No. S189476

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KRISTIN M. PERRY, et al., *Plaintiffs and Appellants*,
v.
EDMUND G. BROWN, JR., as Governor, etc. et al., Defendants,
DENNIS HOLLINGSWORTH, et al., Defendants-Interveners-Appellants.

APPLICATION TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS AND PROPOSED *AMICI CURIAE* BRIEF OF COUNTY OF SANTA CLARA; COUNTY OF SANTA CRUZ; CITY OF OAKLAND; CITY OF CLOVERDALE; COUNTY OF SAN MATEO; CITY OF SANTA CRUZ; COUNTY OF SONOMA

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APPLICATION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Pursuant to Rule 8.520(f) of the California Rules of Court, the County of Santa Clara, the County of Santa Cruz, the City of Oakland, the City of Cloverdale, the County of San Mateo, the City of Santa Cruz, and the County of Sonoma (collectively "*amici*") respectfully request leave to file the attached *amicus curiae* brief, in support of Plaintiff/Respondents Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarillo, and Plaintiff-Intervener/Respondent the City and County of San Francisco.[1]

Amici respectfully submit that their participation as *amici curiae* will assist the Court by providing the valuable and distinct perspective of local governments, whose interests stand to be harmed if initiative proponents are granted the authority to speak for the government in judicial proceedings.

Amici are cities and counties in California that have an interest in the outcome of this litigation. We submit this amicus brief to add the important local perspective to the Court's consideration of the Certified Question from the Ninth Circuit. The Proposition 8 Proponents take the position that initiative proponents have standing to assert the State's interest on appeal. If the Court adopts the resulting rule, it will disrupt the State's governmental structure by conferring on unelected individuals the executive authority to make litigation decisions on behalf of the State. Such a disruption will affect local jurisdictions' ability to rely on existing checks and balances regarding issues of statewide concern. In addition, because the Proponents' rule, if adopted, would presumably apply to the local initiative process, it will impact local jurisdictions directly by usurping the

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[1] No party or counsel for a party in this pending appeal authored any part of this *amicus curiae* brief or made any monetary contribution intended to fund the preparation or submission of this brief. Cal. R. Ct. 8.520(f)(4)(A). Further, no person or entity other than *amici* made a monetary contribution to fund the preparation or submission of this brief. Cal. R. Ct. 8.520(f)(4)(B).

authority of local officials to direct and control litigation to which their jurisdictions are party. *Amici* therefore urge this Court to grant this application and accept the accompanying brief.

Dated: April 29, 2011

Respectfully submitted,

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By: _____
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I.

INTRODUCTION

The Proposition 8 Proponents urge this Court to adopt a blanket rule allowing initiative proponents to speak for the State in judicial proceedings. Yet no basis exists in either the California Constitution or existing case law for the proposed rule. Extending the initiative power to enable initiative proponents to usurp the executive branch's authority to make litigation decisions on the State's behalf would disrupt the separation of powers enshrined in the California Constitution by allowing unelected individuals to undermine the official position taken by government officials relating to litigated matters. Such a rule would lead to legal uncertainty and a potential waste of government resources.

Adopting Proponents' recommended rule would also cause direct harm to California's cities and counties. When state laws are challenged, local governments depend on the State's elected officers to make reasoned litigation decisions and to exercise their legal expertise appropriately. Allowing initiative proponents who are not accountable to the electorate to make decisions on behalf of the State could prevent local governments from relying on the checks and balances inherent when the State executive branch plays its intended role vis-à-vis the other branches of government. Stripping the Attorney General of her constitutionally-conferred power to defend and enforce the State's laws would create a state of legal uncertainty for cities and counties, which are subject to statewide obligations.

Furthermore, if this Court answers the Certified Question in the affirmative, and holds that the official proponents of an initiative measure have either a particularized interest in the initiative's validity or the authority to assert the State's interest in its validity, it is likely that subsequent cases will extend an equivalent power to proponents

of local initiatives. In order to effectively serve their jurisdictions, city and county governments must retain the authority to exercise discretion when making litigation decisions that may have broad implications for their jurisdictions. Granting local initiative proponents the authority to countermand the decisions of duly elected local government officials on litigation matters would weaken local governments and bring harm to the people who rely on them. For these reasons, *amici* urge this Court to reject the rule advocated by Proponents and answer the Certified Question in the negative.

II.

ARGUMENT

A. INITIATIVE PROPONENTS DO NOT HAVE STANDING UNDER CALIFORNIA LAW TO ASSERT THE STATE'S INTEREST IN JUDICIAL PROCEEDINGS

Contrary to the assertions in their opening brief, California law provides no authority for Proponents to defend the validity of Proposition 8 at this procedural juncture. The power Proponents seek—to make litigation decisions regarding when to appeal a lower court ruling on the State's behalf—is fundamentally an executive power, which the Constitution explicitly delegates to elected State officials, the Governor and the Attorney General. Cal. Const., art. V, § 1; Cal. Const., art. V, § 13. California law grants these officials the discretion to decide when to appeal a trial court judgment or whether to defend initiatives that may be unconstitutional, and for good reason: they have both the expertise required to make complex litigation decisions that will affect the State's varied interests and a duty to protect the public interest. *State v. Super. Ct.*, 184 Cal. App. 3d 394, 397-98 (1986) ("The decision of the Attorney General whether to participate in a lawsuit. . .is a decision purely discretionary. . ."); *Connerly v. State Personnel Bd.*, 37 Cal.4th 1169, 1183 (2006) (acknowledging that whether state agencies have an obligation to defend laws that they believe are unconstitutional is an open issue); *D'Amico v. Bd. of*

Med. Examiners, 11 Cal.3d 1, 15 (1974) (calling the Attorney General's obligation to protect the public interest his "paramount duty").

Initiative proponents are not granted similar executive authority, either by the Constitution or by case law. The initiative power, while broad, is exclusively legislative. Article IV, Section 1 of the Constitution, in which the initiative power is reserved by the people, is entitled "Legislative Power." Cal. Const., art. IV, § 1. Article 2, Section 8(a) confers on voters the authority to "propose statutes and amendments to the Constitution and to adopt or reject them," functions that are clearly legislative in nature. Cal. Const., art. II, § 8(a). This Court's precedent confirms that initiative proponents act in a legislative capacity when they exercise their authority under Article 2, Section 8(a). *See, e.g., Prof'l Engineers in Cal. Gov't v. Kempton*, 40 Cal. 4th 1016, 1042 (2007); *Fair Political Practices Comm'n v. Super. Ct.*, 25 Cal.3d 33, 42 (1979). Implying into this legislative power the executive authority to make litigation decisions on the State's behalf would violate separation of powers and intrude on the Attorney General's core function. *See* City and County of San Francisco's Answer Br. (hereinafter "SF's Answer Br.) at 19-21, *Perry v. Brown*, No. S189476, On Request from the United States Court of Appeals for the Ninth Circuit, No. 10-16696 (Cal. Apr. 4, 2011).

In fact, the proponents of an initiative have exhausted their power once an initiative has been voted into law. After an initiative's adoption, the proponents' interest in the validity of the initiative is no more particularized than that of any voter who supported the proposition. Statutes implementing the constitutional initiative authority grant proponents of initiatives limited powers in order to effectuate their right to place a proposed measure on a ballot. Cal. Const., art. II, § 8(a); Elec. Code §§ 9000 *et seq.* However, once a measure has been placed on the ballot, and duly enacted by the electorate, its proponents have no further rights or responsibilities with respect to it; their limited powers have been exercised, and their interest in the validity of the enacted

proposition is shared equally by all voters who supported the initiative. *See* SF's Answer Br. at 36. It is the Attorney General—who has been elected as the State's chief law officer—who has a particularized interest in defending an initiative once it becomes law.

That California courts have allowed proponents of popularly-enacted propositions to *intervene* in litigation in which the propositions were challenged does not indicate that the interests of the proponents are any more particularized than those of other individuals who voted for the proposition. Under Article III of the United States Constitution, a party only has standing to seek relief from the federal courts if he can establish a concrete, particularized, and actual or imminent injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). While California cases allowing *intervention* may establish that initiative proponents have some individual interest in the propositions they have promoted, they certainly do not establish a concrete, particularized interest sufficient to confer standing under Article III of the federal Constitution. Plaintiffs-Respondents' Answering Br. at 21-25, *Perry v. Brown*, No. S189476, On Request from the United States Court of Appeals for the Ninth Circuit, No. 10-16696 (Cal. Apr. 4, 2011); SF's Answer Br. at 37-46.

B. THE RULE ADVOCATED BY PROPONENTS WOULD HARM LOCAL GOVERNMENTS IN CALIFORNIA

Although absent from the text of the Constitution itself, Proponents contend that this Court should imply into the initiative power a right of initiative proponents to speak for the State by defending enacted propositions in court. If adopted, such a rule would disrupt the State's constitutional separation of powers by usurping the authority of the executive branch, and supplanting the duties of elected representatives with the will of a small group of unelected individuals pursuing a singular interest. It may also subject the

State to expensive attorneys' fees, depleting the resources available to fund the State's other obligations.[1]

Accordingly, Proponents suggested rule would cause harm to *amici* and other local governments in California. Local governments rely on the State and its elected officers in a myriad of ways: for a set of governing laws, for consistent and fair enforcement of those laws, and for financial support. The rule advocated by Proponents would disrupt the State structures upon which local governments rely. Furthermore, if adopted in this case, Proponents' suggested rule is likely to be extended in subsequent cases to the proponents of local initiatives, which will directly undermine the ability of local government officials to govern effectively and protect the interests of their jurisdictions.

1. Granting Proponents Of Statewide Initiatives Standing To Speak For The State In Judicial Proceedings Would Adversely Affect Local Governments In California

The rule advocated by Proponents is not only unsupported by California law; it is also unworkable in practice, and would impose harm on California's local governments. The Constitution grants elected officials the authority to make difficult litigation decisions on behalf of the State because they have the experience and expertise to competently weigh the strength of a particular case and the potential outcome of the litigation on the State, and because they have a duty to protect the public interest.

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[1] As Plaintiff-Intervener San Francisco has noted, the Proposition 8 Proponents have claimed that they cannot be held liable for attorneys' fees, citing to a Ninth Circuit decision, *Democratic Party of Washington State v. Reed*, 388 F.3d 1281, 1288 (9th Cir. 2004), which held that attorneys' fees could not be assessed against a defendant-intervener, because its position was not "frivolous, unreasonable, or without foundation." SF's Answer Br. at 28. Under this logic, if plaintiffs of a case challenging an initiative prevail, and their cause of action entitles them to recover their attorneys' fees, the State, as a defendant, would be liable for their fees, even if the initiative proponents, rather than the State, chose to litigate the case to the end.

Allowing members of the public pursuing a singular interest to represent the State in litigation would interfere with this essential function.

Cities and counties in California rely on the State's elected officers to govern the state efficiently and to enforce the State's laws fairly and consistently. While cities and counties, especially those that have adopted charters, have some independence, they are fundamentally dependent on the State in a variety of ways. Counties, as legal subdivisions of the State, must have their charters approved by the State Legislature. Cal. Const., art. XI, § 1(a); Cal. Const., art. XI, § 4(g). Cities and counties are entitled to "make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations," but these regulations must not "conflict with general laws" of the State. Cal. Const., art. XI, § 7. Although charter cities have independent authority to regulate municipal affairs, they too are bound by the Legislature's enactments on issues of statewide concern. *Committee of Seven Thousand v. Super. Ct.*, 45 Cal.3d 491, 505, 510 (1988) (holding that while charter cities can supersede state law as to municipal affairs, as to matters of statewide concern, charter cities are subject to state general law, even when the state law incidentally affects a municipal affair); *Baggett v. Gates*, 32 Cal.3d 128, 139 (1982) (citing *Prof'l Fire Fighters, Inc. v. City of Los Angeles*, 60 Cal.2d 276, 292, 295 (1963) ("[G]eneral laws seeking to accomplish an objective of statewide concern may prevail over conflicting [charter city] regulations even if they impinge to a limited extent upon some phase of local control.").

Local governments also depend directly on the Attorney General, as the chief law officer of the State. The Constitution grants the Attorney General the authority to "have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices," and imposes a duty on the Attorney General to "prosecute any violations of law" whenever she believes "any law of the State is not being adequately

enforced in any county." Cal. Const., art. V, § 13. Under statutory law, the Attorney General has the authority to bring antitrust actions on behalf of the State's political subdivisions or other public agencies. Bus. & Prof. Code § 16750(c). Local governments' ability to enforce the law and protect the interests of their constituents is therefore directly affected by the decisions the Attorney General makes in the exercise of her authority.

Because the Attorney General is required by the Constitution to "see that the laws of the State are uniformly and adequately enforced," local governments, and the people who rely on them, are assured consistency, fairness, and predictability in their legal rights and obligations. Cal. Const., art. V, § 13. As in the Proposition 8 context, if the Attorney General were required to chose between defending a law she believes to violate core constitutional rights or allowing proponents to control the position taken in regard to a constitutionally-suspect enactment, the Attorney General's obligation to the State could be corrupted by special interests. This would throw local jurisdictions, and the rights of the constituents they represent, into a state of legal uncertainty.

a. Allowing Unelected Initiative Proponents To Usurp The Authority Of State Officials Would Be Detrimental To Local Governments

State officers, who have been elected to govern the State fairly and efficiently, and who swear an oath to uphold the law, are accountable to the State's entire electorate. This deters them from making policy decisions that favor one region of the State over another, or choosing to divert all of the State's resources to promote a single issue, because doing so would likely cause them to lose re-election, or even to be recalled. SF's Answer Br. at 26. As described above, local governments rely on the accountability of the State's governing officers to ensure they make reasoned decisions about how to uphold the State's laws.

Proponents of initiatives have no duty to enforce the State's laws or to protect the public interest, and because they are unelected, they have no incentive to balance the

varied interests in the State or to consider the effects of their litigation decisions on the State's resources. Because their loyalty is to the single issue they have chosen to promote in their proposition, initiative proponents are likely to make litigation decisions that discount the many other complex factors officials must consider when litigating on behalf of the State, such as the State's likelihood of success in the case, its overall financial resources, and the potential that it may be exposed to further liability depending on its litigation strategy.

Initiative proponents will be unlikely to consider, for example, that continuing to defend a measure that state officials have already determined is unlawful could harm the constitutional rights of protected individuals, subject the State to expensive additional litigation, and have an overall negative impact on the State's budget and its ability to serve its constituents. Instead, they are likely to defend such an initiative in appeal after appeal, consuming significant judicial resources and creating uncertainty in the state of the law. They will do so in the name of the People of the State of California, even though the people who voted for their initiative would not necessarily support it taking precedence over the State's other important legal protections and obligations.

Local governments in California would face a state of legal uncertainty from a rule granting this broad power to initiative proponents. Because they are subject to state law in areas of statewide concern, cities and counties would not know the parameters of their legal obligations if state executive officers' decisions relating to litigated matters could be overruled by initiative proponents.

For example, initiative proponents could spend years litigating the merits of a proposition that would strip local governments of the right to receive state subventions for state-imposed mandates, in violation of the Constitution. Cal. Const., art. XIIIB, § 6(a). In such a situation, cities and counties would have to decide whether to continue to perform their obligations under the mandate, without any assurance that they would be

reimbursed, or to cease providing the mandated service, and risk significant liability. Or an initiative could be passed granting the State Legislature statutory authority to reallocate to the State General Fund tax revenue local governments levied solely for their own purposes, in contravention of Article XIII, section 24(b) of the Constitution. Local governments would virtually lose their ability to function if the initiative's proponents were entitled to override the Attorney General's determination that the proposition violated local governments' constitutionally-protected rights. Such uncertainty disrupts the essential government structure of the State and extends the initiative power beyond what is constitutionally allowed.

2. The Rule Advocated By Proponents Would Likely Be Extended To Proponents of Local Initiatives And Be Used To Supplant Local Governments' Discretion To Defend Initiatives In Court

The rule advocated by Proponents will likely have an even more direct impact on cities and counties. A rule permitting initiative proponents to stand in the shoes of the government once a statewide initiative becomes law would likely be extended to proponents of local initiatives as well. Allowing initiative proponents to trump local government discretion regarding the legal merits of challenging a court ruling on appeal could have negative impacts on local officials' ability to carry out their essential functions, such as designing a budget that balances all of the jurisdiction's interests.[2]

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[2] In addition to the financial uncertainty that could result if the initiative in question imposes government costs, the government could be required to bear the cost of any applicable attorneys' fees if the challengers of an initiative ultimately prevail, as explained in footnote 1, *supra*.

a. If This Court Adopts The Proponents' Recommended Rule, Subsequent Courts Are Likely To Apply It To Proponents Of Local Initiatives

While the question certified to this Court from the Ninth Circuit Court of Appeals is limited to the issue of whether the proponents of an initiative measure "possess either a particularized interest in the initiative's validity or the authority to assert the *State's* interest in the initiative's validity,"[3] it is likely, if not inevitable, that the rule adopted by this Court will be subsequently applied to proponents of local initiatives. The right of the electorate in a local jurisdiction to propose and pass initiatives is derived from the same reservation of political power to the people as the statewide initiative authority, and therefore has essentially the same character as the statewide initiative power. Cal. Const., art. II, § 1; Cal. Const., art. IV, § 1; Cal. Const., art. II, § 11; *Hopping v. City of Richmond*, 170 Cal. 605, 609 (1915); *Midway Orchards v. County of Butte,* 220 Cal. App. 3d 765, 777 (1990) (citing *Hill v. Board of Supervisors of Butte County*, 176 Cal. 84, 86 (1917)).

In general-law local jurisdictions, the initiative and referendum powers have been held to be "coextensive" and "identical" to the powers reserved to the People of the State, and constitutional limitations on the statewide initiative and referendum powers also generally restrict the power of a local electorate. *See Pala Band of Mission Indians v. Bd. of Supervisors*, 54 Cal. App. 4th 565, 581-82 (1997); *Midway Orchards*, 220 Cal. App. 3d at 777 (citing *Hill*, 176 Cal. at 86); *Ortiz v. Madera County Bd. of Supervisors*, 107 Cal. App. 3d 866, 871 (1980) (citing *Geiger v. Bd. of Supervisors*, 48 Cal. 2d 832, 836 (1957)). And while charter jurisdictions are entitled to reserve initiative and referendum

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[3] Order Certifying a Question to the Supreme Court of California at 2, *Perry v. Schwarzenegger*, No. 10-16696 (9th Cir. Jan. 4, 2011) (emphasis added). Note that after the Certification Order was issued, Governor Edmund G. Brown replaced former Governor Arnold Schwarzenegger.

powers broader than what is reserved in the state context, any powers that are included in the state initiative or referendum power, including implied powers, must be incorporated into the local power, in both charter and general law jurisdictions. *Rubalcava v. Martinez*, 158 Cal. App. 4th 563, 570-73 (2007) (citing *Rossi v. Brown*, 9 Cal.4th 688, 698 (1995)) ("Under these provisions, charter cities cannot deny their citizens the [initiative or] referendum powers reserved in the California Constitution, although charters may properly reserve broader [] powers to voters.").[4] Thus, if this Court adopts the rule advocated by Proponents, it is very likely that courts in later cases will apply the rule to grant equivalent standing to proponents of local initiatives. For the reasons discussed below, allowing the local initiative power to encompass such broad authority would cause further harm to California cities and counties.

b. Allowing Proponents Of Local Initiatives Standing To Defend Propositions Will Usurp The Authority Of Elected Local Governments To Balance Their Jurisdiction's Interests And Protect Its Resources

Cities and counties in California struggle, especially in these difficult economic times, to provide efficient and comprehensive services to their constituents. Allowing the unelected proponents of local initiatives to stand in the shoes of local government officials to defend their initiatives in court would directly undermine the ability of cities

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[4] Although *Rubalcava v. Martinez* analyzed the limits charter cities may place on the referendum power, the same analysis would apply to limits on the initiative power of charter city residents. Courts frequently apply precedent analyzing the referendum power to discussions of the initiative power, and vice versa. *See, e.g., Galvin v. Bd. of Supervisors of Contra Costa County*, 195 Cal. 686, 690 (1925) (relying on *Hopping v. City of Richmond*, 170 Cal. at 609, which analyzed the local referendum power, to derive a rule regarding the local initiative power.); *Ortiz*, 107 Cal. App. 3d at 870 n. 3 ("[B]ecause the nature of the initiative and the referendum are identical insofar as the power reserved is concerned any discussion in the decisional law regarding the initiative also applies to the referendum.").

and counties to serve their jurisdictions. Similar to the State's elected officers, local government officials are charged with the responsibility of making litigation decisions on behalf of their jurisdictions. For example, under California law, county boards of supervisors are explicitly assigned the duty to "direct and control the conduct of litigation in which the county, or any public entity of which the board is the governing body, is a party," and the county counsel, or if none, the district attorney, is charged with "attend[ing] and oppos[ing] all claims and accounts against the county" that in his or her discretion are "unjust and illegal." Gov. Code § 25203; Gov. Code § 26526. In general law cities, city attorneys must "advise the city officials in all legal matters pertaining to city business" and "perform other legal services required from time to time by the legislative body." Gov. Code § 41801; Gov. Code § 41803.[5] Local government officials, like their state counterparts, are responsible for maintaining the overall wellbeing of their jurisdictions, and therefore must make reasoned decisions in cases to which their jurisdictions are party that balance the entire range of issues that affect their constituents.

Local officials are ultimately responsible to the electorate; if they fail to perform their delegated responsibilities appropriately, they may be replaced by the voters. Proponents suggested rule could interfere with the relationship between the electorate and their elected representatives. For example, the proposed rule could interfere with the local government's authority to pass a budget until the litigation over a given measure has been resolved. Because the "management of the financial affairs of [a local] government," including the "fixing of a budget," is considered "an essential function" of the governing

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[5] Charter cities are entitled to structure their own governments, under the principle of municipal home rule, and therefore could theoretically delegate to any person the authority to make litigation decisions on behalf of the city, including initiative proponents. Cal. Const., art. XI, § 5(a); *City of Grass Valley v. Walkinshaw*, 34 Cal.2d 595, 598-99 (1949). However, *amici* know of no charter city that has chosen to grant this authority to proponents of initiatives.

body of a local jurisdiction, enabling initiative proponents to commandeer the process in this way would encroach on the authority and expertise of the individuals who have been elected to allocate the jurisdiction's resources. *Geiger*, 48 Cal.2d at 840; *see also Totten v. Board of Supervisors*, 139 Cal. App. 4th 826, 838-39 (2006); *County of Butte v. Superior Court*, 176 Cal. App. 3d 693, 699 (1985) ("The budgetary process entails a complex balancing of public needs in many and varied areas with the finite financial resources available. . .It involves interdependent political, social and economic judgments which cannot be left to individual officers acting in isolation; rather, it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available."). Such an encroachment would not necessarily fulfill the objectives of the voters who passed the initiative; when an electorate votes to adopt a proposition, it does not necessarily contemplate that doing so will allow the initiative to take precedence over other laws or programmatic responsibilities of the jurisdiction.

Enabling local initiative proponents to represent the interests of local jurisdictions in court would also fundamentally restrict the discretion of local government officers who have the experience and expertise necessary to weigh the legal merits of a particular case. Local government officers have a mandatory duty to place on the ballot an initiative measure that has garnered the requisite number of qualifying signatures. *Save Stanislaus Area Farm Economy v. Board of Supervisors*, 13 Cal. App. 4th 141, 148 (1993); *Citizens for Responsible Behavior v. Superior Court*, 1 Cal. App. 4th 1013, 1021 (1991). Yet local initiatives, like all local legislation, may not conflict with state law when they deal with an issue of statewide concern, and courts will invalidate initiatives when they find that the Legislature intended to bar the use of the local initiative power to legislate in the area. *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal.4th 893, 897-98 (1993); *Committee of*

Seven Thousand, 45 Cal.3d at 509-12; *DeVita v. County of Napa*, 9 Cal.4th 763, 776 (1995).

Therefore, when a local initiative explicitly contradicts state law in an area of statewide concern, but has received the required number of signatures to qualify for the ballot, local officials have only one mechanism for preventing the initiative's implementation: by declining to appeal a judicial ruling invalidating the law. If proponents of local initiatives were instead entitled to bring such an appeal, they would be able to override the reasoned judgment of the jurisdiction's officials and continue to litigate the merits of an improper enactment. By doing so, they would waste judicial resources, subject the local jurisdiction to liability for attorneys' fees, and leave the jurisdiction in a state of legal limbo about its obligations while the litigation made its way through the court system. Such a rule would be unworkable for cities and counties in California that depend on the reasoned judgments of officials who know when it is appropriate to cease litigation in order to protect the overall welfare of their jurisdictions.

III.

CONCLUSION

The rule advocated by the Proposition 8 Proponents is not supported by California law, and would have damaging effects on *amici* and other cities and counties in California. *Amici* therefore respectfully request that this Court answer the Certified Question in the negative.

Dated: April 29, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately 1.5 spaced 13 point Time New Roman typeface. Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the number of words contained in the foregoing amicus curiae brief, including footnotes but excluding the Table of Contents, Table of Authorities, the Application for Leave to Brief as Amici Curiae, and this Certificate, is 4513 words as calculated using the word count feature of the program used to prepare this brief.

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SUPREME COURT OF THE STATE OF CALIFORNIA

PROOF OF SERVICE BY MAIL

Perry, et al v Brown, et al S189476

I, Hosetta P Zertuche, say:

I am now and at all times herein mentioned have been over the age of eighteen years, employed in Santa Clara County, California, and not a party to the within action or cause; that my business address is 70 West Hedding Street, 9th Floor, East Wing, San Jose, California 95110-1770. I am readily familiar with the County's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I served a copy of the attached **APPLICATION TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS AND PROPOSED *AMICI CURIAE* BRIEF OF COUNTY OF SANTA CLARA; COUNTY OF SANTA CRUZ; CITY OF OAKLAND; CITY OF CLOVERDALE; COUNTY OF SAN MATEO; CITY OF SANTA CRUZ; COUNTY OF SONOMA** by placing said copy in an envelope addressed to:

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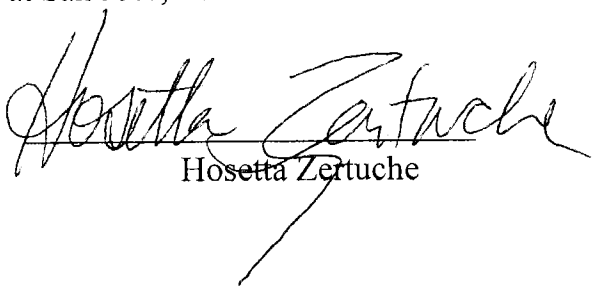
which envelopes were then sealed, with postage fully prepaid thereon, on **April 29, 2011**, and placed for collection and mailing at my place of business following ordinary business practices. Said correspondence will be deposited with the United States Postal Service at San Jose, California, on the above-referenced date in the ordinary course of business; there is delivery Service by United States mail at the place so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **April 29, 2011**, at San Jose, California.



Hosetta Zertuche