ROB BONTA
Attorney General of California
BENJAMIN M. GLICKMAN
Supervising Deputy Attorney General
MALCOLM A. BRUDIGAM
Deputy Attorney General
State Bar No. 323707
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-7873
Fax: (916) 454-8171
E-mail: Malcolm.Brudigam@doj.ca.gov
Attorneys for Respondent
Attorney General Rob Bonta

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

PROTECT KIDS CALIFORNIA, et al., Petitioners, **v.** **ROB BONTA, in his official capacity as Attorney General of the State of California,** Respondent.	Case No. 24WM000034 **RESPONDENT'S OPPOSITION BRIEF TO PETITIONERS' VERIFIED PETITION** Date: April 19, 2024 Time: 1:30 p.m. Dept: 36 Judge: Hon. Stephen P. Acquisto Action Filed: February 13, 2024

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INTRODUCTION

Petitioners Protect Kids California and Jonathan Zachreson (together, "petitioners") filed this lawsuit alleging that respondent Rob Bonta, in his official capacity as Attorney General of the State of California ("respondent" or "Attorney General"), violated Elections Code sections 9004 and 9051 and petitioners' state and federal free speech rights in preparing the circulating title and summary for Mr. Zachreson's proposed initiative measure, Initiative No. 23-0027. (Verified Petition ["Pet."] ¶¶ 10-11, 16-18.)

Petitioners' primary argument is that the Attorney General's title for the proposed measure—"RESTRICTS RIGHTS OF TRANSGENDER YOUTH"—is allegedly misleading and biased. (Petitioners' Opening Brief ["POB"] 5-9, 11-16, 22.) But there is no question that the proposed measure would restrict the rights of transgender youth:

- Under current law, transgender students have the right to participate in school sports and activities and to use school facilities that correspond with their gender identity. The proposed measure would repeal a 2013 law establishing that right and would expressly prohibit schools and colleges from choosing to offer such accommodations.
- Under current law, transgender students may freely use their chosen name or pronouns or request and obtain other gender-identity accommodations at school. The proposed measure would instead require schools to notify parents and obtain their express written consent before a student could receive such accommodations.
- Under current law, transgender youth have a right to receive gender-affirming health care. The proposed measure would prohibit such care in nearly every circumstance, including where it is medically recommended or the patient's parents consent.

Notably, petitioners do not deny that the proposed measure restricts the rights of transgender youth, arguing instead that the Attorney General's use of the term "restricts" "negatively paints" the measure, as evidenced by their alleged difficulty collecting signatures to support it. But the sole question before the court is whether the Attorney General's title and summary provides an accurate and impartial description of the proposed measure. As detailed below, it plainly does, and the writ therefore must be denied. That the measure's proposed

policies are unpopular is irrelevant.

Petitioners also fleetingly assert two free speech claims, but both are unavailing. The first, purportedly made under the California Constitution, merely mirrors the legal standard governing the court's review of the title and summary, and it fails for the same reasons. The second, purportedly brought under the First Amendment to the U.S. Constitution, does not even state a cognizable legal claim. Petitioners' First Amendment rights are not implicated here because the title and summary (i) is speech by the Attorney General, not petitioners, and (ii) it does not impose any restriction on petitioners' rights to collect signatures or to speak any message regarding the proposed measure. Not surprisingly, several federal courts of appeal have rejected similar challenges to state initiative laws.

Accordingly, for the reasons discussed below, the court should deny petitioners' verified petition for writ of mandate and dismiss the two free speech claims with prejudice.

BACKGROUND

The Attorney General has a constitutional duty to prepare a circulating title and summary describing the chief purposes and points of every proposed initiative measure. In 2023, the Attorney General fulfilled this duty with respect to four related measures proposed by Mr. Zachreson. The last of those—Initiative No. 23-0027—is the subject of this lawsuit.

A. Initiative Measures and the Attorney General's Role.

Through the initiative power, California voters can propose statutes and constitutional amendments and adopt or reject them. (See Cal. Const., art. II, § 8, subd. (a), art. IV, § 1.) "An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by [the required number of] electors." (Cal. Const., art. II, § 8, subd. (b).)

"Before an initiative petition may be circulated to the electors for qualifying signatures, a draft petition must be submitted to the Attorney General for preparation of a title and summary." (*Planning & Conservation League, Inc. v. Lungren* (1995) 38 Cal.App.4th 497, 501 [citing Elec. Code, § 9002].) Specifically, after receiving the text of a proposed initiative measure, the Attorney General is tasked with preparing, in no more than 100 words, a circulating title and

summary of the chief purposes and points of the proposed measure. (Elec. Code, §§ 9004, 9051.)

The circulating title and summary "must reasonably inform the voters of the character and purpose of the proposed measure." (*Yes on 25, Citizens for an On-Time Budget v. Superior Court* (2010) 189 Cal.App.4th 1445, 1452 ["*Yes on 25*"].) It must also "be true, impartial, and not argumentative or likely to create prejudice for or against a proposed measure." (*Ibid.* [citing Elec. Code, § 9051, subd. (e)].) "The main purpose of these requirements is to avoid misleading the public with inaccurate information." (*Ibid.* [quoting *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243 ("*Amador Valley*")].)[1]

B. Mr. Zachreson Submits Three Proposed Initiative Measures Regarding Transgender Youth.

On August 28, 2023, Mr. Zachreson submitted to the Attorney General three separate proposed statewide initiative measures affecting the rights of transgender minors: Initiative Nos. 23-0018, 23-0019, and 23-0020. (Request for Judicial Notice in Support of Respondent's Opposition Brief to Petitioners' Verified Petition ["RJN"], Exs. 1-3.)

Mr. Zachreson's first proposed measure—Initiative No. 23-0018[2]—would have required schools to notify parents within three days if a student requests to be treated as a gender that differs from the student's official school records, such as to be called by a different name, use different pronouns, or use a different facility. (RJN, Ex. 1, §§ 4-5 [proposed Ed. Code, §§ 49061, subd. (b), 51101.5].) It also would have required schools to obtain express advance written parental consent before providing any such accommodation. (*Id.*, § 5 [proposed Ed. Code, § 51101.5, subd. (d)].) The Attorney General issued the following circulating title and summary of the chief purposes and points of Initiative No. 23-0018:[3]

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[1] If the Secretary of State determines a measure has qualified for the ballot, the Attorney General must then prepare a ballot title and summary and condensed ballot title and summary, which may differ from the circulating title and summary. (See Elec. Code, §§ 9050, subd. (a), 9051, subds. (a)-(b).)

[2] Clare Erin Friday, counsel of record in this case, was also listed as a proponent of this measure only, Initiative No. 23-0018.

[3] A fiscal estimate prepared by the Legislative Analyst's Office pursuant to Elections Code section 9005 always accompanies the Attorney General's title and summary. The fiscal estimates are not at issue in this case. Therefore, for the sake of brevity, the fiscal estimates have been omitted from the titles and summaries included in this brief.

> **REQUIRES SCHOOLS TO REPORT ANY CHANGE IN A STUDENT'S EXPRESSED GENDER, WITHOUT EXCEPTION FOR STUDENT'S SAFETY. INITIATIVE STATUTE.** Requires K-12 schools to notify parents whenever a student under age 18 asks to be treated as a gender different from what is listed on their school records—for example, by requesting to use an alternate name or pronouns, or use facilities for a different gender. Does not provide exception if student requests confidentiality or where disclosure would endanger their safety; includes exception only for certain communications with school counselors. Prohibits schools from recognizing the student's expressed gender without written parental authorization.

(RJN, Ex. 4.)

Mr. Zachreson's second proposed measure—Initiative No. 23-0019—would have repealed specific protections for transgender students that were enacted by the Legislature in 2013. (RJN, Ex. 2, §§ 4, 6.) Further, the measure would have prohibited schools and colleges from permitting transgender females to participate in female sports, or allowing transgender students to use school facilities or participate in school activities consistent with their gender identity. (*Id.*, §§ 5, 7 [proposed Ed. Code, §§ 221.75, 66271.85].) The Attorney General issued the following circulating title and summary of the chief purposes and points of Initiative No. 23-0019:

> **ELIMINATES STUDENTS' RIGHTS TO PARTICIPATE IN SCHOOL ACTIVITIES CONSISTENT WITH THEIR GENDER IDENTITY. INITIATIVE STATUTE**. Repeals 2013 state law allowing students to participate in school activities and use school facilities consistent with their gender identity. Requires public and private K-12 schools, colleges, and universities to:
>
> - prohibit transgender female students in grades 7 and higher from participating in female sports; and
> - restrict use of gender-segregated facilities (e.g., bathrooms, locker rooms) only to persons assigned that gender at birth.
>
> For purposes of the measure's restrictions, defines "male" and "female" exclusively by reference to certain reproductive traits.

(RJN, Ex. 5.)

Mr. Zachreson's third proposed measure—Initiative No. 23-0020—would have prohibited health care providers from providing "sex-reassignment prescriptions or procedures," as defined under the measure, to any patient under 18 years of age, with limited exceptions, and would have subjected health care providers who violated this prohibition to discipline and license forfeiture. (RJN, Ex. 3, § 4 [proposed Bus. & Prof. Code, §§ 866, 866.1, 866.2, 866.3].) The Attorney

General issued the following title and summary of the chief purposes and points of Initiative No. 23-0020:

> **PROHIBITS GENDER-AFFIRMING HEALTH CARE FOR MINORS. INITIATIVE STATUTE.** Prohibits health care providers from providing transgender patients under 18 with medical care to affirm a gender identity that differs from the minor's gender assigned at birth. Prohibits such treatment even if parents consent or it is medically recommended for the minor's mental or physical wellbeing. Allows limited exceptions if minor: (1) has certain narrowly defined medical conditions; (2) began a continuous course of treatment before January 1, 2025; or (3) wishes to reverse prior treatment. Health care providers who violate the prohibition could lose their license or certification.

(RJN, Ex. 6.)

C. Mr. Zachreson Submits the Proposed Initiative Measure at Issue in This Case, Which Combined His Prior Three Proposed Measures.

On September 25, 2023, Mr. Zachreson submitted to the Attorney General the proposed initiative measure at issue in this case, Initiative No. 23-0027, which he titled the "Protect Kids of California Act of 2024." (Pet., Ex. A.) This proposed measure combined the three prior measures—Initiative Nos. 23-0018, 23-0019, and 23-0020—into a single measure. On November 29, 2023, the Attorney General issued the following circulating title and summary of the chief purposes and points of Initiative No. 23-0027:

> **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.

(Pet., Ex. D.)

The following day, the Secretary of State provided Mr. Zachreson with a "circulating and filing schedule" for the proposed measure, informing him that based on the November 29, 2023, "official summary date," he must submit all petitions to county elections officials on or before

May 28, 2024. (RJN, Ex. 7.)

D. Petitioners File This Lawsuit Challenging the Title and Summary.

In early January 2024, petitioners held a rally in Sacramento announcing that they planned to sue the Attorney General to challenge the title and summary for Initiative No. 23-0027. (RJN, Ex. 8.) Almost six weeks later, on February 13, 2024, petitioners filed this lawsuit, alleging that the title and summary for Initiative No. 23-0027 is "misleading, false, and prejudicial," and does not "accurately state the 'chief purposes and points of the proposed measure'" in violation of the Elections Code. (Pet., ¶¶ 16-17.) Petitioners assert four causes of action: (1) writ of mandate; (2) declaratory relief; (3) violation of free speech under the California Constitution; and (4) violation of free speech under the U.S. Constitution. (Pet., ¶¶ 79–150.)

LEGAL STANDARD

A writ of mandate may issue to compel the performance of an act which the law specially enjoins. (Code Civ. Proc., § 1085, subd. (a).) To obtain writ relief, the petitioner "must show that [i] there is no other plain, speedy and adequate remedy, [ii] that the respondent has failed to perform an act despite a clear, present and ministerial duty to do so, and [iii] that the petitioner has a clear, present and beneficial right to that performance." (*Riverside Sheriff's Assn. v. County of Riverside* (2003) 106 Cal.App.4th 1285, 1289.) Importantly, a writ of mandate "will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner." (*Snowball West Investments L.P. v. City of Los Angeles* (2023) 96 Cal.App.5th 1054, 1072; *Saleeby v. State Bar* (1985) 39 Cal.3d 547, 561 ["Traditional mandamus will, of course, not lie to compel a particular method of exercising discretion."].) Rather, mandamus "will lie to correct an *abuse* of discretion or the actions of an administrative agency which exceed the agency's legal powers." (*Saleeby*, *supra*, 39 Cal.3d at pp. 561-562; see also *Hollman v. Warren* (1948) 32 Cal.2d 351, 355-356 [finding that a writ of mandate lies to compel the Governor to exercise his discretion regarding the appointment of notaries, but not to compel the Governor to exercise such discretion in a particular manner or to reach a particular result].) Abuse of discretion is a "highly deferential" standard, as it must be when a court is asked to intervene after a governmental body has exercised discretion. (*Carrancho v. Cal. Air Resources Bd.* (2003) 111

Cal.App.4th 1255, 1265; *Securus Technologies, LLC v. Public Utilities Commission* (2023) 88 Cal.App.5th 787, 802–803 ["When reviewing the exercise of discretion, the scope of review is limited, out of deference to the agency's authority and presumed expertise," cleaned up].)

Under this limited scope of review, and as described further below, courts defer to the Attorney General's discretion in all but the clearest case when considering challenges to a title and summary.

ARGUMENT

I. THE ATTORNEY GENERAL'S TITLE AND SUMMARY IS AN ACCURATE AND IMPARTIAL DESCRIPTION OF THE PROPOSED INITIATIVE MEASURE.

Under the applicable legal standard, the Attorney General is afforded considerable discretion and deference in drafting titles and summaries for proposed initiative measures. Petitioners have the burden of proving—by clear and convincing evidence—that the Attorney General's title and summary is false, misleading, or likely to create prejudice for or against the measure. (See Elec. Code, §§ 9051, subd. (e), 9092; Gov. Code, § 88006; *Yes on 25*, *supra*, 189 Cal.App.4th at 1453 [same]; see also Elec. Code, § 9004 [circulating title and summary prepared in same manner as ballot title and summary].) Here, petitioners fall far short of their burden because the Attorney General's title and summary is an accurate and impartial description of the chief points and purposes of the proposed measure.

A. When Drafting Titles and Summaries, the Attorney General Is Afforded Considerable Latitude and Deference.

The Elections Code requires the Attorney General to "prepare a circulating title and summary of the chief purposes and points of the proposed measure" which "shall not exceed 100 words." (Elec. Code, § 9004, subd. (b).) In doing so, "the Attorney General shall give a true and impartial statement of the purpose of the measure" using language that "shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure." (*Id.*, § 9051, subd. (e).) In other words, the title and summary "must reasonably inform the voters of the character and purpose of the proposed measure" and "avoid misleading the public with inaccurate information." (*Becerra v. Superior Court* (2017) 19 Cal.App.5th 967, 975 ["*Becerra*"].)

"Implicit in these guidelines is that the Attorney General exercises judgment and discretion in discerning the chief purposes and points of an initiative measure which must be presented to the electorate in clear and understandable language." (*Becerra*, *supra*, 19 Cal.App.5th at p. 975.) In exercising this judgment and discretion, the Attorney General is "afforded considerable latitude." (*Yes on 25*, *supra*, 189 Cal.App.4th at p. 1452.) "Thus, [a]s a general rule, the title and summary prepared by the Attorney General are presumed accurate, and substantial compliance with the 'chief purpose and points' provision is sufficient." (*Becerra*, *supra*, 19 Cal.App.5th at p. 975.) Under this deferential standard, "[i]f reasonable minds may differ as to its sufficiency, the title and summary prepared by the Attorney General must be upheld because 'all legitimate presumptions should be indulged in favor of the propriety of the attorney-general's actions.'" (*Yes on 25*, *supra*, 189 Cal.App.4th at p. 1453 [internal citation omitted].) "[T]he title and summary need not contain a complete catalogue or index of all of the measure's provisions," (*Amador Valley*, *supra*, 22 Cal.3d at p. 243), and "[o]nly in a 'clear case' should a title and summary prepared by the Attorney General be held insufficient," (*Becerra*, *supra*, 19 Cal.App.5th at p. 975 [quoting *Yes on 25*, *supra*, 189 Cal.App.4th at p. 1453].)

Importantly, in reviewing a challenge to a title and summary, courts are charged with independently examining whether it "substantially complies with statutory standards" and may grant relief only "upon clear and convincing proof" that the title and summary is "false, misleading, or inconsistent with" the Elections Code. (*Becerra*, *supra*, 19 Cal.App.5th at p. 976 [citing *Yes on 25*, *supra*, 189 Cal.App.4th at p. 1453]; Elec. Code, § 9092; Gov. Code, § 88006; see also Elec. Code, § 9004 [circulating title and summary prepared in same manner as ballot title and summary].) And in summarizing the proposed measure, "the question of what is and what is not the most important provision is a question of opinion and, unless untrue, misleading, or argumentative, 'the opinion of the attorney-general should be accepted by this court.'" (*Becerra*, *supra*, 19 Cal.App.5th at p. 979 [quoting *Lungren v. Superior Court* (1996) 48 Cal.App.4th 435, 440 ("*Lungren*")].) Petitioners misstate this standard by contending that *Lungren* stands for the proposition that "[c]ourts *favor* titles and summaries that are 'essentially verbatim recitation[s] of the operative terms' of the initiative." (POB 10, emphasis added [quoting *Lungren*, *supra*, 48

Cal.App.4th at pp. 440-441].) That is incorrect. The *Lungren* court held only that the Attorney General's choice to use the statutory text in drafting the title and summary in that case was *permissible*. (See *Lungren*, *supra*, 48 Cal.App.4th at p. 440-441, 443 ["By essentially repeating the operative language of Proposition 209, the Attorney General has complied with the mandate that he provide the electorate with 'a true and impartial statement of the purpose of the measure.'"].) But no court has ever held that the Attorney General lacks discretion to describe a proposed measure in his own words—indeed, that is the very purpose of his title and summary duty. And as explained below, the words chosen by the Attorney General here accurately and impartially describe the proposed measure.

B. The Attorney General's Title and Summary Accurately Describes the Proposed Initiative Measure.

Mr. Zachreson's proposed initiative has three components—all of which restrict or eliminate rights currently held by transgender youth. First, the measure restricts (or eliminates) existing rights of transgender youth to participate in school sports, or use school facilities, that correspond with their gender identity—repealing a decade-old law that granted transgender students such rights. Second, the measure restricts existing rights of transgender students to use their preferred pronouns or name, or to receive other accommodations corresponding to their gender identity, by requiring schools to notify parents of a student's request for such accommodations and to obtain parental permission before accommodating the student. Third, the measure restricts existing rights of transgender youth to receive gender-affirming health care by prohibiting such care in nearly all cases. As detailed below, the Attorney General's bullet point summary of the measure accurately describes the chief purposes and points of these three components, while the Attorney General's title—"RESTRICTS RIGHTS OF TRANSGENDER YOUTH"—accurately describes their cumulative effect.

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1. The title and summary's first bullet point is accurate.

The first bullet point in the title and summary states:

> 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.

(Pet., Ex. D.) This accurately describes sections 6 through 10 of the proposed measure. (See Pet., Ex. B-1, §§ 6–10.)

Under current law (and since 2013), transgender students have the right to "participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records." (Ed. Code, § 221.5, subd. (f).) The proposed measure would not simply restrict this right; it would eliminate it entirely. (See Pet., Ex. B-1, § 6 [repealing Ed. Code, § 221.5, subd. (f)]; see also *id.*, § 9 [repealing Ed. Code, § 224, subd. (a)(5), which allows students to participate in the American Legion's California Boys & Girls State conferences in a manner consistent with their gender identity].)

In fact, the proposed measure goes even further. Not only would it repeal a right held by transgender students for more than a decade, it would prohibit schools from *choosing* to allow: (i) transgender female students in grades 7-12 to participate in athletic programs or activities consistent with their gender identity, or (ii) transgender students in any grade to use a "sex-segregated facility" consistent with their gender identity. (Pet., Ex. B-1, §§ 7-8 [proposed Ed. Code, §§ 210.8, 221.75].) The proposed measure then imposes these same restrictions on transgender students attending a college or university. (*Id.*, § 10 [proposed Ed. Code, § 66271.85].) The operative effect of these provisions is accurately stated in the Attorney General's first bullet point. Petitioners nonetheless challenge the first bullet point on two grounds, neither of which comes close to satisfying petitioners' burden of offering clear and convincing proof that it is inaccurate or misleading.

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Petitioners initially contend that the Attorney General "completely ignored a chief purpose of the Initiative" by failing to mention that it defines the terms "female" and "male." (POB 11.) But this argument is unavailing for at least four reasons. First, it is entirely within the Attorney General's discretion when discerning the chief purposes of a measure to omit explicit reference to some of its provisions. (See *Amador Valley*, *supra*, 22 Cal.3d at p. 243 ["[T]he title and summary need not contain a complete catalogue or index of all of the measure's provisions."]; *Zaremberg v. Superior Court* (2004) 115 Cal.App.4th 111, 117 ["If reasonable minds can differ as to whether a particular provision is or is not a 'chief point' of the measure the determination of the [Attorney General] should be accepted."].) The Attorney General is limited to 100 words to describe each measure (or in this case, to describe three measures combined into one), and choosing what to include and how to describe it is the very essence of the discretion afforded to him.

Second, the Attorney General accurately conveyed the effect of petitioners' proposed definitions for "male" and "female," and even paraphrased these definitions in the first bullet point. (*Compare* Pet., Ex. D ["restrict[s] gender-segregated facilities like bathrooms to *persons assigned that gender at birth*," emphasis added] *with* Pet., Ex. B-1, § 7 [proposed Ed. Code, § 210.8, subd. (c)] ["A statement of a student's biological sex on the student's official birth certificate is considered to have correctly stated the student's biological sex only if the statement was . . . entered at or near the time of the student's birth."].)

Third, petitioners' sudden emphasis on the importance of the proposed measure's definitions of "male" and "female" is not supported by the measure itself. Sections two and three of the proposed measure include 14 uncodified paragraphs of declarations and nine paragraphs of stated intent, but nowhere in those 23 paragraphs is it mentioned that defining the terms "male" and "female" is a primary purpose of the measure. (Pet., Ex. B-1, §§ 2-3.) Unable to point to anything in the measure's text to support their argument, petitioners instead rely on irrelevant extraneous information, such as legislation from other states, which would constitute error for the court to rely upon. (See *Lungren*, *supra*, 48 Cal.App.4th at p. 442 [finding trial court "erred in relying on . . . extraneous materials," such as news articles and ballot guide arguments].)

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Fourth, petitioners do not demonstrate how omitting reference to these defined terms would misinform a voter as to the operative effect of the proposed measure. (Cf. *Lungren*, *supra*, 48 Cal.App.4th at p. 443 [finding that the title and summary should describe the "operative language" of the proposed measure].) Even assuming that defining "male" and "female" were critical parts of the proposed measure and that the effects of those defined terms were not already accurately described in the title and summary, petitioners still cannot establish that their omission demonstrates that the Attorney General did not substantially comply with his statutory charge.[4] (See, e.g., *Amador Valley*, *supra*, 22 Cal.3d at p. 243 [concluding that the title and summary for Proposition 13, "though technically imprecise, substantially complied with the law" despite "stressing only the property tax aspects of the initiative" which was a principal—but not sole—subject of the initiative].)

Next, petitioners argue that the first bullet point is "unclear and confusing in its use of the term 'transgender female'" because it "could, and has been interpreted to, mean that biological females . . . who identify as transgender cannot play on sports teams with other biological females." (POB 17.) In support of this contention, petitioners rely primarily on inadmissible and self-serving hearsay evidence. (POB 17-18; Respondent's Opposition to Petitioners' Request for Judicial Notice and Objections to Petitioners' Evidence ["Resp. Opp. & Objs."], 5.) They also cite a single California regulation which includes an explanatory "(male to female)" parenthetical following the term "transgender female." (POB 17, citing Cal. Code Regs., tit. 4, § 831, subd. (a).) What petitioners fail to mention is that the *immediately preceding* regulation defines "transgender female" as "a person who lives and identifies as female, but whose designated sex at birth was male." (Cal. Code Regs., tit. 4, § 830, subd. (b).) This is precisely how the title and summary uses the term.

[4] Petitioners' reliance on *Boyd v. Jordan* (1934) 1 Cal.2d 468 and *Clark v. Jordan* (1936) 7 Cal.2d 248 for the proposition that the Attorney General omitted an essential feature of the proposed measure is unavailing. (POB 11.) Both cases are inapposite because they construed a prior version of the Elections Code. (See *Becerra*, *supra*, 19 Cal.App.5th at p. 976 [rejecting the petitioners' reliance on *Boyd v. Jordan* and *Clark v. Jordan*].) Moreover, those cases both involved the failure to describe that the operative effect of the proposed measure was to impose a tax. By contrast here, the operative effect of petitioners' proposed measure is described accurately, including the effect of the proposed measure defining the terms "male" and "female."

Petitioners' protestations notwithstanding, "transgender female" is a commonly understood term used to refer to individuals who are assigned male at birth but who identify as female. (See, e.g., *Hecox v. Little* (9th Cir. 2023) 79 F.4th 1009, 1015, 1030, 1036, 1038 [finding that a state law categorically banning the "participation of transgender women and girls in women's student athletics" likely violated the Equal Protection Clause and using the term "transgender female" throughout the opinion without explicitly defining the term]; Cal. Dept. of Ed., School Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions, FAQ #3 ["'[t]ransgender girl' and 'transgender female' refer to an individual assigned the male sex at birth who has a female gender identity"], available at https://www.cde.ca.gov/re/di/eo/faqs.asp#accordionfaq; U.S. Equal Employment Opportunity Com., Fact Sheet: Facility/Bathroom Access and Gender Identity ["[t]he term transgender woman typically is used to refer to someone who was assigned the male sex at birth but who identifies as a female"], available at https://www.eeoc.gov/laws/guidance/fact-sheet-facilitybathroom-access-and-gender-identity.) Given the Attorney General's 100-word limitation, his use of a commonly used term that accurately summarizes the proposed measure's scope is well within his discretion.

2. The title and summary's second bullet point is accurate.

The second bullet point in the title and summary states:

> 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.

(Pet., Ex. D.) This accurately describes sections 4 and 5 of the proposed measure. (See Pet., Ex. B-1, §§ 4–5.)

Under current law, transgender students may use their preferred pronouns and name at school and receive accommodations for school-related activities corresponding with their gender identity. This measure restricts these rights by eliminating the existing rights in Education Code section 221.5, subdivision (f) (discussed in the previous section), and by requiring schools to "notify parents" whenever a student requests to be treated in conformance with a gender identity that differs from the gender listed in their school records, and to "obtain explicit advance written approval from the parents or legal guardians" before providing such accommodations. (Pet., Ex.

B-1, § 5 [proposed Ed. Code, § 51101.5].) This notification requirement is imposed on nearly everyone a student may interact with while at school, including "the school, teachers, administrators, certified staff, school counselors, employees or agents of the school, including health centers on school sites or in contract with the school." (Pet., Ex. B-1, § 5 [proposed Ed. Code, § 51101.5, subd. (d)].) In other words, if the student informs any representative of the school about their preferred pronouns or name or seeks other accommodations pertaining to their gender identity (e.g., to wear certain clothing), these school representatives *must* notify the parents about the student's request.

Petitioners nonetheless argue that the second bullet point is misleading because it inaccurately states that the parental notification requirement does not have an exception for student safety. (POB 18.) But there is no dispute that the text of the measure does not mention student safety, or excuse compliance based on student safety concerns. Rather, petitioners contend that the proposed measure's provision stating that it does not "affect[] confidentiality between a school counselor and a pupil as provided in Section 49602 of the Education Code, Section 6924 of the Family Code, and Section 124260 of the Health and Safety Code" constitutes such an exception. (Pet., Ex. B-1, § 5 [proposed Ed. Code, § 51101.5, subd. (c)]; see POB 18.) Not so. As explained below, the referenced statutory provisions do not provide a student-safety exception to the parental notification requirement.

Education Code section 49602 provides that personal information disclosed by a student who is 12 years or older while receiving counseling from a school counselor may remain confidential from parents if the counselor "has reasonable cause to believe that the disclosure would result in a clear and present danger to the health, safety, or welfare of the pupil." (Ed. Code, § 49602.) But this narrow confidentiality provision is extremely limited in application. Section 49602 does not, for example, prevent a counselor "from conferring with other school staff" (thereby triggering *their* notification obligations under the proposed measure) or from disclosing the information to law enforcement agencies or in administrative or judicial proceedings. (*Ibid.*) And of course, section 49602 does not apply at all to students under 12, or anyone other than a school counselor.

For their part, Family Code section 6924 and Health and Safety Code section 124260 both apply only to *outpatient* mental health treatment or other counseling provided on an outpatient basis and are generally not applicable in the school setting at all. And in any event neither statute provides for confidentiality or an exception to the proposed measure's parental notification requirement. To the contrary, both statutes *require* "involvement of a minor's parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate." (Fam. Code., § 6924, subd. (d); Health & Saf. Code, § 124260, subd. (c).)

The existence of other "mandated reporting codes for abuse and neglect" likewise does not render the Attorney General's second bullet point inaccurate. (POB 18.) The proposed measure does not mention such laws, much less create an exception to the parental notification requirement based on them. Quite the opposite: The proposed measure's notification requirement applies "[n]otwithstanding any other law." (Pet., Ex. B-1, § 5 [proposed Educ. Code, § 51101.5, subd. (a)].) Indeed, the lack of any exception for student safety may well mean that compliance with the proposed measure's parental notification requirement will *trigger* a school official's mandated reporting duties if they believe such notification puts the student at risk. And certainly evidence of parental abuse following such notification would trigger those reporting duties. But these independent reporting duties do not relieve the school official of their obligation to comply with the proposed measure's parental notification requirement in the first place.

Had the measure intended to include an exception for student safety, it could have said so. But it didn't. And as a result, the *only* scenario in which a school official may be relieved of their parental notification obligations under the proposed measure is if a school counselor receives a confidential accommodation request from a student, who is 12 years or older, during a counseling session. Any other request to any other representative of the school—a teacher, a principal, a custodian, a coach, or a school counselor outside of a counseling session—must be reported to the parents of the student, even if the school official believes such disclosure will jeopardize the student's safety. And even that very narrow circumstance—a confidential request for a gender-identity accommodation by a student, who is 12 years or older, to a school counselor during a

counseling session—would not permit the student to *actually obtain* the requested accommodation without parental notification and consent. As a practical matter, the requested accommodation could not be provided without subsequent communications outside of the counseling session—e.g., by the school counselor or student to other school representatives—which would then require *those* representatives to notify the student's parents. An "exception" that does not permit a student to obtain the accommodation requested is no exception at all.

Because the proposed measure requires parental notification of a student's request for gender identity accommodation "without exception for student safety," the Attorney General's description of this component of the measure is accurate.

3. The title and summary's third bullet point is accurate.

The third bullet point in the title and summary states:

> Prohibits gender-affirming health care for transgender patients under 18, even if parents consent or treatment is medically recommended.

(Pet., Ex. D.) This accurately describes section 11 of the proposed measure. (See Pet., Ex. B-1, § 11.)

Under current law, transgender youth have the right to receive gender-affirming health care. (See, e.g., Sen. Bill No. 107 (2021-2022 Reg. Sess.) [Stats. 2022, Ch. 810, §§ 1-10].) This measure would restrict this right by prohibiting health care providers from administering such care—even if it is medically recommended and the child's parent consents—except in very narrow circumstances (e.g., reversal of previously received gender-affirming care or if a minor is born with a "medically verifiable genetic disorder of sexual development"). (Pet., Ex. B-1, § 11 [proposed Bus. & Prof. Code, §§ 866.1, 866.2]; see also *id.* [proposed Bus. & Prof. Code, § 866, stating that these provisions shall apply notwithstanding various statutes enacted by Sen. Bill No. 107 (2021-2022 Reg. Sess.)].)

Petitioners argue that the title and summary's statement that the proposed measure "[p]rohibits gender-affirmative care for transgender patients under 18" is "patently false" because statutory definitions in Family Code section 3453.5 and Welfare and Institutions Code section 16010.2 differentiate between "gender affirming health care" and "gender affirming mental health

care." (POB 18-19.) This argument is nonsensical. First, petitioners misquote the title and summary—the third bullet point does not state that the measure "[p]rohibits gender-affirmative care"; it states that it "[p]rohibits gender-affirming health care." Second, by referencing "gender-affirming health care," the title and summary plainly excludes "gender-affirming mental health care," which as petitioners note, California law separately defines. In other words, the title and summary draws the very distinction petitioners contend should be drawn. Finally, in making this argument, petitioners are relying on the very statutory provisions that the proposed measure seeks to nullify. (Pet., Ex. B-1, § 11 [proposed Bus. Prof. Code, § 866, "notwithstanding . . . Section 3453.5 of the Family Code . . . [and] Subdivision (b) of Section 16010.2 of the Welfare and Institutions Code . . . all provisions of this Article (Article 16) shall apply"].) Because the proposed measure would "[p]rohibit[] gender-affirming health care for transgender patients under 18, even if parents consent or treatment is medically recommended," the title and summary's third bullet point accurately summarizes section 11 of the proposed measure.

4. The title and summary's title is accurate.

The Attorney General's title—"RESTRICTS RIGHTS OF TRANSGENDER YOUTH"—is accurate. As explained above, the measure has three components—all of which would either restrict or eliminate existing rights of transgender youth. The term used in the title—"RESTRICTS"—therefore accurately describes the overall effect of the proposed measure with respect to the rights of transgender minors. The court's analysis need not go further.

While the accuracy of the title is self-evident given the measure's chief points, the Attorney General's word choice is supported by common dictionary definitions. "Restrict" means to "confine within bounds" or "restrain." (See *Restrict*, Merriam-Webster Dictionary [defining "restrict" as "to confine within bounds: RESTRAIN"], available at https://www.merriam-webster.com/dictionary/restrict].) And this is precisely what the proposed measure would do—restrain transgender students from playing certain sports, participating in certain activities, or using certain facilities, or confine them to doing those things within the bounds of their assigned gender at birth. Similarly, a "restriction" is defined as a "limitation or qualification," which is precisely what the proposed measure imposes on transgender youth—e.g., gender-identity

accommodations are permissible, *only if the parent is notified and express written approval obtained*, and certain gender-related health care is permitted, *only if it is to reverse gender-affirming health care or address certain genetic birth defects*. (See RESTRICTION, Black's Law Dictionary (11th ed. 2019) ["Confinement within bounds or limits; a limitation or qualification."].)

Tellingly, petitioners do not actually dispute that the proposed measure would restrict the rights of transgender youth, nor do they offer alternative language that accurately describes the limitations the proposed measure would impose. At most, petitioners argue that some of the rights the measure restricts "do not exist." (POB 16.) But as explained above, there is no question that transgender youth currently enjoy numerous rights that this measure would restrict or eliminate.[5] For these reasons, the Attorney General's title is accurate.

C. The Attorney General's Title and Summary Is Not Misleading, Partial, or Likely to Create Prejudice For or Against the Measure.

As shown in the previous section, the Attorney General's title and summary accurately describes the chief purposes and points of the proposed measure. Nevertheless, petitioners' argue the Attorney General's title and summary is misleading and prejudicial because the Attorney General did not use petitioners' proposed title—"PROTECT KIDS OF CALIFORNIA ACT OF 2024"—and instead titled the measure—"RESTRICTS RIGHTS OF TRANSGENDER YOUTH." (POB 11-16.) Specifically, petitioners contend that the Attorney General's use of the word "restricts" is prejudicial because "very few people approve of the idea of 'restricting rights' of anyone." (POB 9.) In advancing this novel argument, petitioners misapply the applicable legal standard and rely on irrelevant and inadmissible "evidence."

1. The Attorney General is not required to use the proponent's title.

At the threshold, petitioners' suggestion that the Attorney General should have used their proposed title—the "Protect Kids of California Act of 2024"—is unsupported by law. The

[5] Numerous press reports for petitioners' original three measures, published months before the challenged title and summary was issued, similarly described those measures as "restricting" rights, or with similar language, such as "curtail" or "strip," which indicates how the components making up Initiative No. 23-0027 are commonly understood. (RJN, Exs. 9-12.)

Attorney General has no obligation to use the title supplied by the measure's proponents or to describe a proposed measure using particular words acceptable to the proponents; he need only comply with the statutory requirements, as he has done here. (See *Becerra*, *supra*, 19 Cal.App.5th at p. 979 ["[T]he title alone need not use any particular words . . . if it otherwise complies with the statute . . . . Nor should a court draw any adverse conclusion from the fact that the Attorney General wrote his own title and summary, rather than using one proposed by [the petitioner]."].) Indeed, because initiative proponents frequently use precatory language describing the purported goals or purposes of their proposed measure, the Attorney General could risk violating his obligation to be impartial if he incorporated such language into the official title and summary. (See *Lungren*, *supra*, 48 Cal.App.4th at pp. 442-443 [rejecting the argument that the Attorney General had to use the phrase "affirmative action" in preparing his title and summary; "we cannot fault the Attorney General for refraining from the use of such an amorphous, value-laden term in the ballot title and ballot label"].) That is why courts focus solely on whether the title and summary accurately expresses the operative effect of the proposed measure.[6] (See *id.* at p. 443.)

2. The Attorney General's title and summary is not misleading and does not create prejudice for or against the measure.

In order to demonstrate that the Attorney General's title and summary is partial to one side, misleading, or likely to create prejudice, petitioners must demonstrate, with clear and convincing evidence, that it signals to voters the Attorney General's view of "how they should vote, or casts a favorable light on one side of the [] issue." (*Martinez v. Superior Court* (2006) 142 Cal.App.4th 1245, 1248; see also *McDonough*, *supra*, 204 Cal.App.4th at p. 1174.) Petitioners do not come close to meeting this heavy burden.

[6] This is also why petitioners' reliance on *McDonough v. Superior Court* (2012) 204 Cal.App.4th 1169, 1175 ("*McDonough*") is misplaced. (POB 12.) There, the court found that a city's measure which framed a change to their pension laws as "designed principally ***to*** '***protect*** essential services, including neighborhood police patrols, fire stations, libraries, community centers, streets and parks" improperly promoted the measure "by implying that if voters do not endorse pension reform by passing the measure, the public will lose fire and police protection and be deprived of popular community resources." (*Ibid.*, emphasis added.) Similarly, by adopting petitioners' language of "protecting kids," the Attorney General would be implying that by not supporting the measure, voters would be depriving children of protection.

Petitioners' contention that the title and summary is "biased" focuses exclusively on the title. (POB 11-16.) Specifically, petitioners contend that their proposed title "affirmatively denotes that the Initiative will protect kids, while [the Attorney General's] title negatively paints the Initiative as restricting kids' rights." (POB 12.) As an initial matter, it is unclear how an accurate title (as demonstrated above) can "negatively paint" the measure. The Attorney General does not violate his title and summary duty when he accurately describes a proposed measure, but the measure's proposed policies turn out to be unpopular.[7] (See POB 9 ["very few people approve of the idea of 'restricting rights' of anyone"].) If petitioners did not want a title that describes their measure as restricting rights of transgender youth, then they should not have proposed a measure that would restrict rights of transgender youth.

In any event, petitioners cannot isolate their attack on the title, which must be read in conjunction with the summary. (See *Becerra*, *supra*, 19 Cal.App.5th at p. 976 [rejecting the petitioners' contention that the court "evaluate the title separately from the summary" because the Elections Code refers to the title and summary "as a single document, using singular verbs to describe what it is and what it does"].) And when viewed together (as they must be), the title and summary here provide an accurate and impartial summary of petitioners' proposed measure.

The *Becerra* case is instructive. There, the court of appeal upheld the Attorney General's circulating title and summary issued for an initiative seeking to repeal a portion of Senate Bill 1 (the so-called "gas tax"), finding that it did "not mislead the voters or create prejudice against the measure." (*Becerra*, *supra*, 19 Cal.App.5th at pp. 970-971.) In that case, proponents alleged that the Attorney General's title—"ELIMINATES RECENTLY ENACTED ROAD REPAIR AND TRANSPORTATION FUNDING BY REPEALING REVENUES DEDICATED FOR THOSE PURPOSES"—was "false, argumentative and misleading" because it did not specify that the

[7] This fact also distinguishes *Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1434, relied on by petitioners. (POB 12.) There, the court found that use of the word "exemption" regarding a city measure on a utility tax "connote[d] unfair influence and special treatment . . . [and] convey[ed] the idea that AES isn't paying *any* utility tax at all—a proposition that . . . ***is simply not true***." (*Ibid.*) In contrast, as shown above, the Attorney General's title and summary here is accurate. Indeed, although petitioners contend the title's use of the word "restricts" "negatively paints" the measure, they do not argue it is inaccurate. (See also Section I.B.)

measure would repeal certain taxes. (*Id.* at pp. 973-974.) Reaffirming the Attorney General's "considerable latitude" in drafting the title and summary, the court held that the "title" and "summary" must be read together, and when so read, "the text prepared by the Attorney General [was] not misleading, argumentative, or likely to create prejudice against the measure." (*Id.* at pp. 976-977.) The court specifically noted that the first sentence of the "summary" portion referenced the various taxes to be repealed, which "reasonably inform[ed] the voter of the character and real purposes of the proposed measure." (*Id.* at p. 977, internal quotations omitted.) Like the title and summary upheld in *Becerra*, the title and summary here reasonably informs voters that the measure would restrict or eliminate rights currently held by transgender youth—with a general statement of the overall impact in the title, and a more detailed description of its specific provisions in the summary.

And while it is relatively uncommon for an initiative measure to propose the restriction or elimination of existing rights, when such measures are proposed, the Attorney General has consistently described them in such terms:

- Initiative No. 23-0019: "ELIMINATES STUDENTS' RIGHTS TO PARTICIPATE IN SCHOOL ACTIVITIES CONSISTENT WITH THEIR GENDER IDENTITY."
- Initiative No. 15-0073: "SPEECH. HOLOCAUST DENIAL RESTRICTIONS . . . Restricts speech that . . . ."
- Initiative Nos. 13-0019, 13-0038: "ABORTION RESTRICTION. PARENTAL NOTIFICATION AND WAITING PERIOD FOR FEMALES UNDER 18."
- Initiative Nos. 14-0013, 14-0014, 15-0025, 15-0040, 15-0047, 15-0063: "ABORTION ACCESS RESTRICTION. PARENTAL NOTIFICATION AND WAITING PERIOD FOR FEMALES UNDER 18."
- Initiative No. 11-0010: "PROHIBITS POLITICAL CONTRIBUTIONS BY PAYROLL DEDUCTION. PROHIBITIONS ON CONTRIBUTIONS TO CANDIDATES . . . Restricts union political fundraising by . . . ."
- Initiative No. 09-0106: "PROHIBITS VOTING BY THOSE WHO DO NOT PROVIDE GOVERNMENT-ISSUED IDENTIFICATION. . . . Restricts voting by. . . ."
- Initiative No. 07-0068: "LIMIT ON MARRIAGE."

(RJN, Exs. 13-18.)

At bottom, petitioners contend that describing a restriction as a restriction is inherently biased. Or to put a finer point on it, they contend the Attorney General must use euphemistic language in a title and summary if he anticipates a proposed initiative might be unpopular. There is no legal support for such a claim. Nor is it difficult to imagine the absurd results of such a rule.

3. Petitioners' reliance on inadmissible evidence and the Attorney General's actions as California's Chief Law Officer is misplaced.

Petitioners' reliance on polling, social science studies, newspaper editorials, and other "evidence" is entirely misplaced. (POB 13-15.) Such "evidence" is irrelevant under the applicable legal standard where the court is charged with independently examining whether the Attorney General's 100-word title and summary substantially complied with the statutory requirements.[8] (See *Lungren*, *supra*, 48 Cal.App.4th at p. 442 ["The court erred in relying on these extraneous materials. The mandate to the Attorney General is to state the purpose and effect of the measure, not to reiterate selectively fragments of public commentary and debate on the measure."].) Not only is this so-called evidence irrelevant, but it is inadmissible for the reasons articulated in the Attorney General's evidentiary objections filed concurrently herewith. (Resp. Opp. & Objs., 2-3, 7-8.)

Similarly, there is no legal support for petitioners' contention that the title and summary is inherently biased because of the Attorney General's statements and official actions regarding the rights of transgender youth. (POB 6-9.) To the contrary, outside of his role in drafting the official title and summary, the Attorney General is free to take public positions on legal issues generally and initiative measures specifically, including, for example, by authoring the official argument for or against a measure. (See *Lungren*, *supra*, 48 Cal.App.4th at p. 440 n.1 ["As an elected state constitutional officer, the Attorney General is not only entitled to an opinion on matters of public importance, he is entitled to state that opinion publicly. It is immaterial whether

[8] Petitioners' examples of "the standard legislative practice of preparing a bill title," (POB 12), are likewise irrelevant because those titles need not comply with Elections Code sections 9004 and 9051. Petitioners also fail to cite any legal authority for the proposition that the titles of unrelated state legislative bills have any relevance under the applicable legal standard for evaluating a title and summary issued by the Attorney General. To the contrary, the Legislature—like initiative proponents—frequently employs precatory language to describe a bill in terms intended to garner support for its passage.

the Attorney General supports or opposes [the proposed measure].”].)

The only exception to the Attorney General’s exclusive authority to prepare the circulating title and summary for a proposed initiative is when “the Attorney General is a proponent” of the measure. (Elec. Code, § 9003.) Had the Legislature wanted to reassign the Attorney General’s title and summary duties any time he has taken a position on a similar legal issue, it would have done so. But given the Attorney General’s unique and essential role in state government, such a requirement would be absurd. As the state’s Chief Law Officer, the Attorney General has a constitutional duty to enforce California law. (Cal. Const., art. V, § 13; see also, e.g., Gov. Code, §§ 12511, 12512.) Initiatives—by definition—seek to change the very laws the Attorney General has a duty to enforce. (Cal. Const., art. II, § 8, subd. (a); see also Elec. Code, § 9002, subd. (b) [amendments to proposed initiatives are not permitted “if the initiative measure as originally proposed would not effect a substantive change in law”].) Petitioners’ proffered rule—that the Attorney General may not prepare a title and summary for initiatives seeking to change laws he has previously enforced—would render the Attorney General’s title and summary duties a nullity.

For all of these reasons, petitioners cannot meet their heavy burden to establish—by clear and convincing evidence—that the Attorney General’s title and summary is untrue, partial, or likely to create prejudice for or against the measure. The writ should be denied.

II. PETITIONERS’ FREE SPEECH CLAIMS ARE FUNDAMENTALLY FLAWED.

Petitioners present a jumble of free speech claims in the final section of their opening brief that purport to stem from both the California Constitution and the U.S. Constitution. (POB 19-21.) None have any merit because petitioners’ free speech rights are not implicated by a state law that requires the Attorney General to prepare a circulating title and summary.

First, petitioners invoke state law for the proposition that, “[g]overnment action, including that which may influence the outcome of an election, falls within Petitioners’ free speech rights, and the government may not ‘take sides’ in the electoral process, including with ballot initiatives.” (POB 19 [citing *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199, 1227-1228 (“*City of Albany*”)].) And they contend there is no compelling government interest for providing a biased and misleading title and summary. (POB 19-20.) This

"free speech" claim simply recasts their criticism of the Attorney General's title and summary in the guise of a constitutional violation.

It is true that "[b]allots . . . are hemmed in by the constitutional guarantees of equal protection and freedom of speech" and that "[t]hese guarantees mean, in practical effect, that the wording on a ballot or the structure of the ballot cannot favor a particular partisan position." (*Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1433 [citing *City of Albany*, *supra*, 56 Cal.App.4th at pp. 1227-1228].) Of course, a circulating title and summary does not appear on any ballot. And in any event this limitation does not materially differ from the one analyzed above in Section I.C to demonstrate that the Attorney General's title and summary is not partial, misleading, or prejudicial. And so petitioners' claim fails for the same reasons. (See also *Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 127-128 [rejecting free speech challenge under the state and federal constitutions to a local ballot measure where the court determined that the county counsel's 500-word limited "summary and impartial analysis . . . [did] not endorse the measure and . . . are reasonably fair and accurate"].)

Next, petitioners contend that the *Attorney General's* title and summary is unconstitutionally compelled speech because it forces petitioners to "speak the government's message." (POB 20.) The doctrine of compelled speech has no application here because the title and summary is not speech by petitioners; it is speech by the Attorney General. (Elec. Code, § 9004, subd. (a).) Indeed, the top of every petition used to collect signatures is expressly required to say as much. (Elec. Code, § 9008, subd. (d) [requiring petitions to state in bold face: "The Attorney General of California has prepared the following circulating title and summary of the chief purpose and points of the proposed measure"]; see also *San Francisco Forty-Niners v. Nishioka* (1999) 75 Cal.App.4th 637, 648 [rejecting First Amendment challenge to state law prohibiting proponents from including falsehoods in their initiative petition circulated for signatures because "[t]he initiative petition . . . is not a handbill or campaign flyer—it is an official election document . . . [and] is the constitutionally and legislatively sanctioned method by which an election is obtained on a given initiative proposal"].) Petitioners even acknowledge this fact at another point in their opening brief: "Respondent cannot argue that persons soliciting

signatures can use their own speech to counter *his speech*." (POB 20, emphasis added.)

Notably, petitioners do not cite any legal authority in support of this argument. For good reason. Petitioners' argument has been specifically rejected by several federal courts of appeal. (See *Caruso v. Yamhill County ex rel. County Com'r* (9th Cir. 2005) 422 F.3d 848, 858 ("*Caruso*") [finding Oregon law requiring certain ballot measures include the statement, "[t]his measure may cause property taxes to increase more than three percent," did not implicate strict scrutiny or the compelled speech doctrine because it provided "the State's message," which was "transmitted through ballots, documents prepared, printed, and distributed by—and therefore attributed to—State and local governments"]; *Missouri Roundtable for Life v. Carnahan* (8th Cir. 2012) 676 F.3d 665, 673, 676 ("*Missouri Roundtable*") [finding a ballot initiative proponent failed to show "that it has a legally protected interest in controlling the manner in which the state officers carry out their duties" and that "[t]he summaries prepared by the state officers do not purport to be [the proponent's] speech"]; *Campbell v. Buckley* (10th Cir. 2000) 203 F.3d 738, 745 ("*Campbell*") [finding Colorado's title setting requirement for ballot initiatives, which included preparation of a title and summary by state officials, did not violate the First Amendment because it "cannot be characterized as a direct limitation on the quantity of speech available to [the initiative proponents"].)

Moreover, petitioners' reliance on cases striking down state laws that limited signature gathering for initiative measures as violating the First Amendment misses the mark. (POB 20-21 [citing *Meyer v. Grant* (1988) 486 U.S. 414 ("*Meyer*"); *Buckley v. American Constitutional Law Foundation, Inc.* (1999) 525 U.S. 182 ("*Buckley*")].) *Meyer* struck down a state law that imposed criminal penalties for paying or receiving money to circulate initiative petitions; *Buckley* invalidated state laws requiring petition circulators to be registered voters and wear identification badges. (*Meyer*, *supra*, 486 U.S. at pp. 421-422; *Buckley*, *supra*, 525 U.S. at pp. 197, 200.) Here, by contrast, the Attorney General's preparation of the title and summary does not limit or restrict the speech of signature gatherers or the circulation of petitions. Indeed, petitioners cannot show "how [their] asserted right to control the speech used by elected state officers in response to citizen initiative proposals for constitutional amendments would be subject to the exacting

scrutiny test used in *Meyer* and *Buckley*." (*Missouri Roundtable*, *supra*, 676 F.3d at p. 675 [rejecting the relevance of signature gathering cases to a First Amendment challenge to ballot summaries prepared by state officials because the state initiative law "does not limit the exchange of ideas during the petition circulation process"]; *Caruso*, *supra*, 422 F.3d at pp. 855-856 [distinguishing *Meyer* from a state law that "governs the political process" and "regulate[s] only what is said through the ballot itself"].)[9]

For all of these reasons, petitioners have failed to state—much less prove—a cognizable claim that their free speech rights were violated. Accordingly, the court should dismiss petitioners' free speech claims with prejudice.[10]

III. PETITIONERS' REQUEST FOR AN EXTENSION OF THE 180-DAY CIRCULATION PERIOD FOR SIGNATURE COLLECTION MUST BE DENIED.

Petitioners seek a writ directing the Attorney General to "request the Secretary of State to extend the 180-day deadline from the date of this court's order or for the amount of time which Petitioner has been restricted with the use" of the previously issued title and summary. (POB 23.) Notably, Petitioners offer no legal authority supporting such relief—in fact, they offer no argument at all on this point, and have therefore waived the issue. In any event, a writ may issue only to compel the performance of an official duty and petitioners have not identified any duty requiring the Attorney General to make such a request of the Secretary of State. The curious relief sought also seems to confirm petitioners' understanding that the Attorney General has no

[9] Petitioners attempt to rewrite the U.S. Supreme Court's decision in *National Institute of Life Advocates v. Becerra* (2018) 138 S.Ct 2361, inserting bracketed references to "initiatives," "voters", and the "ballot title and summary" where none exist. (POB 20.) That case has nothing to do with initiative measures; it involved a challenge to a California law that required crisis pregnancy centers to post certain notices. It has no application here.

[10] See also *Missouri Roundtable*, *supra*, 676 F.3d at pp. 676-677 [affirming dismissal of a First Amendment challenge to a state law requiring that state officials prepare 100-word summaries of proposed ballot initiatives]; *Initiative and Referendum Institute v. Walker* (10th Cir. 2006) 450 F.3d 1082, 1099-1101 (*en banc*) [finding that a state law imposing a two-thirds voting requirement for passage of ballot initiatives concerning wildlife did "not implicate the First Amendment at all" because the law did not restrict speech, even if it made "some political outcomes less likely than others—and thereby discourages some speakers from engaging in protected speech"]; *Biddulph v. Mortham* (11th Cir. 1996) 89 F.3d 1491, 1493, 1500 [dismissing First Amendment challenge where the plaintiff's initiative measure was "excluded from the ballot for failure to comply with Florida requirements governing the substance and titles of amendments proposed by initiative," and concluding that "[m]ost restrictions a state might impose on its initiative process would not implicate First Amendment concerns"].)

role in the signature gathering or verification process, or the 180-day deadline associated with it, which the Secretary of State administers. (See Elec. Code, §§ 9014(b), 9030, 9031.) Of course, the Secretary of State is not a party to this case and therefore cannot be bound by its judgment. And even if the court were to direct the Attorney General to make such a "request," the Secretary of State would have no obligation to acquiesce to it. Nor is it clear that she could—the 180-day circulation period is set by statute, not the Secretary of State, and that statute expressly prohibits county elections officials from accepting petitions for proposed initiatives after it expires. (Elec. Code, § 9014(b).) Of course, those county elections officials are also not parties to this case.

Accordingly, for all of these reasons, the 180-day circulation period for Initiative 23-0027 may not be extended.

CONCLUSION

For the reasons discussed above, the court should deny petitioners' verified petition for a writ of mandate and dismiss the remaining free speech claims with prejudice.

Dated: April 10, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
BENJAMIN M. GLICKMAN
Supervising Deputy Attorney General

/s/ Malcolm Brudigam
MALCOLM A. BRUDIGAM
Deputy Attorney General
Attorneys for Respondent
Attorney General Rob Bonta

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Protect Kids California, et al. v. Rob Bonta**

Case No.: **24WM000034**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230.

On April 10 2024, I served the attached: **RESPONDENT'S OPPOSITION BRIEF TO PETITIONERS' VERIFIED PETITION** by transmitting a true copy via electronic mail, addressed as follows:

- ***SEE ATTACHED SERVICE LIST –***

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 10, 2024, at Los Angeles, California.

Ron Quijada	Ron Quijada
Declarant	Signature

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **Protect Kids California, et al. v. Rob Bonta**

Case No.: **24WM000034**

1. Nicole C. Pearson, Esq.
   Law Office of Nicole C. Pearson
   E-mail: nicole@FLTJllp.com
   Attorney for Petitioners

2. C. Erin Friday, Esq.
   Law Office of Nicole C. Pearson
   E-mail: erin@FLTJllp.com
   Attorney for Petitioners

3. Carla Holland
   Law Office of Nicole C. Pearson
   E-mail: Carla@FLTJllp.com

4. Emily Rae, Esq.
   Liberty Justice Center
   E-mail: ERae@libertyjusticecenter.org
   Attorney for Petitioners

5. Sarah Childress, Esq.
   Liberty Justice Center
   E-mail: SChildress@libertyjusticecenter.org
   Attorney for Petitioners