No. S279622

# IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

HECTOR CASTELLANOS; JOSEPH DELGADO; SAORI OKAWA; MICHAEL ROBINSON; SERVICE EMPLOYEES INTERNATIONAL UNION CALIFORNIA STATE COUNCIL; SERVICE EMPLOYEES INTERNATIONAL UNION,

Petitioners and Respondents,

v.

STATE OF CALIFORNIA; KATIE HAGEN, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS, *Defendants and Appellants*,

PROTECT APP-BASED DRIVERS AND SERVICES; DAVIS WHITE; KEITH YANDELL,

Intervenors and Appellants.

After a Decision by the Court of Appeal First Appellate District, Division Four, Case No. A163655 Alameda County Superior Court No. RG21088725 The Honorable Frank Roesch, Presiding

\_\_\_\_\_

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF, AND BRIEF OF T. ANTHONY QUINN, DANIEL SCHNUR AND ROBERT M. STERN IN SUPPORT OF APPELLANTS

\_\_\_\_\_

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#### APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF

Pursuant to California Rule of Court 8.520(f), T. Anthony Quinn, Daniel Schnur and Robert M. Stern respectfully request leave to file an amici curiae brief in support of Defendant and Appellants the State of California; Katie Hagen, in her official capacity as Director of the California Department of Industrial Relations; and Intervenors and Appellants Protect App-Based Drivers and Services; Davis White; Keith Yandell (collectively "Appellants").

**Dr. T. Anthony Quinn** has more than 50 years of experience with California government. He served for five years as a member of the Fair Political Practices Commission. In addition, he was a legislative consultant in elections and redistricting, a gubernatorial appointee in economic development, and a special assistant to the attorney general. He has written extensively on California government and politics, including on the California initiative process, and he has been involved in both initiative and referendum campaigns. Dr. Quinn is a strong believer in the people's right to exercise their reserved powers through direct democracy.

Daniel Schnur is a former Chairman of the California Fair Political Practices Commission and founded the Voices of Reform project, which laid the foundation for California's redistricting reform. He is an Adjunct Professor at the University of Southern California's Annenberg School of Communications; the University of California – Berkeley's Institute of Governmental Studies; and Pepperdine University's School of Public Policy. Mr. Schnur has also taught at the John F. Kennedy School at Harvard and George Washington University. He believes the ballot initiative process is a hallmark in our state's experiment in direct democracy and, therefore, should be "jealously guarded" by the courts.

Robert M. Stern is past President of the Center for Governmental Studies in Los Angeles. He has co-authored numerous books, including "Democracy by Initiative: Shaping California's Fourth Branch of Government." He was a principal co-author of the Political Reform Act of 1974, a wide-ranging initiative upheld by the California Supreme Court in the face of a single-subject challenge. While he voted against Prop. 22, he believes that the initiative process is an important part of California elections, and that the courts should defer to the will of the people.

For these reasons, and those more fully expressed in the attached brief, Daniel Schnur, T. Anthony Quinn and Robert M. Stern request leave to file the attached amicus curiae brief in support of Appellants.

DATED: April 3, 2024 Respectfully Submitted,

BUCHALTER, APC

Steven G. Churchwell

Attorneys for Amici Curiae Daniel

Schnur, T. Anthony Quinn and Robert M.

Stern

#### I. INTRODUCTION

Does money matter in ballot measure elections in California?

Definitely. Is it outcome determinative? Definitely not. California's voters have proven by their response to dozens of ballot measures over many decades that they cannot "be bought."

One example is the battle over a large increase in tobacco taxes in 1988, in which supporters of Proposition 99 spent just \$1.84 million against more than \$21.2 million spent by the tobacco industry. The measure easily won. On the same ballot, the insurance industry spent \$55.87 million on a "no fault" insurance measure, Proposition 104, which was defeated 25% to 75%. These are just two examples. We list 13 others below in which an enormous spending advantage of more than 10 to 1 on the YES side of a statewide ballot measure did *not* result in passage of the measure.

California's voters derive information about ballot measures from a variety of sources, including media coverage and endorsements, political party endorsements, the Attorney General's Official Title and Summary, the Summary by the Legislative Analyst, and the arguments and rebuttals for and against each measure. While the voters certainly are

<sup>&</sup>lt;sup>1</sup> https://www.latimes.com/archives/la-xpm-1989-03-31-mn-712-story.html (page accessed Feb. 19, 2024).

<sup>&</sup>lt;sup>2</sup> See, e.g., <a href="https://www.sacbee.com/opinion/election-endorsements/">https://www.sacbee.com/opinion/election-endorsements/</a> <a href="https://www.sacbee.com/opinion/election-endorsements/">https://www.sac

<sup>&</sup>lt;sup>3</sup> See, e.g., <a href="https://cadem.org/endorsements/">https://cadem.org/endorsements/</a> (page accessed Feb. 25, 2024).

<sup>&</sup>lt;sup>4</sup> See, e.g., <a href="https://voterguide.sos.ca.gov/propositions/1/analysis.htm">https://voterguide.sos.ca.gov/propositions/1/analysis.htm</a> (current example; page accessed Feb. 2, 2024).

influenced by spending on advertising for and against ballot measures, their decision-making has proven to be, over many decades, far more nuanced and sophisticated.

Finally, recent amendments to the Political Reform Act, requiring that ballot measure advertisements more clearly display the "Top 3 Contributors" funding the ads, presumably have also increased voter awareness.<sup>5</sup>

#### II. ARGUMENT

#### A. Money and Ballot Measures

One could say that the "modern" era of California direct democracy began in 1972 with enactment by the voters of the California Coastal Conservation Initiative (Proposition 20). Frustrated with inaction in the Legislature, environmental groups sensed that the time was ripe to protect the state's awe-inspiring coastline via the ballot box. This election marked the beginning of proponents placing very complex, and often lengthy, statutes and constitutional amendments on the ballot. This almost ensured that the state's ballot proposition battles would become "big money" affairs.

Two years later, the voters enacted the Political Reform Act of 1974 following the refusal of the Legislature to deal with campaign finance reform in the wake of Watergate. These measures that came from

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https://www.fppc.ca.gov/content/dam/fppc/NS-documents/TAD/Campaign%20Documents/CampaignAdvertisementDisclosure/2023-adcharts/ 2023\_Disclaimers\_6\_Final.pdf [Ad Committee Top Funder(s) (names of top three contributors of \$50,000 or more) in descending order, beginning with the largest contributor and may not appear in all capital letters. This text shall be in yellow].

progressives were soon followed by a far-reaching measure from the populist right, Proposition 13.

"That sound roaring out of the West – what was it? A California earthquake, a Pacific tidal wave threatening to sweep across the country? Literally it was neither, figuratively it was both. That angry noise was the sound of a middle class tax revolt and its tremors are shaking public officials from Sacramento to Washington D.C."

(Time Magazine, Cover Story, p. 13 (June 19, 1978).)

California voters willingly upended the California political order with a ballot measure no one at the time saw coming, but which has survived largely intact—and even been expanded with subsequent initiatives—over the past 45 years. It seems obvious in hindsight that no amount of money could have stopped Proposition 13, cigarette taxes, the Coastal Act or the Political Reform Act.

Ten years after Proposition 13, four insurance-related ballot measures appeared on the November 1988 ballot. As one magazine summarized it:

"The insurance industry spent \$90 million to accomplish three goals: defeat two consumer backed initiatives (Propositions 100 and 103) meant to curb its profits and more strictly regulate its rate-making activities; and pass a no-fault insurance initiative (Proposition 104) and a punitive measure (Proposition 106) .... The result was a black eye the size of Jupiter. Not only did Propositions 104 and 106 lose (no fault by a margin or three to one) but voters approved 103, the measure insurers feared most."

(California Journal, p. 515 (Dec. 1988).)

Results like these ostensibly influenced Professor Elisabeth Gerber<sup>6</sup> to write in her 1998 study of funding for ballot measures:

"The analysis of direct legislative campaign contributions shows that economic interests are severely constrained in their ability to pass new initiatives. They direct a much larger share of their campaign contributions toward opposing than toward supporting initiatives and referendums. When they do spend in support of new initiatives, the measures they support pass at a low rate .... In short, economic interests in California are severely constrained in their ability to pass new laws by initiative."

(Elisabeth R. Gerber, *Interest Group Influence in the California Initiative Process*, Public Policy Institute of California (1998) [background paper].)

Set forth below is a list of spending and results for 13 propositions that appeared on the statewide ballot in California between 2005 and 2022. In each case, the YES side outspent the NO side by a larger ratio than the Proposition 22 proponents outspent the NO side. But in the case of these 13 measures, unlike Proposition 22 (which was enacted by a 58.6% to 41.4% margin), all of them went down to defeat.

-

<sup>&</sup>lt;sup>6</sup> Assoc. Prof. of Political Science at UC, San Diego (in 1998); presently, Faculty Innovator in Residence, Center for Academic Innovation, Univ. of Michigan.

# B. Examples of Recent Statewide Propositions That Were Defeated In Spite of Large Funding Advantages for the YES Side (Ratio of YES to NO Spending Exceeded That in Prop. 22)

1. **PROPOSITION 16 (2010)** – NEW TWO-THIRDS VOTE REQUIREMENT FOR LOCAL PUBLIC ELECTRICITY PROVIDERS. (Initiative Constitutional Amendment.)

Support: \$46,521,652.23 Oppose: \$141,270.79

> YES Side Funding Advantage 329:1<sup>7</sup>

➤ DEFEATED Yes: 47% No: 53%

2. **PROPOSITION 10 (2008)** – ALTERNATIVE FUEL VEHICLES AND RENEWABLE ENERGY. BONDS. INITIATIVE STATUTE.

Support: \$22,499,944.00 Oppose: \$150,579.22

> YES Side Funding Advantage 149:18

➤ DEFEATED Yes: 41% No 59%

3. **PROPOSITION 21 (2010)** – ESTABLISHES \$18 ANNUAL VEHICLE LICENSE SURCHARGE TO HELP FUND STATE PARKS AND WILDLIFE PROGRAMS AND GRANTS FREE ADMISSION TO ALL STATE PARKS TO SURCHARGED VEHICLES.

(Initiative Statute.)

Support: \$9,119,453.98 Oppose: \$74,013.00

> YES Side Funding Advantage 123:19

► DEFEATED Yes: 43% No: 57%

<sup>&</sup>lt;sup>7</sup> All proposition funding data from California Secretary of State website: <a href="https://powersearch.sos.ca.gov/quick-search.php">https://powersearch.sos.ca.gov/quick-search.php</a> (page visited March 1, 2024), Appendix A attached ("Appx. A"), p. 1.

<sup>&</sup>lt;sup>8</sup> Appx. A, p. 2.

<sup>&</sup>lt;sup>9</sup> Appx. A, p. 3.

4. **PROPOSITION 33 (2012)** – CHANGES LAW TO ALLOW AUTO INSURANCE COMPANIES TO SET PRICES BASED ON A DRIVER'S HISTORY OF INSURANCE COVERAGE. INITIATIVE STATUTE.

Support: \$17,148,249.45 Oppose: \$290,838.29

YES Side Funding Advantage 59:1<sup>10</sup>

➤ DEFEATED Yes: 45% No: 55%

5. **PROPOSITION 1E (2009)** – MENTAL HEALTH SERVICES FUNDING. TEMPORARY REALLOCATION. HELPS BALANCE STATE BUDGET.

(Legislative Statute.)

Support: \$23,687,677.96 Oppose: \$904,197.16

YES Side Funding Advantage 26:1<sup>11</sup>

> DEFEATED Yes: 34% No: 66%

6. **PROPOSITION 1D (2009)** – PROTECTS CHILDREN'S SERVICES FUNDING. HELPS BALANCE STATE BUDGET.

(Legislative Statute.)

Support: \$23,687,677.96 Oppose: \$1,083,621.80

> YES Side Funding Advantage 22:1<sup>12</sup>

> DEFEATED Yes: 34% No: 66%

(cont'd on next page)

<sup>&</sup>lt;sup>10</sup> Appx. A, p. 4.

<sup>&</sup>lt;sup>11</sup> Appx. A, p. 5.

<sup>&</sup>lt;sup>12</sup> Appx. A, p. 6.

7. **PROPOSITION 34 (2012)** – DEATH PENALTY REPEAL.

INITIATIVE STATUTE.

Support: \$8,920,637.93 Oppose: \$421,524.69

YES Side Funding Advantage 21:1<sup>13</sup>

➤ DEFEATED Yes: 48% No: 52%

8. **PROP 80 (2005)** – ELECTRIC SERVICE PROVIDERS.

REGULATION. INITIATIVE STATUTE.

Support: \$46,548,098.23 Oppose: \$2,653,342.18

YES Side Funding Advantage 17:1<sup>14</sup>

DEFEATED Yes: 34% No: 66%

9. **PROPOSITION 16 (2020)** – ACA 5 (RESOLUTION CHAPTER 23), WEBER. GOVERNMENT PREFERENCES.

(Legislative Constitutional Amendment.)

Support: \$26,855,916.19 Oppose: \$1,782,074.96

> YES Side Funding Advantage 15:1<sup>15</sup>

> DEFEATED Yes: 43% No: 57%

10. **PROPOSITION 65 (2016)** – CARRY-OUT BAGS. CHARGES.

INITIATIVE STATUTE.

Support: \$2,888,883.25

Oppose: \$0.00

> YES Side Funding Advantage Infinity<sup>16</sup>

> DEFEATED Yes: 46% No: 54%

<sup>14</sup> Appx. A, p. 8.

<sup>15</sup> Appx. A, p. 9.

<sup>16</sup> Appx. A, p. 10.

<sup>&</sup>lt;sup>13</sup> Appx. A, p. 7.

# 11. **PROPOSITION 1B (2009)** – EDUCATION FUNDING.

PAYMENT PLAN.

(Legislative Constitutional Amendment.)

Support: \$33,728,235.54

Oppose: \$0.00

YES Side Funding Advantage Infinity<sup>17</sup>

➤ DEFEATED Yes: 38% No: 62%

# 12. **PROPOSITION 1C (2009)** – LOTTERY MODERNIZATION

ACT.

(Legislative Constitutional and Statutory Amendment.)

Support: \$26,994,437.92

Oppose: \$0.00

YES Side Funding Advantage Infinity<sup>18</sup>

> DEFEATED Yes: 36% No: 64%

# 13. **PROP 78 (2005)** - PRESCRIPTION DRUGS. DISCOUNTS.

INITIATIVE STATUTE.

Support: \$80,534,402.00

Oppose: \$0.00

YES Side Funding Advantage Infinity<sup>19</sup>

➤ DEFEATED Yes: 42% No: 58%

(cont'd on next page)

<sup>&</sup>lt;sup>17</sup> Appx. A, p. 11.

<sup>&</sup>lt;sup>18</sup> Appx. A, p. 12.

<sup>&</sup>lt;sup>19</sup> Appx. A, p. 13.

#### **CONCLUSION**

The spending advantage by the proponents of Proposition 22 did not ensure its passage. The Court should affirm the decision of the Court of Appeal.

Dated: April 3, 2024 Respectfully submitted,

BUCHALTER, APC

Steven G. Churchwell

Attorneys for Amici Curiae T. Anthony Quinn, Daniel Schnur and Robert M.

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#### **CERTIFICATE OF COMPLIANCE**

Pursuant to rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that the Amici Curiae Brief of Daniel Schnur, T. Anthony Quinn and Robert M. Stern in support of appellants uses 13-point Times New Roman font and contains 1,876 words, including footnotes, but excluding the cover page, tables and this certificate, according to the word count generated by the computer program used to produce the brief.

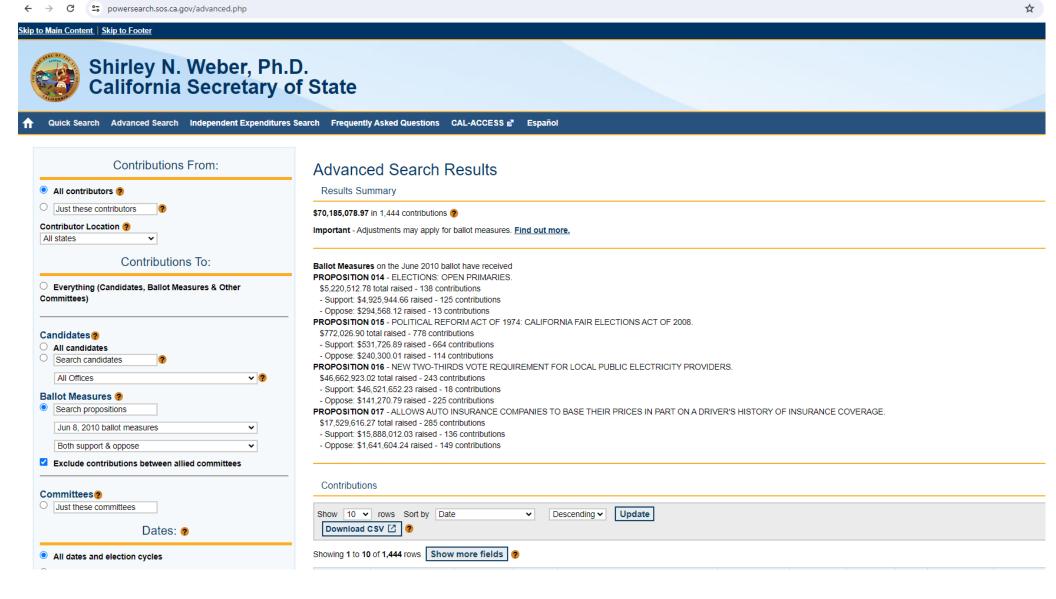
April 3, 2024

Steven G. Churchwell

Attorney for Amici Curiae Daniel Schnur, T. Anthony Quinn and Robert M. Stern

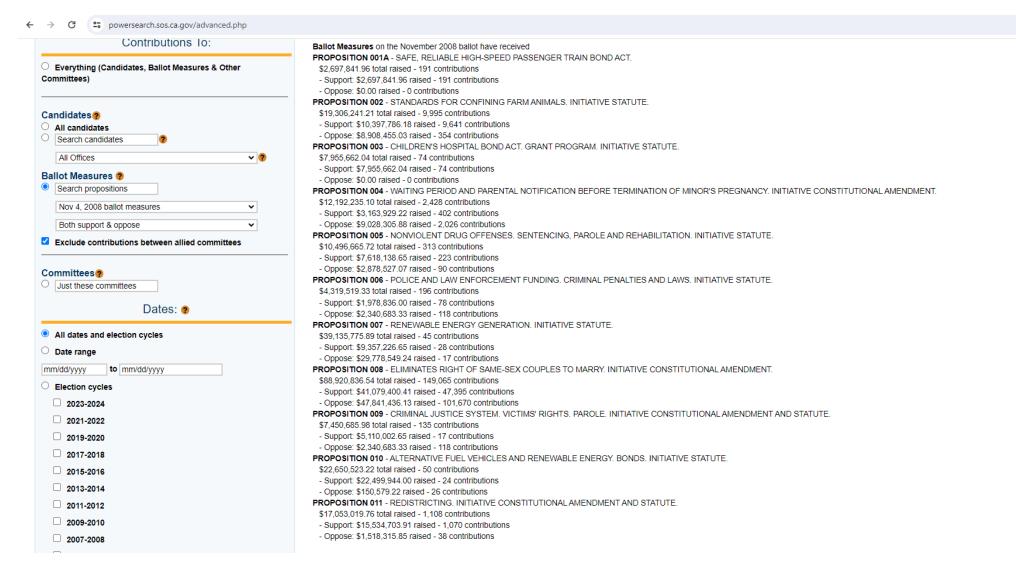
APPENDIX A

#### **FOOTNOTE 7**:



Appendix A, Page 1

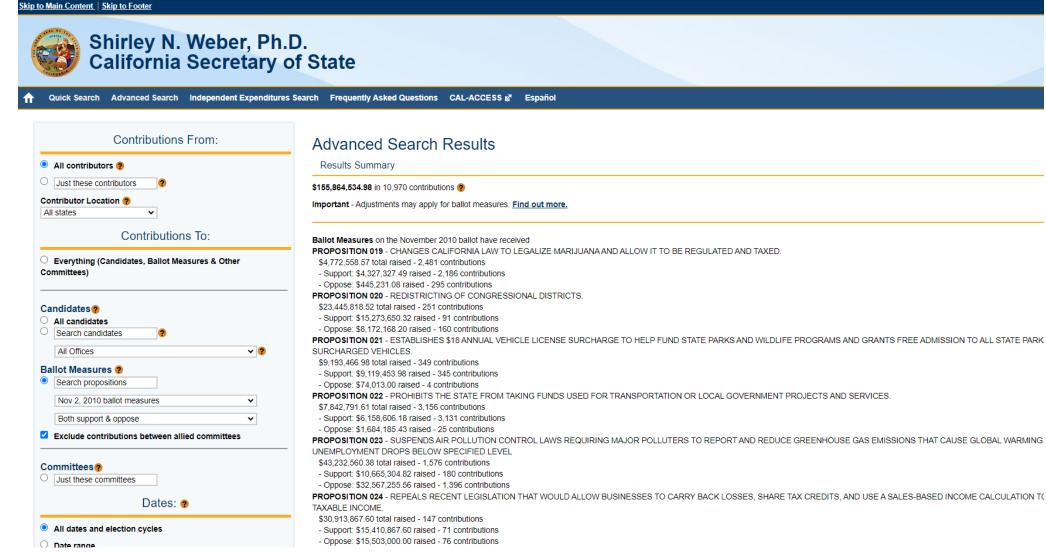
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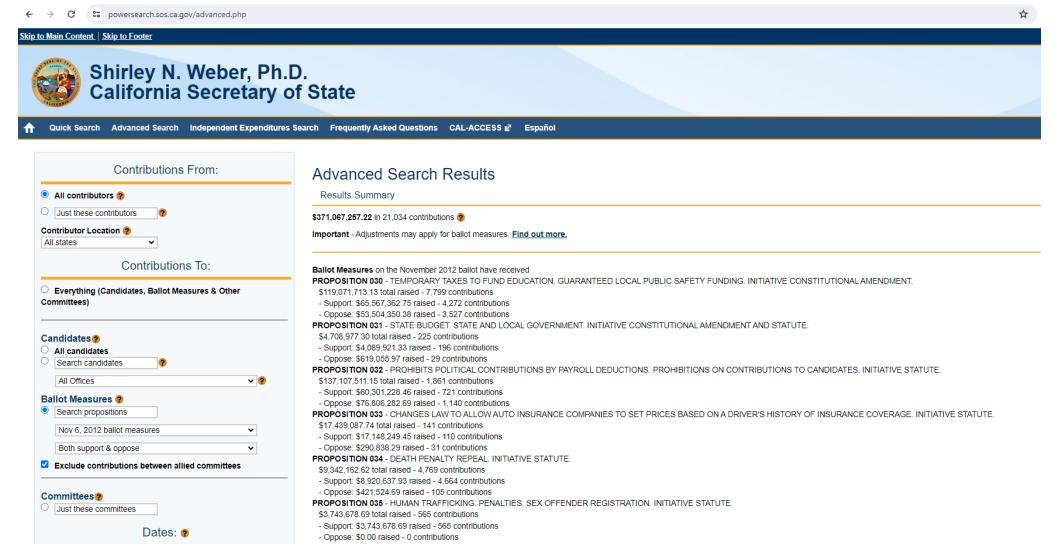
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#### **FOOTNOTE 9:**

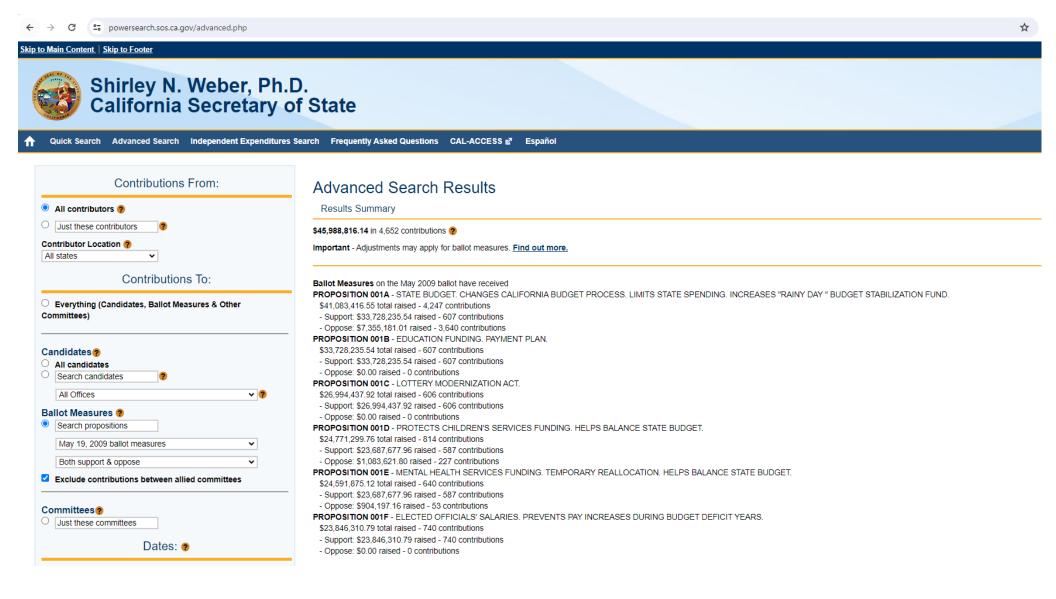
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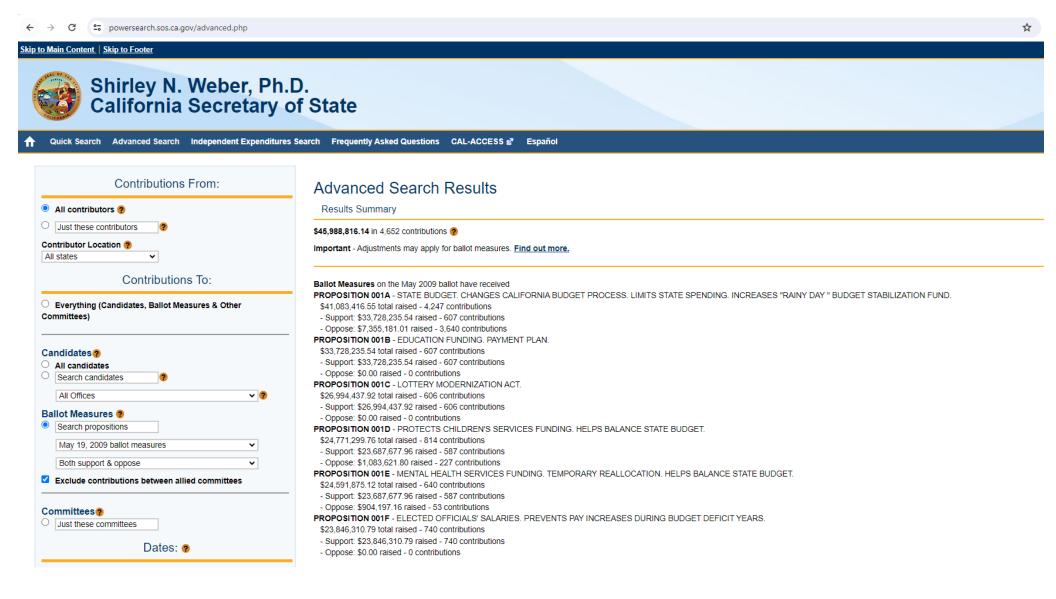
#### **FOOTNOTE 10:**



#### **FOOTNOTE 11:**



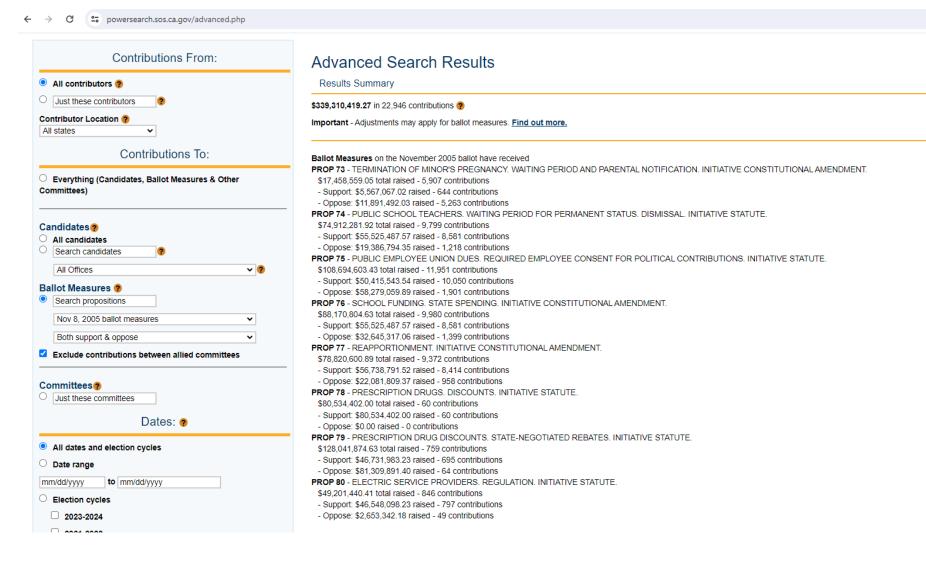
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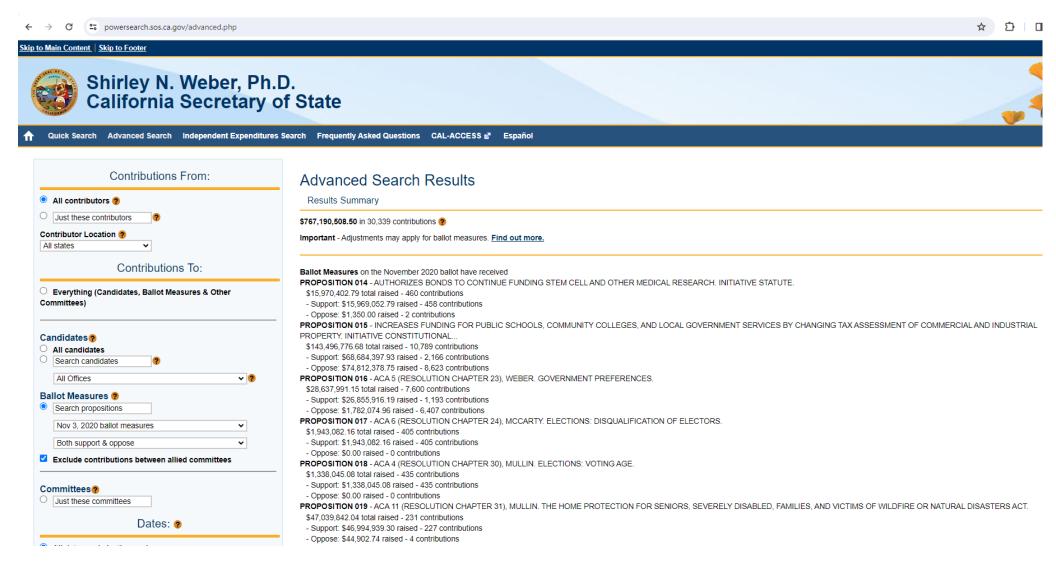
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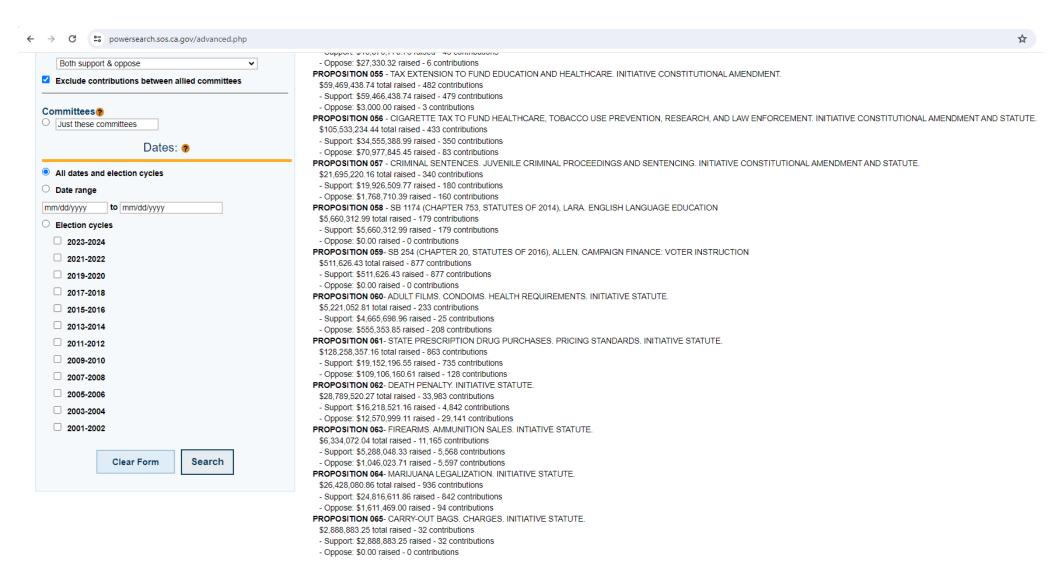
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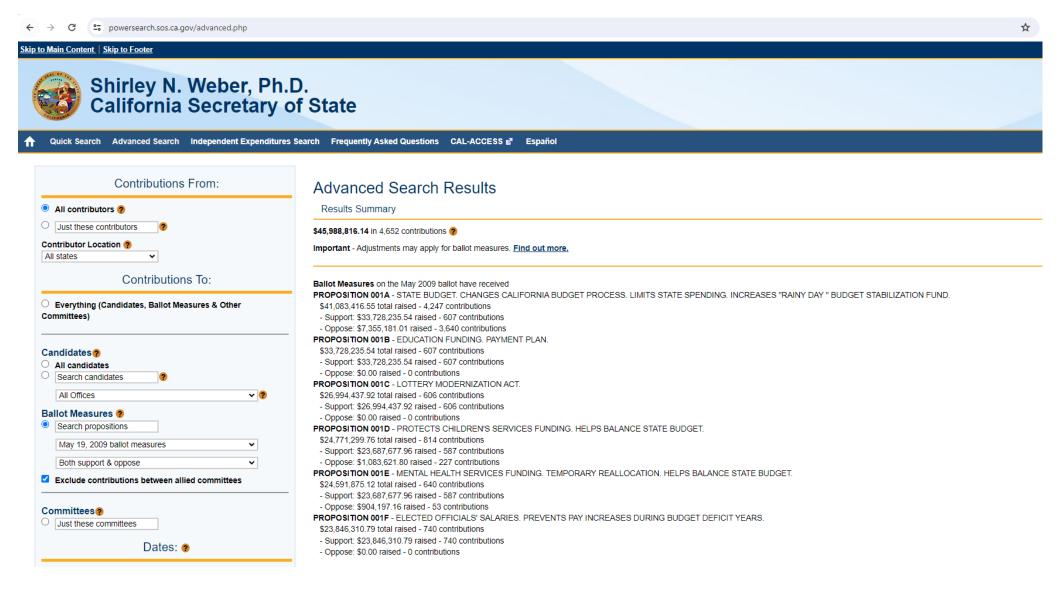
#### **FOOTNOTE 15:**



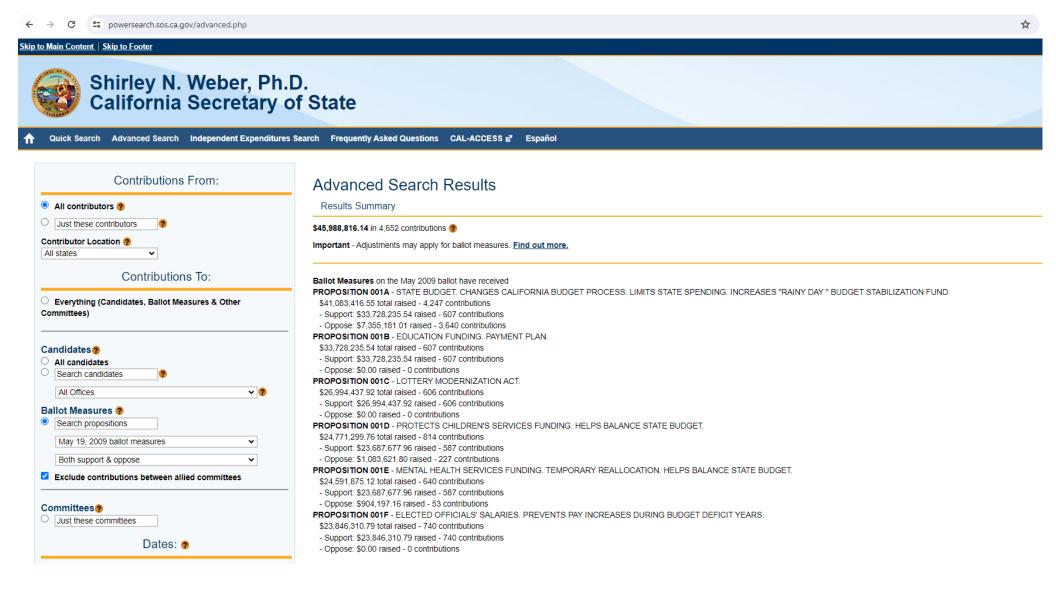
#### **FOOTNOTE 16:**



#### **FOOTNOTE 17:**



#### **FOOTNOTE 18:**



#### **FOOTNOTE 19:**



#### PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am a citizen of the United States employed in the County of Sacramento. I am over the age of 18 and not a party to the within cause of action. My business address is 500 Capitol Mall, Suite 1900, Sacramento, California 95814. On April 3, 2024, I served the following document(s):

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By filing via TrueFiling: I filed and served such document(s) via TrueFiling, thus sending an electronic copy of the filing and effecting service on all registered users for this case.

By email: I caused such document(s) to be served via electronic mail on the parties in this action by transmitting true and correct copies to the following email addresses from my email at dpowers@buchalter.com:

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By First-Class Mail: By following ordinary business practices and placing for collection and mailing at 500 Capitol Mall, Suite 1900, Sacramento, California 95814, a true and correct copy of the document(s), enclosed in a sealed envelope; in the ordinary course of business, the document(s) would have been deposited for first-class delivery with the United States Postal Service the same day they were placed for deposit, with postage thereon fully prepaid.

The Hon. Frank Roesch Alameda County Superior Court Administration Building, Dept. 17 1221 Oak Street Oakland, CA 94612 The Hon. Jorge E. Navarrete Supreme Court Clerk and Executive Officer 350 McAllister Street San Francisco, CA 94102-4797

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 3rd day of April 2024, at Sacramento, California.

Danielle Y. Powers

DANIELLE Y. POWERS

#### No. S279622

# IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

\_\_\_\_\_

HECTOR CASTELLANOS; JOSEPH DELGADO; SAORI OKAWA; MICHAEL ROBINSON; SERVICE EMPLOYEES INTERNATIONAL UNION CALIFORNIA STATE COUNCIL; SERVICE EMPLOYEES INTERNATIONAL UNION, Petitioners and Respondents,

v.

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After a Decision by the Court of Appeal First Appellate District, Division Four, Case No. A163655 Alameda County Superior Court No. RG21088725 The Honorable Frank Roesch, Presiding

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#### PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am a citizen of the United States employed in the County of Sacramento. I am over the age of 18 and not a party to the within cause of action. My business address is 500 Capitol Mall, Suite 1900, Sacramento, California 95814. On April 3, 2024, I served the following document(s):

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**By filing via TrueFiling**: I filed and served such document(s) via TrueFiling, thus sending an electronic copy of the filing and effecting service on all registered users for this case.

**By email**: I caused such document(s) to be served via electronic mail on the parties in this action by transmitting true and correct copies to the following email addresses from my email at dpowers@buchalter.com:

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The Hon. Frank Roesch Alameda County Superior Court Administration Building, Dept. 17 1221 Oak Street Oakland, CA 94612 The Hon. Jorge E. Navarrete Supreme Court Clerk and Executive Officer 350 McAllister Street San Francisco, CA 94102-4797

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 3rd day of April 2024, at Sacramento, California.

Danielle Y. Powers

DANIELLE Y. POWERS

#### STATE OF CALIFORNIA

Supreme Court of California

#### PROOF OF SERVICE

# STATE OF CALIFORNIA

Supreme Court of California

Case Name: CASTELLANOS v. STATE OF CALIFORNIA (PROTECT APP-BASED DRIVERS AND SERVICES)

Case Number: **S279622**Lower Court Case Number: **A163655** 

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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.

4/3/2024		
Date		
/s/Danielle Powers		
Signature		
Churchwell, Steven (110346)		
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