No. S232642

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

GOVERNOR EDMUND G. BROWN JR., MARGARET R. PRINZING and HARRY BEREZIN,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO,

Respondent.

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION, ANNE MARIE SCHUBERT, an individual and in her personal capacity, and KAMALA HARRIS, in her official capacity as Attorney General of the State of California,

Real Parties in Interest.

Writ Regarding Order by the Sacramento County Superior Court,
Case No. 34-2016-80002293-CU-WM-GDS, Department 24,
Phone No.: (916) 874-6687, The Honorable Shelleyanne Chang, Presiding

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REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDATE AND REQUEST FOR IMMEDIATE STAY AND/OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

CRITICAL DATE: FEBRUARY 26, 2016

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INTRODUCTION

In 2014, the Legislature enacted significant changes to the initiative process that made it more accessible to the public and more flexible for proponents. Among the other changes, Senate Bill No. 1253 allowed proponents to make substantive amendments to their proposal within 35 days after submission to the Attorney General for title and summary. The plain language of Elections Code section 9002 contains only two restrictions on a proponent's ability to amend: the original measure must have made a substantive change to the law and the amendments must be reasonably germane to the theme, purpose, or subject of the original measure. Section 9002's combination of a minimal floor that the original measure must meet, coupled with a high ceiling for permissible amendments demonstrates the Legislature's intent to permit broad, substantive amendments, while prohibiting the submission of a "spot" measure as a placeholder.

Real parties in interest California District Attorneys Association and Anne Marie Schubert (collectively, "CDAA") ask the Court to ignore the plain language of section 9002, which borrows directly from this Court's single subject jurisprudence to establish a standard for the Attorney General's review of amendments. CDAA does not even attempt to argue that the amendments to the Public Safety and Rehabilitation Act are not reasonably germane to the theme, purpose, or subject of the measure, as those terms are defined in the context of the single subject rule. Instead, CDAA urges the Court to adopt a "more restrictive" test, though it does not explain how or why the Court should depart from the clear standard established in the plain text of the statute.

The resolution of this question will have an effect not just on the proponents' ballot measure, but on the initiative process generally. By enacting SB 1253, the Legislature sought to empower proponents and the public by creating an opportunity for public comment, authorizing the filing of substantive amendments, and allowing the proponents of an initiative to withdraw the measure, even after submitting initiative petitions to county elections officials. The reading urged on this Court by CDAA, and adopted by the trial court, would undercut the purpose of SB 1253, hand opponents of ballot measures a cudgel to use to delay a measure from qualifying, and hamstring proponents from making substantive changes to strengthen and improve their measures, as was intended by the Legislature. It is critical that this Court assert its original jurisdiction to resolve the important questions presented by this petition and to ensure the integrity of the initiative process.

ARGUMENT

I.

ORIGINAL JURISDICTION IS APPROPRIATE IN THIS COURT

CDAA does not dispute that original relief is necessary and appropriate in this Court rather than the Court of Appeal. Indeed, all parties apparently agree that this matter presents issues of broad public importance that require speedy and final resolution, and that this is one of those unusual but compelling cases requiring this Court to hear an emergency writ as an original matter. Certainly the Attorney General and petitioners believe that to be the case.

A. This Case Presents Issues Of Broad Public Importance

Petitioners and the Attorney General agree that this case raises issues of broad public importance, including: the ability of the Attorney General to fairly and consistently administer the provisions of section 9002(b); the need to avoid the public uncertainty the lower court's ruling would create about the scope of permissible amendments in the future; the ability of voters to consider an important statewide ballot measure with far-reaching effects on our criminal justice system; and the ability of the State to respond to a federal court mandate to reduce its prison population.[1] (Attorney General's Preliminary Response ["AG Prelim. Resp."] at 11-12; Petitioners' Emergency Petition ["Emergency Pet."] at 5-6.)

CDAA disagrees with the latter point, stating that "the Governor falsely implies that if he is unable to get his proposed initiative on the ballot this year, the State will be unable to meet the 'federal mandate to reduce its prison population.'" (CDAA Preliminary Opposition ["CDAA Prelim. Opp."] at 1.) Of course, that is not what petitioners said. They said that the measure "would provide the state with a *durable* solution to prison over-crowding that enhances public safety and avoids the indiscriminate release of prisoners by federal court order." (Emergency Pet. at 3-4, emphasis added.) Regardless of whether CDAA agrees with the proposed

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[1] Policy experts and members of the advocacy community agree. On February 26, 2016, the Alliance for Boys and Men of Color, California Alliance for Youth and Community Justice, Los Angeles County Public Defender, National Center for Youth Law, and Pacific Juvenile Defender Center each submitted amicus letters urging this Court to issue an immediate stay to enable this Court to address the important public issues presented in this case.

solution, there can be no dispute that it would give the State tools to address prison over-crowding and federal court oversight.

CDAA also mischaracterizes the information the Governor and Attorney General provided to the federal court when they declared that the current prison population is 985 inmates below the court-ordered population benchmark of 137.5% of capacity. (CDAA Prelim. Opp. at 1.) CDAA ignores that the State has been ordered to take steps to reduce its out-of-state prison population – presently at 5,088 inmates – and the federal court will retain oversight until the State has "firmly established" that compliance with the population benchmark is durable. (Request for Judicial Notice, Exh. 1 at 2, 4-5; Exh. 2 at 2.) The court has ordered that if the State fails to keep the prison population below the mandated benchmark (the current population is now only 835 inmates below the benchmark, not 985), a court-appointed compliance officer will order the release of prisoners. As the State's population continues to grow, the State must find a durable solution to prison over-crowding, and the voters should have the earliest opportunity to consider a policy that would reduce the prison population by focusing on rehabilitation.

In addition, CDAA disputes whether the superior court's decision creates a new and unworkable standard for implementing section 9002, characterizing the decision as one that merely found that the Attorney General had abused her discretion. (CDAA Prelim. Opp. at 2-3.) The argument ignores the words in the ruling, which would require the Attorney General to determine, untethered from the text of the statute, whether the amendments are "sweeping" and "substantive." The uncertainty inherent in these terms, especially in contrast with the well-established body of law applying the single subject test, will invite the

opponents of other measures to file similar lawsuits in an effort to fight their political battles in court rather than at the ballot box and, as the Attorney General explains, make it extremely difficult for her office to implement section 9002.

B. The Issues Raised In This Case Must Be Resolved Promptly

Petitioners and the Attorney General also agree that the issues raised in this case must be resolved promptly. (Emergency Pet. at 5-6; AG Prelim. Resp. at 12-13.) More to the point, pursuing relief in the Court of Appeal before seeking review in this Court would almost certainly cause substantial delays that would prevent the kind of final resolution required in ballot measure litigation. (*Perry v. Jordan* (1949) 34 Cal.2d 87, 91 [exercising original jurisdiction and explaining that, "the voters should not become bogged down by lengthy litigation in the courts" where doing so may delay presentation of statewide initiative to the electorate].) For example, in *Costa v. Superior Court* (2006) 37 Cal.4th 986, the superior court barred a measure from being placed on the ballot based on discrepancies in the circulating petition. When the proponent decided to file a writ, he did so in the court of appeal rather than this Court, which led to 18 days of uncertainty before this Court granted review and ordered the measure to be placed on the ballot. (*Id.* at 1001-1004.)

CDAA does not disagree that this case presents urgent issues, but it nevertheless tries to blame the Governor for the need for urgency. The effort fails.

It is true that the proponents of the Public Safety and Rehabilitation Act filed the measure in December, after the Secretary of State's *suggested* target date of August 25, 2015 for filing initiatives.

However, the same is also true of all of the statewide measures in circulation right now. That does not mean that any of these measures, including the one before this Court, were filed after an actual deadline. Indeed, the Secretary of State's target date assumes that proponents will take the full 180 days to collect signatures. Of course, they are not required to do so, and most initiatives qualify in far less time.[2]

This Court should exercise its original jurisdiction and issue its writ of mandate to lift the cloud of uncertainty hovering over this measure in the wake of the superior court's ruling, and to affirm the right of the people to use the initiative process to remedy problems that urgently require attention.

II.

SECTION 9002 ADOPTS THE SINGLE SUBJECT STANDARD FOR AMENDMENTS

CDAA spends seven pages of its brief explicating the purported legislative history of SB 1253 while conspicuously ignoring the plain language of section 9002.[3] (CDAA Prelim. Opp. at 9-16.) First, CDAA argues that the Attorney General and proponents' reading of the statute "is not supported anywhere in the legislative history" of SB 1253. (*Id.* at 16.) Of course, when a statute is unambiguous, there is no need for a

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[2] It is worth noting that it is not any action by the Governor that set into motion the urgent proceedings of the last two weeks. It was, of course, CDAA's decision to file the action that prompted this writ. Thus, the only "delay" here is the one sought by CDAA to prevent the voters from having the opportunity to consider the measure in November.

[3] Unless otherwise stated, all further statutory references are to the Elections Code.

court to resort to its legislative history. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 ["We begin by examining the statutory language, giving the words their usual and ordinary meaning. If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs."], citations omitted.)

In this case, the Legislature incorporated this Court's description of the single subject rule in *Californians for an Open Primary v. McPherson* (2006) 38 Cal.4th 735, 764 ("reasonably germane to a common theme, purpose, or subject") into the standard for filing amendments under section 9002(b): "the proponents of the proposed initiative measure may submit amendments to the measure that are reasonably germane to the theme, purpose, or subject of the measure as originally proposed." The Legislature's use of this language evinces its intent to apply the well-established standard in the Court's single subject jurisprudence to the Attorney General's determination whether amendments to a ballot measure constitute a new measure or may be accepted as amendments to the original measure. (*See Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 19 ["Where [statutes] make use of words and phrases of a well-known and definitive sense in the law, they are to be received and expounded in the same sense in the statute."].)[4]

Next, CDAA repeats the assertion that comparing the single subject standard to section 9002 "is a false equivalence" because the single

[4] A related rule provides that "the Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes 'in the light of such decisions as have a direct bearing upon them.'" (*People v. Overstreet* (1986) 42 Cal.3d 891, 897, citation omitted.)

subject rule requires that '"all parts' of an initiative measure must be 'reasonably germane' to each other, and *to the general purpose or object of the initiative*' as a whole," while section 9002 requires that "any amendment to a pre-existing proposed ballot initiative be reasonably germane 'to the theme, purpose, or subject of the initiative measure *as originally proposed.*'" (CDAA Prelim. Opp. at 16-17, emphasis in original.) From this comparison, CDAA draws the puzzling conclusion that section 9002 "is clearly different and *more restrictive* than the broad single subject rule." (*Id.*, emphasis added.)

CDAA is certainly correct that the *purpose* of the rules is different. After all, the single subject rule asks whether a measure may even be submitted to the voters, while section 9002 merely asks whether the clock must re-start or not before voters are permitted to sign petitions to qualify a measure for the ballot. But CDAA nowhere explains how section 9002 is "more restrictive" than the single subject rule. In fact, section 9002 requires the Attorney General to conduct the same analysis that this Court employs in reviewing whether a ballot measure satisfies article II, section 8, subdivision (d), of the California Constitution – she must determine whether the amendments to a measure are reasonably germane to the other provisions of the measure and to the original measure's theme, purpose, or subject. This review is no different than that employed by the Court in evaluating compliance of a standalone measure with the single subject rule.

Applying the supposedly "more restrictive" test in section 9002, CDAA concludes that the Attorney General erred in

determining that the amendments are reasonably germane to the theme, purpose, or subject of the original measure.[5] First, CDAA argues that the amendments are not reasonably germane to the theme, purpose, or subject of the original measure because they include a constitutional amendment. The single subject rule, however, has never been construed to prohibit a measure from including both statutory revisions and a constitutional amendment. In fact, the length of the California Constitution arises in no small part from past ballot measures adopted by the voters that included both constitutional amendments and statutory provisions. (*See, e.g.*, Prop. 71 [adding article XXXV to the California Constitution and Chapter 3, Part 5, Division 106 to the Health and Safety Code].) The fact that the amendments included a constitutional change is irrelevant to the question of whether that change is reasonably germane to the original provisions of the measure and to its theme, purpose, or subject.

Most notably, SB 1253 did not include the word "scope" in that phrase, and nothing in the rest of the bill or its legislative history refers or even alludes to it. For this reason, the nearly eight pages CDAA devotes to listing of Penal Code and constitutional provisions that may (or may not) be affected by the amended measure is irrelevant to the question before the Court. (*See Brosnahan v. Brown* (1982) 32 Cal.3d 236, 246-247 [fact that a ballot measure has an impact on existing law, even a sweeping impact, is not relevant for purposes of the single subject test].) As this Court has

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[5] Although CDAA states that it does not concede that the amended initiative is a single subject, it makes no effort to explain how the measure combines wholly unrelated provisions, requiring that the matters be voted on separately. (CDAA Prelim. Opp. at 18, fn. 6.)

previously noted, opponents of a measure "frequently overstate the adverse effects of the challenged measure. . . ." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 505.) CDAA has done just that in grossly exaggerating the effect of the measure on existing law. (CDAA Prelim. Opp. at 21-28.) For example, CDAA claims that the amended version would effectively repeal a court's authority to impose a sentencing enhancement or Three Strikes punishment based on prior felony convictions. (CDAA Prelim. Opp. at 22-25.) In fact, the measure does not alter criminal trial or sentencing laws at all. Rather, it establishes a parole consideration process for non-violent offenders after they have served the full term for their primary offense in state prison. Thus, it does not overturn any existing enhancements; it authorizes parole consideration after an inmate has completed the sentence for his primary offense but before he has served the term for any enhancement. Furthermore, even if one were to accept CDAA's argument that the parole provision sweeps away the laws governing enhancements, the same could be said of the original version, which authorized parole consideration for all state inmates, violent and non-violent, who were convicted of their crime before they were 23, irrespective of enhancements, consecutive sentences, or Three Strikes sentences.

Second, CDAA asserts that the purpose of the original measure was juvenile justice. (CDAA Prelim. Opp. at 19.) However, CDAA itself concedes that the juvenile transfer provisions contained in both versions affect "adult court." (*Id.*) Indeed, it is misleading to label the original measure as a juvenile justice measure because it did not make any changes to the juvenile system itself. Instead, it addressed which juveniles could be tried in adult court and who was authorized to make that decision. CDAA also incorrectly asserts that the original measure "was specifically

limited to the prosecution and punishment of juveniles and youthful offenders." (*Id.*) In fact, the original measure affected adults in two ways. It authorized the sealing of juvenile records, a request that by definition can only be made by an adult. (I Appendix ["App."] at 36-38 [Welf. & Inst. Code, § 781].) And it authorized parole consideration for inmates who committed a crime when they were under the age of 23, including inmates convicted under the Three Strikes Law. (I App. at 39-40 [Pen. Code, § 3051].) CDAA argues that this provision applies to "youthful offenders," even though 18 to 22 year olds are "adults" under the law, and calls the Attorney General and proponents' contention that it applies to adults "nonsense." (CDAA Prelim. Opp. at 28-29.) But by its plain language, section 3051, as amended by the original measure, would only have authorized parole for an inmate in adult prison between an inmate's 15th and 25th years of incarceration. Thus, even for an inmate who was convicted at age 16, the provision would not be effective until the inmate reached at least age 31. Indeed, many of the individuals who would be affected by the provision will not have a parole hearing until they are in their late 30s and so would commonly be viewed as "approaching middle age."

Third, CDAA dismisses the Attorney General and proponents' reliance on the measure's findings and declaration of purpose to define its purpose. Yet this Court has often relied upon the findings set forth in a measure to discern its intent. (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 277 [identifying the "electorate's intended goal" based on the findings and declaration of purpose of Prop. 213].) Here, the findings in both versions make clear that the purpose of the measure is to focus on rehabilitation and to enhance public safety. The purpose of the measure, as

originally filed, was to "[e]nsure that California's juvenile and criminal justice system resources are used wisely to rehabilitate and protect public safety" and to ensure that our "juvenile and criminal justice systems effectively stop repeat offending and improve public safety." (I App. at 16.) The findings in the amended version are consistent with these goals, stating that the measure was designed to "[p]rotect and enhance public safety" and "[s]top the revolving door of crime by emphasizing rehabilitation, especially for juveniles." (*Id.* at 46.)

Fourth, CDAA seizes on the fact that the amended version is shorter than the original version. (CDAA Prelim. Opp. at 29.) Although the amended measure undoubtedly comprises fewer pages, a comparison of the original and amended measures demonstrates that this was not the "gut-and-amend" process that CDAA claims. The original version was not "gutted"; the core juvenile transfer provisions remain, although they have been shortened. The fact that the proponents streamlined the juvenile transfer provisions as a result of input received during the public comment period, including from the Chief Probation Officers of California, has no bearing on whether the amendments are reasonably germane to the other provisions of the measure and to its theme, purpose, or subject. Indeed, CDAA does not dispute that both versions of the measure would prohibit the mandatory filing of charges in adult court and authorize judges, rather than prosecutors, to determine whether a juvenile should be tried in adult court.

Finally, CDAA argues that California has long treated juvenile offenders differently than adult offenders, because the philosophy for adults is one of punishment while for juveniles, it is one of rehabilitation. (*Id.*) That, of course, is a matter of opinion, and one which

the voters are free to reject if the measure qualifies for the November ballot. It is also the point of the amended measure – to focus on rehabilitation for juveniles and adults as a means of stopping the revolving door of crime and enhancing public safety.

The amendments filed by the proponents of the measure are not only consistent with the theme, purpose, or subject of the original measure, they directly advance the measure's goals by putting additional emphasis on rehabilitation and offering juveniles who are tried in the adult system the opportunity to earn credits and be eligible for parole.

III.

BY PASSING SB 1253, THE LEGISLATURE INTENDED TO PERMIT BROAD SUBSTANTIVE AMENDMENTS TO A MEASURE

CDAA not only misconstrues the plain language of Elections Code section 9002, it misstates both the legislative history and the legislative intent behind the statute. Far from pointing to a "near unanimous interpretation" of section 9002, as CDAA contends,[6] the legislative history of SB 1253 demonstrates that the Legislature intended to permit precisely the kinds of amendments at issue here.

First, CDAA argues that the Legislature intended to limit amendments under section 9002 to correcting drafting errors and identifying unintended consequences of a measure as originally filed. (CDAA Prelim. Opp. at 11-14.) For this proposal, CDAA relies on a Senate Floor Analysis suggesting that the author intended to allow

[6] CDAA Prelim. Opp. at 16.

amendments to an initiative "as long as the changes are consistent with the original intent." (*Id.* at 10.) As demonstrated above, the amendments at issue here are entirely consistent with the original measure's intent to promote rehabilitation in the criminal justice system. Even if that were not the case, however, the same report on which CDAA relies used the actual language of the bill ("reasonably germane to the theme, purpose, or subject") in the section that describes what the bill actually does. (I App. 139.) There is no reference to "original intent" in the text of the statute.

Former Senate President Pro tem Darrell Steinberg was the author of SB 1253, and he has made very clear that his intent was *not* to limit the scope of amendments as the CDAA claims. In an amicus letter to the Court, Senator Steinberg described his intent and that of his colleagues as follows:

> The early amendment process under Elections Code section 9002 is designed to allow initiative proponents an opportunity to consider a broad range of modifications to their idea before settling on a final version. We deliberately wanted to encourage stakeholders with different priorities or perspectives on major areas of public policy to reconcile their differences. In order to do that, we necessarily wanted to allow both the narrowing or *expansion* of the original initiative to avoid the potential of multiple measures on the same general subject.
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> (Sen. Darrell Steinberg, amicus letter, Feb. 26, 2016 at 1, emphasis in original.)

Senator Steinberg stated that one of the Legislature's chief purposes in passing SB 1253 was to "to help proponents partner with other

interested parties to improve their measures by making broad substantive amendments," and he described how the lower court's interpretation of SB 1253 would thwart that purpose:

> By reading section 9002's reasonably germane test narrowly and indeed suggesting that substantive amendments could only be made during the 30-day public comment period, the lower court effectively prevented section 9002 from realizing one of its chief purposes: to encourage interested parties to get together behind a single effort so long as the amended measure is reasonably germane to the theme, purpose, or subject of the original initiative. If that reading of section 9002 is allowed to stand, the Attorney General will reject such efforts, and our general election ballots will be as cluttered and confusing as ever.

(*Id.* at 2.)

CDAA distorts SB 1253's legislative history in other ways as well. For example, CDAA claims that the legislative history shows that section 9002(b) was meant "to bring more sunlight to the ballot measure, not less" and that it was intended "to provide more information to voters and proponents early in the initiative process . . . ." (CDAA Prelim. Opp. at 15.) CDAA also quotes the media release distributed by the Governor's office saying that the purpose of SB 1253 was to "to increase public participation in the initiative process and provide better information to voters on ballot measures." (*Id.* at 16.)

The amendment provisions of SB 1253 do encourage more public participation in the initiative process by, among other things, inviting the public to submit comments about an initiative to the proponent via the Attorney General's website. These comments, however, are primarily for

the benefit of the proponents. Significantly, section 9002(a)(2) provides that the public comments are sent only to the initiative's proponents and are *not* to be posted on the website. Thus, section 9002 could not have been meant to provide more information to voters, as CDAA claims. Indeed, the Attorney General has long posted the text of ballot measures on the Attorney General's website, together with contact information where the public may reach the proponents, prior to circulation. The references in the legislative history to providing voters more information have to do with other detailed provisions of SB 1253 requiring the Secretary of State to create a website that includes a summary of each ballot measure and identifies the donors and other sources of funding for the campaigns for and against each ballot measure. The website must also provide the public a means to access the state ballot pamphlet online, as well as a way to access candidate contribution disclosure reports. (§ 9082.7(a).) These are the provisions to which the legislative history and the Governor's media release refer.

CDAA also suggests that the Legislature intended to limit amendments to correcting drafting errors, quoting language from SB 1253 and a committee report pointing out that one purpose of the bill was "[i]dentifying and correcting flaws in an initiative measure before it appears on the ballot." (CDAA Prelim. Opp. at 11-12, 14.) The next sentence, however, explains that proponents have few options " to withdraw a petition for a proposed initiative measure, even when flaws are identified." (*Id.*) That language refers to SB 1253's amendments to the Elections Code allowing proponents to withdraw a measure even after petitions have been filed with elections officials, something they could not do before the Legislature enacted SB 1253. (Former Elec. Code, § 9604 (2014).) A

"flaw" can mean something more than a drafting error. It can mean that a measure does not do enough, that its reach is too timid or that its proponents misgauged the degree of support for doing more.[7] In that case, as Senator Steinberg says, SB 1253 was designed to encourage interested parties to get together behind a single measure rather than submitting competing measures that would confuse voters and lengthen the ballot. They can do this either during the amendment process or even later by withdrawing one measure in favor of another or in favor of a bill introduced in the Legislature.

Finally, CDAA points to criticisms in a committee report that SB 1253 would permit "spot" initiatives, which CDAA claims was identified as creating an opportunity for gutting and amending initiatives after the close of public comment. (CDAA Prelim. Opp. at 12-13.) Those criticisms apparently had an effect in the Legislature, but it is not the effect that CDAA claims. Following the committee report, the Legislature at first amended SB 1253 to say that proponents may submit amendments to a measure "that further its purposes, as determined by the Attorney General." (*Id.* at 13.) That language did not last, however. Instead, the Legislature replaced it with the broad language taken from this Court's single subject opinions, allowing amendments "that are reasonably germane to the theme, purpose, or subject of the initiative measure as originally proposed." (*Id.*) The Legislature followed that sentence with language specifically directed at the spot bill problem: "However, amendments shall not be submitted if

[7] As even CDAA acknowledges, SB 1253 was also intended to address unintended consequences, which frequently require more sweeping changes to address.

the initiative measure as originally proposed would not effect a substantive change in law." (*Id.*)

These changes were not the "obvious and explicit effort to narrow the scope of permissible amendments" that CDAA claims. (*Id.* at 13.) Instead, the reasonably germane language is *broader* than the earlier language that would require amendments to further the purposes of the original measure, because now an amendment need only be "reasonably germane" to that purpose. It is not required to further its purpose. And even if the amendment is not reasonably germane to the purpose, it is enough if the amendment is reasonably germane "to the theme, purpose, *or* subject" of the original measure. Any one of those concepts will do, and the trial court erred by ruling to the contrary.

IV.

ALL OF THE PURPOSES OF THE AMENDMENT PROVISIONS OF SB 1253 HAVE BEEN MET

It is not true, as CDAA asserts, that petitioners did not raise the issue of substantial compliance below. (CDAA Prelim. Opp. at 30.) Petitioners fully briefed the issue. (II App. at 182-184.) It is true, however, that CDAA has never adequately explained why the doctrine does not ultimately dispose of their arguments.

According to this Court, "as long as the fundamental purposes underlying the applicable constitutional or statutory requirements have been fulfilled . . . there has been 'substantial compliance' with the applicable constitutional or statutory provisions," and a measure should be allowed to go forward. (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1013.)

Here, as petitioners have already explained, during the 35-day period before the amended measure was filed, the sponsors of this measure

and their coalition partners engaged in significant outreach to solicit feedback concerning the amendments. (II App. at 194-195, ¶ 5; 200-201, ¶¶ 6-7.) Outreach efforts included communications with legal and policy experts, clergy, members of the advocacy community, state and local officials from the California Department of Corrections, district attorneys, chiefs of police, chief probation officers, sheriffs, representatives of the California State Sheriffs' Association, the California Police Chiefs Association, the California Correctional Police Officers Association, and the Executive Director of CDAA itself. (*Id.* at 195, ¶¶ 5-6; 200-201, ¶ 6.) The sponsors weighed this feedback, and in many cases accepted suggestions for improvement. (*Id.* at 195, ¶ 7; 201, ¶¶ 6-7.) By the time they submitted the amended measure on January 25, 2016, however, the amendments to the measure had been thoroughly vetted and the outreach process had reached its end. (*Id.* at 195, ¶ 8.) No further amendments will be accepted to the measure, regardless of any further feedback proponents may receive and regardless of whether the superior court order is overturned or affirmed. (*Id.* at 190, ¶ 3; 218, ¶ 3.)

Even so, the public continues to have the opportunity to comment on the measure. To do so, members of the public need only contact the proponents directly via the email address, physical address, phone number, or fax number that have been posted on the Attorney General's website since the date the amended measure was filed. (*Id.* at 219, ¶¶ 5-6.)

Thus, proponents and the Attorney General's Office have substantially complied with the "fundamental purposes" underlying section 9002, however those purposes are reasonably defined. If, as proponents assert, the purpose of section 9002 is to empower a measure's

proponents to engage in public outreach that could lead to constructive suggestions for improvement of a measure, those purposes have been satisfied by the efforts of the measure's sponsor and its allies. If an additional purpose of section 9002 is to "give voters an opportunity to comment on an initiative measure before the petition is circulated," (CDAA Lodging of Reporters' Transcript ["Transcript"], Exh. 1 at 40:8-12), as the superior court concluded, then petitioners' outreach efforts and the posting of proponents' contact information satisfy that purpose as well.

The superior court disagreed because it concluded that it "is not particularly adequate" to allow the public to submit comments through the mail rather than by "push[ing] a button" on the Attorney General's website. (*Id.* at 41:1-3.) Yet, under the substantial compliance doctrine, it is only necessary to fulfill the "*fundamental purposes* underlying the applicable . . . statutory requirements. . . ." (*Costa v. Superior Court*, *supra*, 37 Cal.4th at 1013, emphasis added.) It strains credulity to suggest that one of the *fundamental* purposes of section 9002 was to facilitate online rather than written comments. And even if that were the case, the availability of proponents' email address offered the public with a ready means of contacting proponents electronically.

Although CDAA does not defend the superior court's emphasis on the importance of online comments, CDAA does defend the superior court's conclusion that the public was deprived of the chance for the proponents to "make a change to the initiative measure in response to the comments." (Transcript, Exh. 1 at 41:3-5; CDAA Prelim. Opp. at 31.) Both CDAA and the court are in error. The proponents were free to change their initiative in response to public comments. To do so, proponents could

have submitted a new measure, or abandoned their efforts to qualify the measure for the ballot.

Nothing more is required to demonstrate substantial compliance here. Section 9002 does not make any provision for a public comment period for amended measures. Thus, it cannot be said that the amendment process for this measure has violated any of the "fundamental purposes" of section 9002.

CDAA also complains that "the LAO was given just 15 days to analyze the fiscal impact" of the new measure, (*Id.* at 31), but this is not true. The Elections Code provides that the estimate by the Legislative Analyst shall be completed within 50 days of the date of receipt of the proposed initiative measure, "unless, in the opinion of both the Department of Finance and the Legislative Analyst, a reasonable estimate of the net impact of the proposed initiative cannot be prepared within the 50-day period." (§ 9005(c).) The LAO has availed itself of this option when it concludes that it is necessary to do so. For example, on April 21, 2015, the LAO declined to issue an analysis of "The California Drug Price Relief Act" (Initiative 15-0009) because it concluded that a reasonable estimate of the net impact of the measure could not be prepared within the statutory time period. (Legis. Analyst Mac Taylor & Director of Finance Michael Cohen, letter to Attorney General Kamala D. Harris, April 21, 2015 [http://lao.ca.gov/ballot/2015/150147.pdf].) Here, the LAO completed its analysis within one day of the statutory deadline without objection, and CDAA does not complain that the analysis is inadequate in any way.

The cases CDAA cites do not help them. Each case considers whether acknowledged deficiencies in initiative or referendum petitions should serve to invalidate those petitions because they would actually

mislead voters, rather than accomplishing the statutory purpose of giving "information to the electors who are asked to sign . . . petitions." (*Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 652-653 [upholding the validity of referendum petitions despite technical deficiencies including typographical errors, explaining that "[t]he errors were so minor as to pose no danger of misleading the signers of the petitions"]; *Boyd v. Jordan* (1934) 1 Cal.2d 468, 471-473 [concluding initiative petitions were invalid because the short title printed at the top of every page stated the measure related to a "Gross Receipts Act" without informing voters it would impose a tax]; *Costa v. Superior Court*, *supra*, 37 Cal.4th at 1022 [concluding that even though discrepancies between two versions of measure included substantive differences, the differences did not "mislead the public" or otherwise frustrate the applicable constitutional or statutory provisions].)

Here, by contrast, not even CDAA claims that there is any risk of misleading the public. They instead assert that the public has been "deprived of required information," but that is not true either. The public has had and will continue to have every opportunity *to review* the amended measure. The only question is whether they have had an adequate opportunity *to comment* on the amendment. For all the reasons described above, the answer to that question is yes.

Finally, CDAA faults proponents for proclaiming that they will not amend the measure regardless of any public comments that they may receive. CDAA characterizes this as an effort to "apparently seek a waiver of application of section 9002," (CDAA Prelim. Opp. at 31), but it is nothing of the kind. Section 9002 does not require the proponents of a measure even to read the public comments they receive, let alone respond to them.

In short, every significant purpose of section 9002 has been fully satisfied, and requiring additional public comment will serve no purpose at all. By nevertheless asking this Court to affirm the superior court's order, CDAA asks the Court to require a futile act: a public comment period that will serve no purpose that has not already been accomplished by the outreach efforts described above. A writ should not issue if it would only "require . . . an idle act . . . merely [to] vindicate an abstract right with no practical effect . . . ." (*See Cal. High Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 716.)

CONCLUSION

The petition for writ of mandate should be granted to allow petitioners to gather enough valid signatures to qualify their measure for the November, 2016 ballot.

Dated: March 1, 2016

Respectfully submitted,

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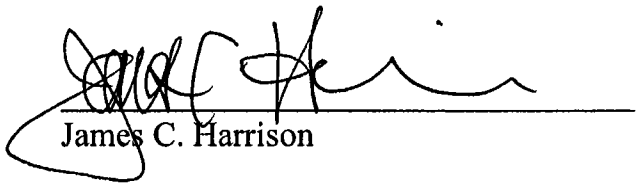
BRIEF FORMAT CERTIFICATION PURSUANT TO
RULE 8.204 OF THE CALIFORNIA RULES OF COURT

I certify that this brief is proportionately spaced, has a typeface of 13 points or more and contains 6,340 words as counted by the Microsoft Word 2010 word processing program used to generate the brief.

Dated: March 1, 2016



James C. Harrison

PROOF OF SERVICE

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

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On March 1, 2016, I served a true copy of the following document(s):

Reply in Support of
Emergency Petition for Writ of Mandate and
Request for Immediate Stay and/or
Other Appropriate Relief;
Memorandum of Points and Authorities

on the following party(ies) in said action:

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I declare, under penalty of perjury, that the foregoing is true and correct. Executed on March 1, 2016, in San Leandro, California.

Nina Leathley

(00269207-11)