



November 13, 2023

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

Re: *Legislature of the State of California v. Weber (Hiltachk)*, No. S281977
Amicus Letter in Support of Petition for Writ of Mandate

Dear Chief Justice Guerrero and Associate Justices of the Court:

The American Civil Liberties Union of Northern California and the American Civil Liberties Union of Southern California respectfully submit this letter in support of the emergency petition for writ of mandate in *Legislature v. Weber (Hiltachk)*, No. S281977.

Amici have frequently supported and collaborated on voter initiatives to secure essential funding for housing, schools, healthcare, and other public services. Yet, as explained below, the proposed ballot initiative here (the “Taxpayer Protection and Government Accountability Act”) would severely restrict the ability of voters, community groups, and organizations like *amici* to pursue such initiatives and to generate revenue for critically needed services. This new limitation is emblematic of the fundamental changes that the proposed initiative makes to the division of power and responsibilities between the legislative branch, the executive branch, local governments, and the voters—all of which demonstrate that the initiative seeks to implement an unlawful constitutional revision. (See Pet. at pp. 39–62.)

Accordingly, this Court should exercise its original jurisdiction and review the petition on an expedited basis to ensure that the proposed initiative’s legality is resolved far before the November 2024 election. This Court has recognized that preelection review of invalid ballot initiatives can be necessary to guarantee the legitimacy of the initiative process—particularly when an initiative unlawfully seeks to revise the Constitution. Such review is particularly important here because, absent this Court’s intervention, nearly three years of state and local tax measures that do not conform to the proposed initiative’s requirements may be retroactively invalidated. Simply put, if the Court waits until after the election to review the proposed initiative, it may be practically impossible to unring the bell.

I. The proposed initiative will reduce voters' ability to enact revenue measures, which play a key role in funding needed programs and services.

In California, voter-led initiatives are critical to funding a wide array of needed services, from education and housing to public health and public safety. As this Court is aware, voters routinely use the initiative process to impose or raise taxes to generate revenues that can then be invested in their communities. Voters can also approve initiatives to amend their city or county charters to provide for increased taxes. (See Cal. Const., art. XI, § 3, subd. (a).) These voter initiatives are often the most important—and, sometimes, the only—source for funding desperately needed community priorities.

To take one recent example, Los Angeles voters voted in November 2022 to approve Measure ULA, the largest investment in affordable housing in Los Angeles history backed by a coalition of over two hundred community groups and partner organizations, including *amici*. By enacting real-estate transfer taxes on property sales of more than \$5 million, Measure ULA will produce hundreds of millions of dollars annually to purchase and construct affordable housing, provide financial assistance to low-income seniors and tenants, and fund legal assistance for tenants facing eviction. Indeed, just a couple of months ago, the Los Angeles City Council unanimously approved spending the first \$150 million of Measure ULA funds on programs to reduce the city's housing crisis.¹

Measure ULA was passed by a significant majority—around 58%—of Los Angeles voters. Under current law, this proportion of voters far exceeded the simple majority vote needed to enact a local revenue measure. (See, e.g., *City & County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal. App. 5th 703, 714, 721–24; *City of Fresno v. Fresno Bldg. Healthy Communities* (2020) 59 Cal.App.5th 220, 235, 238.) If the proposed initiative is approved, however, even this significant majority vote would not be enough to enact similar measures.

Of course, Measure ULA is just one of more than two hundred local tax and bond measures that were enacted in the November 2022 election. In that same election, for instance, Santa Monica voters approved Measure GS, a transfer-tax initiative like Measure ULA that will support housing affordability; and San Francisco voters approved Proposition M, a vacancy-tax initiative to fund rent subsidies and affordable housing. Earlier voter initiatives like Measure P in Fresno, which created a sales tax that will provide more than \$30 million of funding per year

¹ Jack Flemming, *As challenges loom, L.A. City Council approves \$150 million in 'mansion tax' spending*, L.A. Times (Aug. 29, 2023), <https://www.latimes.com/business/real-estate/story/2023-08-29/as-challenges-loom-l-a-city-council-approves-150-million-in-mansion-tax-spending>.

for parks and recreation for thirty years, continue to pay major dividends for local communities. Although these measures received the support of significant majorities of local voters, none of them satisfy the proposed initiative’s supermajority requirement. Moreover, as explained below, the validity of the recently enacted measures will be called into doubt if the proposed initiative is approved.

This Court has stressed that “[w]hen voters exercise the initiative power, they do so subject to precious few limits on that power.” (*Cal. Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 935.) Yet the proposed initiative here enforces a substantial limit on the voters’ ability to generate revenues to invest in their communities via the initiative process—a limit that it does not impose on voters who favor *reducing* revenues. Whether that incongruent treatment (along with the many other structural changes identified by the petitioners and other *amici*) may lawfully be enacted outside the constitutional-revision process is surely an important question worthy of this Court’s review.

II. Preelection review is necessary.

Amici recognize that this Court’s general rule is to review the legality of ballot initiatives after the election. But that “rule does not preclude preelection review when the challenge is based upon a claim,” like here, “that the proposed measure . . . amounts to a constitutional revision rather an amendment.” (*Senate of State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1153; accord *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1029; *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 679.)

When a measure makes “far reaching changes in the nature of our basic governmental plan,” it “amount[s] to a constitutional revision beyond the scope of the initiative process.” (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 351–2; see also *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 222.) The proposed initiative here is such a measure. Not only does it substantially interfere with the voters’ reserved power to increase or impose taxes through the ballot measure, but, as the petitioners explain, it fundamentally restructures the legislative and executive branches’ “foundational powers” under the Constitution. (See, e.g., *Legislature v. Eu* (1991) 54 Cal.3d 492, 509.) Among other things, the proposed initiative would: (1) practically eliminate the legislature’s power of taxation by subjecting any tax law to voter approval; (2) impair the legislature’s spending power by requiring any change in how special-tax revenues are spent to be approved by the voters; and (3) prohibit executive and administrative agencies from exercising their delegated power to implement tax law and set regulatory fees. (See Pet. at pp. 39–58.)

Because the proposed initiative is an unlawful constitutional revision, this Court’s preelection review is necessary. (See *Jones, supra*, 21 Cal.4th at p. 1153.) As this Court has recognized, there is no “value in putting before the people a measure which they have no power to enact.” (*American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 697; see also, e.g., *Citizens for Responsible Behavior v. Super. Ct.* (1991) 1 Cal.App.4th 1013, 1022 [“If an ordinance proposed by initiative is invalid, routine deference to the process will often require the charade of a pointless election.”].) That’s because “[t]he presence of an invalid measure on the ballot steals attention, time, and money from the numerous valid propositions on the same ballot,” while “confus[ing] some voters and frustrat[ing] others.” (*Eu*, at p. 697.) It imposes “high costs” on state and local governments, including printing and translating election materials, that “if the initiative is in fact invalid . . . will be for naught.” (*Deukmejian, supra*, 34 Cal.3d at p. 666.) Worst of all, “an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure.” (*Eu*, at p. 697.) These concerns are particularly relevant here, where the proposed ballot initiative seeks to fundamentally restructure the voters’ initiative power itself.

Further, this Court’s preelection review is especially warranted here because the effects of the proposed initiative are not limited to *future* measures. As the petitioners explain (at pp. 33–38), the initiative’s retroactivity provision would “void” any tax adopted after January 1, 2022, unless the tax is reenacted within one year to comply with the initiative’s requirements. (See Taxpayer Protection and Government Accountability Act, § 4 [proposed art. XIII A, § 3, subd. (f)]; *Id.*, § 6 [proposed art. XIII C, § 2, subd. (g)].)

Without this Court’s review, the consequences will be drastic. It could mean, for instance, that Measure ULA would be invalidated, absent a two-thirds re-approval vote by November 2025. Until then, what would happen to the Measure ULA funds that the City of Los Angeles budgeted for—or already spent on—affordable housing and other programs? The same would be true for the other recently enacted measures discussed above: Existing budgets would be thrown into disarray and local spending would have to be redistributed and cut back, leading to the reduction of critical programs and services. Granting preelection review will avoid all these problems. (See, e.g., *McPherson, supra*, 38 Cal.4th at p. 1030 [noting that the “potential costs [that] are incurred in postponing the judicial resolution of a challenge to an initiative measure until after the measure has been submitted to and approved by the voters . . . appropriately can be considered by a court in determining the propriety of preelection intervention”].)

For these reasons, *amici* urge the Court to grant the petition and direct the Secretary of State to remove the proposed initiative from the November 2024 election.

Respectfully submitted,



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PROOF OF SERVICE

I, Sara Cooksey, declare that I am over the age of eighteen and not a party to the above action. My business address is 39 Drumm Street, San Francisco, CA 94111. My electronic service address is scooksey@aclunc.org. On November 13, 2023, I served the attached:

**Amicus Letter in Support of Petition for Writ of Mandate in
Legislature v. Weber (Hiltchak), Case No. S281977**

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system:

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*Pursuant to Rule 8.29 of the
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 13, 2023, in Fresno, CA.


Sara Cooksey