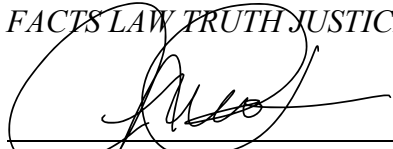
14 6. Attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure and
15 any other applicable provision of law;

16 7. Costs of suit; and

17 8. Such other and further equitable relief as the Court may deem just and proper.

18 Dated: February 12, 2024

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FACTS LAW TRUTH JUSTICE



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24 Dated: February 12, 2024

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