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Superior Court Of California,
Sacramento
10/14/2009
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By _____, Deputy
Case Number:
34-2009-80000353

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SACRAMENTO

17 **GEORGE RUNNER,**

18 Petitioner,

19 vs.

20 **EDMUND G. BROWN, JR.,** Attorney
21 General of the State of California,

22 Respondent.

) Case No.
)
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF VERIFIED
) PETITION FOR WRIT OF MANDATE
)
) [Cal. Elec. Code §13314; C.C.P. § 1085]
)
) **IMMEDIATE ACTION REQUIRED:**
) **ELECTION LAW MATTER ENTITLED**
) **TO CALENDAR PREFERENCE**
) **PURSUANT TO C.C.P. §35**
)
) Hearing Date:
) Time:
) Dept:
) Judge:
) Petition Filed:
)
)
)

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1 **I. INTRODUCTION**

2 For each proposed initiative, the California Attorney General is charged with providing to
3 the electorate a Title and Summary in the form of a “true and impartial statement of the purpose”
4 of the measure. (Elec. Code, §§ 9004, 9051.)¹ The Title and Summary must reflect the
5 initiative’s “chief purpose and points,” and be couched in terms that are neither argumentative,
6 nor “likely to create prejudice[] for or against the proposed measure.” (Elec. Code, § 9051.) In
7 the instant matter, Attorney General Brown’s Title and Summary are fundamentally inaccurate
8 and misleading to the public. As will be shown below, the Attorney General seems to be so intent
9 on torpedoing Petitioners’ initiative that he is incapable of providing a dispassionate review.
10 Where, as here, the Attorney General fails to meet his statutory duties, a writ of mandate should
11 issue.

12 On June 16, 2009, the Attorney General issued a Title and Summary for California’s
13 “Vote SAFE: Secure and Fair Elections Act.” (See Cal. Initiative No. 09-0008 [V-3], Amdt. 1-S
14 (April 23, 2009), hereafter “the Vote SAFE Initiative,” “Initiative No. 09-0008,” or Measure No.
15 09-0008, Exhibit “D.”) The Title and Summary, as presently circulated, read as follows:

16 **LIMITATIONS ON VOTING INITIATIVE STATUTE:** Prohibits citizens from
17 voting at the polls unless they present a government-issued photo-identification
18 card. Establishes provisional voting for citizens at the polls who fail to present
19 government-issued photo-identification. Requires that provisional ballots and
20 mail-in ballots be deemed invalid unless the accompanying envelope is marked
with the last four digits of a citizen’s California driver’s license, state identification
card or social security number. Establishes that ballots from absent military
personnel are timely if postmarked by election day.

21 (Title & Summary of Initiative No. 09-0008, Amdt. 1-S (Jun. 16, 2009.) This language is
22 clearly calculated not to inform, but to persuade. Although a ballot title need not contain a
23 summary or index of all of the measure’s provisions, it must fairly represent the major objectives
24 of the initiative. (*Brennan v. Bd. of Supervisors of S.F.* (1st App. Dist. 1981) 125 Cal.App.3d 87,
25 92.) The critical points of the Vote SAFE Initiative are four-fold.

26 *First*, the initiative endeavors to secure and improve the State’s election system by
27 requiring voters to present a photo identification before voting at a precinct. (Initiative No. 09-

28 ¹ Hereafter, all references to statutory code will refer to the California Elections Code unless
otherwise specified.

1 0008, Amdt. 1-S, § 2, amending Elec. Code, § 14216.5.) *Second*, vote-by-mail ballots will be
2 equipped with a security flap or sleeve, underneath which the voter will be required to provide the
3 last four digits of his California driver's license or identification card number. (Initiative No. 09-
4 0008, Amdt. 1-S, § 5, amending Elec. Code, § 3011.) *Third*, the initiative will amend the Vehicle
5 Code to provide that the fee for an original or replacement identification card shall be waived for
6 a person who requests the card for the purpose of satisfying Vote SAFE's requirements.
7 (Initiative No. 09-0008, Amdt. 1-S, § 3, amending Veh. Code, § 14902.5.) *Fourth* and finally, the
8 ballots of military voters stationed overseas shall be considered timely cast if they are postmarked
9 or signed and dated by election day, and received by the voter's election official no later than
10 fifteen (15) days after Election Day. (Initiative No. 09-0008, Amdt. 1-S, § 4, amending Elec.
11 Code, § 3020.5 and adding Elec. Code, § 3101.5.)

12 To ensure that no voter is unfairly denied the right to vote, voters who fail or refuse to
13 present photo identification will be permitted to vote provisionally under pre-existing rules for
14 provisional voting. (See Elec. Code, § 14310 *et seq.*) In exercising this option, the voter is
15 required only to execute a declaration under penalty of perjury certifying that he or she is
16 registered to vote. (Elec. Code, § 14310, subd. (a).) Moreover, in the absence of both a
17 California driver's license and California identification card number, the absentee voter may
18 enclose the last four digits of his or her social security number. (Initiative No. 09-0008, Amdt. 1-
19 S, § 5, subd. (a)(2).)

20 Although an Attorney General's Title and Summary for an initiative generally enjoys a
21 presumption of accuracy, trial courts are empowered to review the contents of a ballot digest to
22 ensure fairness and impartiality. (*Brennan v. Bd. of Supervisors of S.F.*, *supra*, 125 Cal.App.3d
23 87, 93.) Where, as here, a petition Title and Summary are designed to discourage electors from
24 signing the petition or to set the stage for defeat of the measure once it has qualified for the ballot,
25 a writ of mandate is appropriate.

26 While challenges to county and city initiative Titles and Summaries are explicitly
27 authorized by statute, there is no specific authority in chapter 1 of division 9 of the Elections
28 Code that authorizes the same for statewide petitions. (See Elec. Code, §§ 9106 (county initiative

1 petitions), 9204 (city initiative petitions.) Moreover, neither Assembly Bill 753 (reorganizing
2 code provisions governing preparation of titles, summaries, and ballot labels for state ballot
3 measures) nor Assembly Bill 894 (requiring certain information to be disclosed in Legislative
4 Analyst Office's fiscal analyses of initiative measures), both of which will become effective on
5 January 1, 2010, provide a mechanism for pre-circulation title and summary challenge. However,
6 Elections Code section 13314 permits any elector to seek a writ of mandate alleging that an error
7 or omission has occurred, or is about to occur, in the printing of any official matter, or that a
8 neglect of duty has occurred or is about to occur; that the error, omission or neglect is in violation
9 of the Code; and the issuance of the writ will not substantially interfere with the conduct of the
10 election. Alternatively, relief is appropriate by general writ of mandate under Cal. Code Civ.
11 Proc., section 1085. Accordingly, the writ sought by Petitioner should be granted.

12 **II. STATEMENT OF FACTS**

13 On February 17, 2009, Petitioner submitted the "Vote SAFE: Secure and Fair Elections
14 Act" (also referred to as "the Vote SAFE Initiative"), version 1, also known as Initiative #09-
15 0005, to Respondent for preparation of a title and summary. (Cal. Initiative No. 09-0005, Pet.
16 Exh. "A.") On April 16, 2009, Respondent issued a title and summary to this initiative. (Title &
17 Summary of Initiative No. 09-0005 (Apr. 9, 2009), Pet. Exh. "A.") That Title and Summary is
18 identical to the Title and Summary issued for Initiative No. 09-0008, Amendment 1-S. (Pet. Exh.
19 "B.") (Pet. ¶ 3.)

20 On April 23, 2009, Petitioner submitted the current Initiative No. 09-0008, Amendment 1-
21 S to Respondent. In Initiative No. 09-0008, Amend. No. 1S, Petitioner amended Initiative #09-
22 0005 to delete a "felony probationer voting provision," and specified that the amended measure
23 "will not prohibit a person from voting ... a provisional ballot" if the person does not make
24 available a government-issued photo identification." (See Charles H. Bell, Jr., Letter to Attorney
25 General Edmund G. Brown, Jr., Apr. 29, 2009, on behalf of Petitioner and himself as co-
26 proponents attached to Petition as Exhibit "C.") (Pet. ¶ 4.)

27 On June 16, 2009, Respondent issued a virtually identical Title and Summary to Measure
28 No. 09-0008, Amendment 1-S. (Pet. Exhibit "D.") Secretary of State Debra Bowen, pursuant to

1 her duties under Elections Code section 335, noticed the circulation period for Measure No. 09-
2 0008, Amendment 1-S: from June 16, 2009 to November 13, 2009. If qualified, Measure No. 09-
3 0008, Amendment 1-S would appear on the June 5, 2010 statewide consolidated election. (Pet. ¶
4 5.)

5 On July 16, 2009, in response to Petitioner's Op-Ed in The San Bernardino Sun criticizing
6 Respondent's Title and Summary (Runner, Op-Ed, *Brown Sabotages Initiative Process*, The San
7 Bernardino Sun (June 25, 2009), Pet. Exhibit "E"), Chief Deputy Attorney General Jim Humes,
8 on behalf of Respondent, issued a sharp, partisan and -- to Petitioner's knowledge and belief -- an
9 unprecedented attack on Petitioner's allegations. (Pet. Exhibit "F.") (Pet. ¶ 6.)

10 The Attorney General has failed and refused to change the challenged Title and Summary
11 notwithstanding its clear legal defects and his abuse of discretion in adopting its language. (Pet. ¶
12 7.)

13 **A. Current California and Federal Voter Identification Requirements**

14 Current California voting laws do not require any person who goes to vote in person at the
15 polls to present any form of identification to cast a regular ballot. (See Elec. Code, § 14216 *et*
16 *seq.*) Nor does current law require any person whose name does not appear on the voting rolls at
17 a precinct to provide identification in order to cast a provisional ballot. (Elec. Code, § 14310; Cal.
18 Code Regs., tit. 2, § 20107, subd. (b).) If the provisional voter presents a California driver's
19 license or identification card or another form of photo identification, no other identification is
20 required. However, if the voter does not present a current, acceptable photo identification,
21 Secretary of State regulations treat as acceptable two alternate forms of identification containing
22 the name and residence address of the voter. (Cal. Code Regs., tit. 2, § 20701, subd. (d)(2) [e.g.,
23 bank statement, utility bill, government-issued check]; Pet. ¶ 8.)

24 Current California and federal laws require an "absentee" or "vote-by-mail" voter to
25 present identification to cast a "vote-by-mail" ballot only if the voter is a "first time voter" who
26 has registered to vote by mail. (42 U.S.C. § 15483(b)(2)(A); Cal. Code Regs., tit. 2, § 20107.)
27 California and federal law require any person who registers to vote to include on the voter
28 registration affidavit his or her California driver's license or identification number or the last four

1 digits of his or her social security number. (42 U.S.C. § 15483(a)(5)(A); Elec. Code, § 2150,
2 subd. (a)(7); Cal. Code Regs., tit. 2, § 20107; Pet. ¶ 9.)

3 California's existing matrix of election administration laws is inadequate, at best. To vote
4 a regular ballot at any precinct, a voter need only know the name of a registrant who lives in the
5 neighborhood. (See Elec. Code, § 14216.) Furthermore, no one other than a member of the
6 precinct board is authorized to challenge a voter's qualifications. (Elec. Code, § 14240.) The
7 nominal protections in place for verifying voter identities are undermined by permanent absentee
8 voting (Elec. Code § 3200 *et seq.*), and the low-level means used to validate vote-by-mail ballots,
9 i.e., signature comparison. (Elec. Code, § 3000 *et seq.*) Indeed, a returning vote-by-mail
10 applicant need not provide a form of identification, numerical or otherwise to receive a vote-by-
11 mail ballot. (See Cal. Code Regs., tit. 2, § 20107(a). Nor must he claim exigent circumstances to
12 receive a vote-by-mail ballot. (Elec. Code, § 3003.)

13 **B. America's and California's Histories of Voting and Voter Fraud Are Well**
14 **Documented**

15 America's (and California's) history of voting fraud and voter fraud is replete with events
16 which provide ample basis for enactment of "anti-fraud" measures such as Initiative No. 09-
17 00008, as recognized by the United States Supreme Court in its landmark decision upholding the
18 facial constitutionality of the State of Indiana's photo voter identification law in *Crawford v.*
19 *Marion County Election Board* (2008) 128 S.Ct. 1610. (Pet. ¶ 10.) Indiana's law applied to "in-
20 person" voting only. Concerns about absentee voting abuses associated with liberalized absentee
21 voting rules are rife. (See, e.g, Moss, *Absentee Votes Worry Officials as Nov. 2 Approaches*, N.Y.
22 Times (Sept. 13, 2004)
23 <<http://query.nytimes.com/gst/fullpage.html?res=9406E1D71330F930A2575AC0A9629C8B63>>
24 [as of October 6, 2009].) The Department of Justice reported in July 2008 that since 2002, the
25 Justice Department had initiated 360 investigations, leading to the prosecution and conviction of
26 over 100 individuals for various election crimes, including vote fraud, impersonation fraud and
27 absentee ballot offenses. (See Dept. of Justice, *Fact Sheet: Protecting Voting Rights & Preventing*
28 *Election Fraud* (Jul. 2, 2008) <<http://www.usdoj.gov/opa/pr/2008/July/08-crt-585.html>> [as of

1 October 2, 2009].) Fraud at the polls is not just an anecdotal problem. (See Von Spakovsky,
2 *Stolen Identities, Stolen Votes: A Case Study in Voter Impersonation* (Mar. 10, 2008) The
3 Heritage Foundation Policy Archive <<http://www.heritage.org/Research/LegalIssues/lm22.cfm>>
4 [as of October 5, 2009].) Even the esteemed journalist Walter Cronkite admitted to engaging in
5 vote fraud by voting three times in one day for Harry Truman in the 1930s while a journalism
6 student in Missouri. (See *Bright lights, big city and Walter Cronkite make for a good day at*
7 *Black Rock: Had he voted? Yes three times* (Nov. 20, 2000) Hard News Café Archive, Utah State
8 Department of Journalism <[http://newscafe.ansci.usu.edu/archive/nov2000/](http://newscafe.ansci.usu.edu/archive/nov2000/1120_waltermme.html)
9 [1120_waltermme.html](http://newscafe.ansci.usu.edu/archive/nov2000/1120_waltermme.html)> [as of October 3, 2009].)

10 California's history of voting fraud and voter registration fraud just in the period since "no
11 excuse absentee voting" was introduced in 1978, similarly is well documented in *Stebbins v.*
12 *White* (3rd DCA 1987) 190 Cal.App.3d 769. The Court of Appeal for this Appellate District
13 recounted the controversy in annulling a city council election in Stockton involving over 1,000
14 absentee ballots collected in a manner that indicated either absentee ballot fraud, involving voter
15 coercion and voter intimidation. In *Stebbins, supra*, the court cited three earlier cases involving
16 allegations of third-party involvement with the collection or voting of absentee ballots deemed
17 not to constitute fraud. (*Fair v. Hernandez* (1981) 116 Cal.App.3d 868, 878-879; *Beattie v.*
18 *Davila* (1982) 132 Cal.App.3d 424; and *Wilks v. Mouton* (1986) 42 Cal.3d 400.) In *Gooch v.*
19 *Hendrix* (1993) 5 Cal.4th 266, the Supreme Court invalidated five local school district elections
20 involving 13 school board seats held in November 1991 in Fresno County on the record of a
21 widespread absentee ballot voting fraud scheme in which an organization registered over 1,200
22 voters, obtained absentee ballot applications for them with return addresses at the organization's
23 headquarters, and delivered the voted ballots to the Fresno election department. In *Hardeman v.*
24 *Thomas* (2nd App.Dist. 1989) 208 Cal.App.3d 183, the court invalidated a local election in the
25 City of Inglewood on the record of more than 13 illegal absentee ballots where the voters'
26 signatures on the absentee ballot envelopes did not match either their absentee ballot application
27 signatures or voter registration affidavit signatures and 7 illegal ballots tainted by voter
28 intimidation or fraud. More recently, in *Bradley v. Perrodin* (2nd App.Dist. 2003) 106

1 Cal.App.4th 1153, the court invalidated a March 2001 election for a city councilmember in the
2 City of Compton on a record of absentee ballot fraud offenses involving nine ballots and another
3 144 illegally obtained absentee ballot votes. (Pet. ¶ 11.)

4 **C. Petitioner’s “Anti-Fraud” Voting Measure Attempts to Remedy Voting Fraud**
5 **Comprehensively By Requiring Appropriate Voter Identification for “In person**
6 **Voters” at the Polling Place and “Vote-by-Mail” Voters.**

7 Initiative Measures No. 09-0008, Amendment 1-S is an “anti-fraud” measure that attempts
8 to remedy such abuses and violations of law identified in election contest and criminal voting
9 fraud cases by requiring specific voter identification requirements for both “in person” voting at
10 precincts and “vote-by-mail” or “absentee” voting. (Pet. ¶ 14.) Commentators from the political
11 right and the left agree that “vote-by-mail” voting presents the greatest opportunity for vote fraud.
12 (See, e.g., Fortier, *Absentee & Early Voting: Trends, Promises & Perils* (AEI Press 2006); Hasen,
13 *The Untimely Death of Bush v. Gore*, 60 Stan. L. Rev. 1, 22 (2007).) The Vote SAFE Initiative
14 addresses those concerns. The Vote SAFE Initiative aligns the voter identification required to
15 vote by mail to that required by California and federal law for voter registrants. (42 U.S.C. §
16 15483(a)(5)(A)(i).) The Vote SAFE Initiative also ensures the privacy and secrecy of this
17 information by mandating that vote-by-mail ballot envelopes be designed with a security flap that
18 would conceal the California voter’s driver’s license or identification number or last four digits of
19 the social security number required for identification. (*Id.*)

20 **D. Data Demonstrate that the Photo Identification Requirement Will Not**
21 **Substantially Burden California’s Voters.**

22 According to California DMV statistics, as of December 31, 2008, 26,408,602 persons
23 held current California driver’s licenses or identification cards. (California Dept. of Motor
24 Vehicles, Statistics for Publication, Jan. through Dec. 2008 (Dec. 31, 2008)
< <http://dmv.ca.gov/about/profile/official.pdf> > [as of Oct. 4, 2009].) (Pet. ¶ 15.)

25 According to 2008 U.S. Census Bureau statistics, California’s voting age population as of
26 November 2008 was nearly 27 million, and its citizen population was 21.8 million, while its
27 number of voter registrants was just under 14.9 million. (U.S. Census Bureau, *Reported Voting*
28 *and Voting Age Population by States*, (Nov. 2008) Table 4b

1 < <http://www.census.gov/population/www/socdemo/voting/cps2008.html>>.) (Pet. ¶ 16.)

2 Thus, over 97.8 percent of California’s voting age population, 123.7 percent of its citizen
3 population, and 177.4 percent of the total number of actual registered voters as of December 31,
4 2008 had either a current California driver’s license or identification card. These statistics starkly
5 demonstrate that current government-issued photo identification alone is universally available
6 among California’s citizen voting age population and registered voters. Statistics as to the
7 availability of other acceptable, government-issued photo identifications among Californians of
8 voting age population are not readily available.; however, the figures above overwhelmingly
9 show that Initiative Measures No. 09-0008, Amendment No. 1-S does not constitute a
10 “limitation” or “prohibition” on voting or a substantial burden on voting by Californians. (Pet. ¶
11 17.)

12 Measure No. 09-0008, Amendment 1-S’s proposed California Elections Code, section
13 3020.5 extends the period for overseas military voters’ ballots to be received and counted to 15
14 days after the date of the election. Thus, this provision of the Vote SAFE Initiative, expands,
15 rather than “limits” or “prohibits” military voters’ ability to have their votes counted. (See Cal.
16 Const., article II, § 2.5.)

17 In an effort to preserve the integrity of California’s elections, the Vote SAFE Initiative
18 seeks to impose anti-fraud requirements for precinct poll voting and voting by mail. However, in
19 response to its proponents’ request for a ballot Title and Summary, the Attorney General
20 produced a paragraph replete with inaccuracies (see Section I, *supra*). After making amendments
21 to clarify that no voter would be disenfranchised any of the Initiative’s provisions, Vote SAFE’s
22 proponents resubmitted the Measure with a request for a new title and summary. True to form,
23 the Attorney General returned the same inflammatory text.

24 Because voter fraud is a cost that a constitutional democracy cannot long absorb, this Court
25 should amend the Attorney General’s Title and Summary in a manner that comports with ballot
26 administration laws and allows Californians a legitimate opportunity to consider the Vote SAFE
27 Initiative. The Vote SAFE Initiative’s anti-fraud components are no different in substance than
28 preexisting regulations, including federally-imposed voter registration requirements, State vote-

1 by-mail application and ballot submission deadlines, the Secretary of State’s provisional ballot
2 identification regulations, and the daily demand for identification encountered at places like
3 airports, government offices, and virtually all retail establishments accepting credit cards. As
4 such, the Vote SAFE Initiative does not in any way “limit” or “prohibit” the right of a qualified
5 voter to have his or her ballot counted, so long as it is cast in accordance with the laws of the
6 State. (See Cal. Const., art. II, § 2.5.) In light of the Supreme Court’s holding that voter
7 identification requirements do *not* impose an unconstitutional burden on the right to vote, to
8 describe the voter identification requirements as “limitations” or “prohibitions” on voting is false,
9 misleading, and patently biased.

10 **III. ARGUMENT**

11 **A. LEGAL AUTHORITY FOR PETITION.**

12 **1. Elections Code § 13314 Authorizes the Writ of Mandate.**

13 Petitioners bring this Petition for Writ of Mandate pursuant to two other provisions
14 germane to the issue, Elections Code section 13314 and Code of Civil Procedure section 1085.

15 Specifically, Elections Code section 13314, subdivision (a), and Code of Civil Procedure
16 section 1085 authorize this Court to issue a writ of mandate ordering Attorney General Brown to
17 amend ballot materials in a manner that comports with his duty of impartiality. Section 13314
18 provides that a peremptory writ of mandate shall issue for activities inconsistent with the law, or
19 which constitute a neglect of official duties in the preparation of petition Titles and Summaries.
20 (Elec. Code, § 13314, subd. (a).) Because the Attorney General treats the Title and Summary of
21 Petitioners’ initiative as a platform for political advocacy, his exercise of authority is unlawful
22 and should be declared as such. Indeed, the Attorney General has an affirmative duty to provide
23 the electorate with a Title and Summary that is neither false nor misleading, that faithfully
24 expresses the initiative’s chief purposes and points, and that constitutes a fair and impartial
25 characterization of the measure.

26 **2. A Writ of Mandate Also Is Proper Under CCP § 1085.**

27 In California, the purpose behind preparing a Title and Summary for a ballot measure is to
28 objectively convey its purpose and effect, not selectively reiterate “fragments of public

1 commentary and debate” (or, for that matter, the Attorney General’s personal standpoint on the
2 issue). (*Lungren v. Superior Court* (3rd App.Dist.1996) 48 Cal.App.4th 435, 442.) Here, the
3 content of the Vote SAFE Initiative belies any assertion that the Attorney General’s assessment of
4 its purpose and effect is “true and impartial.”

5 The Attorney General’s failure to prepare a lawful Title and Summary amounts to an
6 abuse of his discretion in violation of Code of Civil Procedure section 1085, a broad provision
7 that permits the courts to compel the performance of official acts. (Cal. Code Civ. Proc., § 1085.)

8 **B. PHOTO IDENTIFICATION REQUIREMENTS FOR IN-PERSON**
9 **VOTERS AND NEW IDENTIFICATION REQUIREMENTS FOR “VOTE-**
10 **BY-MAIL” VOTERS THAT REQUIRE THE SAME INFORMATION**
11 **CONTAINED ON THE VOTERS’ VOTER REGISTRATION AFFIDAVITS**
12 **ARE NOT “LIMITATIONS” OR “PROHIBITIONS” ON VOTING; THE**
13 **PHOTO IDENTIFICATION REQUIREMENT HAS BEEN HELD NOT TO**
14 **IMPOSE AN UNDUE BURDEN ON VOTING BY THE SUPREME COURT.**

15 **1. The U.S. Supreme Court Has Upheld Photo Voter Identification**
16 **Requirements On The Basis That The State’s Interest In Preventing Ballot**
17 **Fraud Is Significant As Compared To The Minimal Burden Placed On**
18 **Voters.**

19 The Attorney General’s contention that the Vote SAFE Initiative may violate the
20 constitution, as a justification for his abuse of discretion in using the terms “limits on voting” and
21 “prohibition” in the Title and Summary, is entitled to no deference by this court.² Set against the
22 Attorney General’s political assertion that the Vote SAFE Initiative unduly burdens the right to
23 vote, is the United States Supreme Court’s decision in the 2008 case of *Crawford v. Marion*
24 *County Election Board, supra*, 128 S.Ct. 1610 (2008), upholding Indiana’s voter identification
25 law against facial constitutional challenge that it substantially burdened the right to vote. The
26 Supreme Court weighed in on the very anti-fraud concerns that the Vote SAFE Initiative seeks to
27 address. The Indiana law under consideration, or Senate Enrolled Act No. 483 (“SEA 483” or

28 ² Moreover, the Attorney General’s “self-help” remedy of distorting the Title and Summary to
adjudicate the constitutionality of voter ID requirements usurps the court’s jurisdiction over
whether Vote SAFE is constitutional on its face. If the Attorney General believed that the Vote
SAFE Initiative is unconstitutional, he should have either amended the Title and Summary to
reflect the proposed voter ID requirement or challenged the Vote SAFE Initiative as facially
unconstitutional so that the courts might decide whether it should appear on the ballot. Instead,
the Attorney General created a third alternative and in doing so, violated the law and his
obligation to craft a fair and impartial title and summary.

1 “the Indiana law”), requires voters to present a government-issued photo identification card in
2 order to cast an in-person ballot at the polls. (*Id.* at p. 1613.)

3 In holding the Indiana statute constitutional, the Court found that the governmental interest
4 in deterring and detecting voter fraud was sufficiently compelling to justify a photo identification
5 requirement. In so finding, the Court reiterated that ““evenhanded restrictions that protect the
6 integrity and reliability of the electoral process itself” are not invidious,” and that the test for
7 determining whether an election regulation was constitutional required courts to “weigh the
8 asserted injury to the right to vote against the ‘precise interests put forward by the State as
9 justifications for the burden imposed by its rule.’” (*Id.* at p. 1616 (internal citations and
10 quotations omitted).) Although the plurality opinion slightly narrowed the decision in asserting
11 that the complainants had failed to adduce sufficient evidence of the burden placed on any
12 specific subset of voters, seven of the nine justices agreed that the State had a valid interest in
13 deterring and detecting voter fraud. (*Id.* at pp. 1618-29 (plur. opn. of Stevens, J.); see also *id.* at
14 1628 (dis. opn. Souter, J.).)

15 Despite the fact that there was *no* evidence of voter impersonation at Indiana’s polling
16 places (a contention made by Chief Deputy Attorney General Jim Humes in his July 16, 2009 Op-
17 Ed defending the Attorney General’s Title and Summary of the Vote SAFE Initiative), the
18 Supreme Court found that “flagrant” examples of such fraud had been documented in other areas
19 of the country and that there was “no question” about the legitimacy or importance of the State’s
20 interest in preventing election fraud. (*Crawford v. Marion County Election Board, supra*, 128
21 S.Ct. at p. 1619.)

22 The second interest proffered by Indiana as a basis for the law was the State’s interest in
23 addressing the vote fraud potentially generated by inflated voter registration rolls. (*Crawford v.*
24 *Marion County Election Board, supra*, 128 S.Ct. at pp. 1619-20.) In an aim to increase voter
25 registration, Congress passed the National Voter Registration Act of 1993 (NVRA), 107 Stat. 77,
26 42 U.S.C. § 1973 *et seq.*, which moderately diluted states’ rights to remove voters from the voter
27 rolls and resulted in an inflation of the rolls in many areas. (*Id.* at p. 1617.) After opining that the
28 State’s own negligence contributed to its bloated lists of registered voters, the Court held that the

1 asserted justification was both neutral and nondiscriminatory and adequately supported the photo
2 ID requirement. (*Id.* at p. 1620.) Finally, the Court endorsed State’s derivative interest in
3 protecting the public confidence in the integrity and fairness of its elections. Citing the report of
4 the Commission on Federal Election Reform, a body chaired by former President Jimmy Carter
5 and former Secretary of State James A. Baker III (“Carter-Baker Report”), the Court noted that
6 the “electoral system cannot inspire public confidence if no safeguards exist to deter or detect
7 fraud or to confirm the identity of voters.” (*Id.* at p. 1620, quoting Commission on Federal
8 Election Reform, Report, Building Confidence in U.S. Elections § 2.5 (Sept. 2005) pp. 136-137.)

9 The Court also rejected the challengers’ assertion that photo identification laws place a
10 facially unjustified burden on voters who do not already possess identification in the requisite
11 form. (*Crawford v. Marion County Election Board, supra*, 128 S.Ct. at pp. 1619-20.) In so
12 doing, Justice Stevens emphasized that the Indiana law afforded indigents and others the
13 opportunity to cast a provisional ballot at the polls, and although they would be forced to travel to
14 the circuit court to validate their ballot, “[b]urdens of that sort arising from life’s vagaries ... are
15 neither so serious nor so frequent as to raise any question about the constitutionality of SEA 483.”
16 (*Id.* at p. 1620.)

17 Just as provisional voting provided an adequate remedy for SEA 483, the Vote SAFE
18 Initiative provides an adequate, constitutional remedy for the problem of voter impersonation at
19 the polls. In fact, Vote SAFE is even less “burdensome” than the Indiana law, as the
20 Californian’s who vote provisionally will not be required to drive to the circuit court to execute
21 an affidavit or display a photo ID. Moreover, while the Indiana law did not touch on the State’s
22 absentee ballot scheme, *Crawford* acknowledged the severity of the problem and the validity of
23 anti-fraud measures imposed on vote-by-mail ballot administration. (*Crawford v. Marion County*
24 *Election Board, supra*, 128 S.Ct. at p. 1619.) In fact, Vote SAFE accomplishes vote-by-mail
25 reforms using easily-accessible numerical data, the lack of which in the equivalent Indiana statute
26 led to its declaration of unconstitutionality in a recent Indiana state court case. (See *Indiana*
27 *League of Women Voters v. Rokita*, (Ind. Ct. App., Sept. 17, 2009, No. 49A02-0901-CV-40) 2009
28

1 WL 2973120 (Ind.App.) [holding lack of absentee voter ID requirement rendered entire law
2 invalid].)

3 **2. The Identification Requirements for “Vote-by-Mail” Voters Are Consistent**
4 **With Federal Law Requirements for Voter Registration and Do Not**
5 **Constitute “Limitations” on Voting.**

6 As set forth above, vote-by-mail voters in California will simply be required to include
7 under a protective security flap the last four digits of their California driver’s license number,
8 California ID number, or social security number. Importantly, the numeric requirements in Vote
9 SAFE do not reach beyond what is *already required* by federal law. The Help America Vote Act
10 of 2002 (HAVA)(116 Stat. 1666, 42 U.S.C. § 15483), requires the states to verify the information
11 contained in voter registration applications and permits them to do so by requesting either the
12 applicant’s driver’s license number or the last four digits of the applicant’s social security
13 number. (42 U.S.C. § 15483(a)(5)(A)(i).) HAVA also mandates that first-time voters casting
14 their ballots in person present one of several specified forms of written identification, including
15 government-issued photo IDs or other documentation such as a paycheck. (*Id.* § 15483(b)(2)(A).)
16 A first-time voter who votes absentee is under a similar obligation to submit a copy of his
17 identification with his ballot. (*Id.* § 15483(b)(3).) Thus, preexisting requirements imposed by
18 federal law vitiate any argument that the Vote SAFE Initiative would pose an undue burden on
19 voters’ right to vote.

20 **3. The Measure Provides A Much-Needed Response To Overseas Military**
21 **Voter Disenfranchisement.**

22 It is axiomatic that the State “may not deny the opportunity to vote to a bona fide
23 resident merely because he is a member of the armed services.” (*Harper v. Virginia Bd. of*
24 *Elections* (1966) 383 U.S. 663 (citing *Carrington v. Rash* (1965) 380 U.S. 89, 96).) Yet,
25 thousands of our military are unable to receive and return their absentee ballots in the limited
26 timeframe provided by the State’s provisions implementing the Federal Uniformed Overseas
27 Voter Absentee and Voting Act (UOCAVA)(42 U.S.C. § 1973 *et seq.*) According to the Pew
28 Center on the States, more than 70 percent of military personnel on active duty abroad did not
have their ballots counted in the 2008 election cycle. (See The Pew Center on the States, *No
Time to Vote: Challenges Facing America’s Overseas Military Voters* (January 2009) [qualifying

1 California as an “at risk” state when it comes to affording servicemen and women sufficient time
2 to return their ballots], < [http://www.pewcenteronthestates.org/uploadedFiles/
3 NTTV_Report_Web.pdf](http://www.pewcenteronthestates.org/uploadedFiles/NTTV_Report_Web.pdf)> [as of Oct. 2, 2009].) Current Assembly Bill 1340, sponsored by
4 California Secretary of State Debra Bowen, would extend the deadline for election officials’
5 receipt of overseas military voters’ ballots from the current deadline of Election Day eve to five
6 (5) days after the election, provided the ballots were postmarked on or before the election. (Elec.
7 Code, § 3020.5.) Five days, however, is simply not enough.

8 In providing that a qualified overseas military voter’s ballot will be counted if signed and
9 dated or postmarked on or before Election Day, and received by the serviceperson’s elections
10 official within 15 days of the election, proposed Election Code section 3020.5 addresses the
11 problems identified in the Pew Report and by several members of Congress.³

12 Anti-fraud measures simply set forth requirements for ID, the lack of which will cause a
13 ballot not to be counted. These are no different in nature than (a) voter registration requirements;
14 (b) vote by mail application and ballot submission deadlines; and (c) the Secretary of State’s
15 provisional ballot identification regulations. No California case has ever invalidated voter
16 registration identification requirements, or provisional ballot identification requirements, and
17 there is no basis for such a challenge in this instance. The Measure’s anti-fraud provisions do not
18 prohibit or limit in any way the right of a qualified voter to have his or her ballot count if cast in
19 accordance with the laws of the State. (Cal. Const., Art. II, § 2.5.)

20 ///

21 ///

22 ///

23 ///

24
25 ³ Congressional legislation authored by Representative Kevin McCarthy of California (H.R. 2393,
26 111th Cong., 1st Sess. (2009)) would modify UOCAVA rules to allow military voters to return
27 their ballots electronically and would liberalize ballot verification rules and submission
28 deadlines. By the same token, legislation put forth by Senator John Cornyn of Texas (Sen. No.
1026, 111th Cong., 1st Sess. (2009).) and by Senator Charles Schumer of New York (Sen. No.
1415, 111th Cong., 1st Sess. (2009)) seek to require state election administration officials to send
absentee ballots to military voters no later than 45 days prior to an election and to receive them up
to 10 days after Election Day.

1 **C. THE CHALLENGED TITLE AND SUMMARY DOES NOT SATISFY THE**
2 **STANDARDS WARRANTING JUDICIAL DEFERENCE TO THE ATTORNEY**
3 **GENERAL'S TITLE AND SUMMARY**

4 **1. Statutory Standards**

5 The California Constitution requires the Attorney General to prepare a title and summary
6 of an initiative. (Cal. Const. art. II, §10, subd. (d).) The title and summary must describe the
7 initiative's "chief purposes and points." (Elec. Code, § 9004.) The Attorney General's title and
8 summary must be an impartial statement in language that "shall neither be an argument, nor be
9 likely to create prejudice, for or against the proposed measure." (*Zaremborg v. Superior Court*
10 (2004) 115 Cal.App.4th 111, 116 (quoting §9051) (emphasis added).)

11 **2. Courts Intervene In Clear Cases, And This Case Presents A Clear Abuse Of**
12 **Discretion And Violation Of Statutory Standards**

13 Courts invalidate the Attorney General's title and summary in clear cases. (*Lungren v.*
14 *Superior Court, supra*, 48 Cal.App.4th at pp. 439-40 (holding that a title and summary should be
15 overturned in clear cases).) To determine a "clear case," courts look at whether reasonable minds
16 may differ as to the title's and summary's sufficiency. (*Amador Valley Joint Union High Sch.*
17 *Dist. v. State Bd. Of Equalization, supra*, 22 Cal.3d at p. 243.)

18 However Courts also intervene to amend titles and summaries to merely improve their
19 accuracy, fairness, and impartiality. (See, e.g., *Brennan v. Bd. Of Supervisors of S. F., supra*, 125
20 Cal.App.3d 87, 93 [approving of trial court's amendment of a Summary that made a measure
21 "appear more inflexible than it really [was]".])

22 **3. Courts Invalidate or Amend Titles And Summaries That Inaccurately,**
23 **Unfairly, or Prejudicially Represent A Measure.**

24 Courts invalidate titles and summaries where they exclude essential provisions of the
25 initiative. (See, e.g., *Clark v. Jordan* (1936) 7 Cal.2d 248, 251 (invalidating Title and Summary
26 that failed to disclose new taxes); and *Boyd v. Jordan*, (1934) 1 Cal.2d 468, 472.)

27 Additionally, titles and summaries must reasonably inform voters of the character and real
28 purpose of proposed measures. (*Lungren v. Superior Court, supra*, 48 Cal.App.4th at p. 440
(emphasis added).)

Titles and summaries cannot mislead the public with inaccurate information. (*Amador*

1 *Valley Joint Union High Sch. Dist. v. State Bd. Of Equalization*, (1978) 22 Cal.3d 208, 243.) An
2 initiative’s title and summary must fairly represent the initiative. (*Brennan v. Bd. Of Supervisors*
3 *of S.F.*, *supra*, 125 Cal.App.3d at p. 93 (emphasis added).)

4 Finally, the Attorney General’s mandate is limited to stating the purpose and effect of a
5 measure. A title and summary should not “reiterate selectively [sic] fragments of public
6 commentary and debate on the measure.” (*Lungren v. Superior Court*, *supra*, 48 Cal.App.4th at
7 pp. 441-442 (overturning order requiring Attorney General to include colloquial terminology in
8 title and summary).)

9 **D. THE TITLE AND SUMMARY CLEARLY FAILS TO ACCURATELY**
10 **REPRESENT THE CHIEF PURPOSES AND POINTS OF THE INITIATIVE.**

11 **1. The Title And Summary Is Inaccurate Because (1) The Measure**
12 **Places No “Limits On Voting”; (2) The Measure Does Not “Prohibit**
13 **Citizens From Voting At The Polls Unless They Present A Government-**
14 **Issued Photo-Identification Card”; And (3) The Summary Uses**
15 **Contradictory Language Likely To Mislead The Public.**

16 **a. The Measure Places No Limits on Voting.**

17 Webster’s Dictionary defines the term ‘limit’ as:

- 18 (a) to restrict the bounds or limits of;
- 19 (b) to curtail or reduce in quantity or extent

20 (Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/limiter> [as of
21 Oct. 6, 2009].) Under this definition, the title and summary clearly inaccurately describe the
22 Measure. Similarly, the Vote SAFE Initiative is so different from historically proscribed
23 limitations on voting that it cannot properly be considered to “limit” voting.

24 **i. The Measure Does Not Restrict the Bounds of Voting.**

25 The Vote SAFE Initiative does not restrict the bounds or limits of voting. The Vote SAFE
26 Initiative requires voters to present photo identification at the polling place. Voters with such
27 identification will be given a ballot that will be voted and counted in the ordinary manner. (See
28 Initiative No. 09-0008, Amdt. 1-S, § 2, amending Elec. Code, § 14216.5, subd. (a).)

Voters without identification, however, will still be able to vote under the Vote SAFE
Initiative. Such voters will be issued a provisional ballot. (Initiative No. 09-0008, Amdt. 1-S, §

1 2, amending Elec. Code, § 14216.5, subd. (b).) The voter will fill out his or her provisional
2 ballot, and shall execute an affirmation with (a) his/her signature and (b) either the last four digits
3 of his/her social security number or driver's license number.⁴ Thereafter, elections officials will
4 verify the voter's affirmation in accordance with vote-by-mail procedures. (*Id.*)

5 Clearly, any voter who is eligible to vote under current law will be able to cast a ballot and
6 have that ballot counted under the Vote SAFE Initiative. The Measure does not restrict the
7 bounds of voting even in the slightest and therefore does not limit voting.

8 **ii. The Measure Does Not Reduce the Quantity of Voting.**

9 There is no evidence that the Vote SAFE Initiative will reduce the quantity of voting in
10 any way. Anti-fraud security statutes similar to the Measure have been enacted throughout the
11 United States. However, challengers to such statutes have never been able to present persons
12 "who will be unable to vote...or have his or her right to vote unduly burdened by its
13 requirements." (*Crawford v. Marion County Election Board, supra*, 128 S.Ct. 1610, 1614.)
14 Similarly, challengers have never been able to present plaintiffs "who claimed that the law would
15 deter them from voting." (*Id.* at p. 1615.)⁵ Finally, available data indicate that voter turnout
16 increased as a percentage of registered voters in the elections in Indiana and Georgia for the 2008
17 Presidential election, states had photo voter identification statutes in force for these elections.
18 (Von Spakovsky, *Voter ID Was a Success in November*, Wall Street Journal (Jan. 30, 2009)
19 <<http://online.wsj.com/article/SB123327839569631609.html>> [as of October 5, 2009][hereafter
20 Von Spakovsky].) Indiana's vote increased as a percentage of registered voters by 8.32 percent in
21 2008 over 2004 Presidential election turnout. (Von Spakovsky, *supra*, ¶ 10.) Georgia's turnout
22 increased by 6.7 percent in 2008 over 2004 turnout, including a rise in black voter turnout from
23 25 percent in 2004 to 30% in 2008. (Von Spakovsky, *supra*, ¶ 8.)

24 California is no different. Despite presenting a plethora of arguments selectively lifted

25 _____
26 ⁴ Citizens are required to provide a signature and either the last four digits of their social security
27 number or their driver's license number when they register to vote. (Cal. Elec. Code, §
28 2150(a)(7)(A) & (B).)

⁵ In *Crawford*, the Supreme Court noted as significant the availability of free photo identification.
(*Crawford v. Marion County Election Board, supra*, 128 S.Ct. at p. 1615 n.6.) Under the
Measure, the State will also provide free photo identification for the purposes of voters.
(Initiative No. 09-0008, Amdt. 1-2, amending Veh. Code, § 14902.5.)

1 from the public commentary, Attorney General Brown cannot credibly argue that any person will
2 be unable to vote as a result of the Measure. Indeed, the Legislative Analyst's Office informed
3 Attorney General Brown earlier this year that "[v]oters not providing the required identification
4 could still cast provisional ballots." (See Mac Taylor & Michael C. Genest, Legislative Analyst's
5 Office, letter to Attorney General Edmund G. Brown, Jr., Jun. 1, 2009, (Pet. Exhibit "D.")
6 Similarly, despite making public arguments in support of his interpretation, Attorney General
7 Brown has been unable to present any evidence that the Vote SAFE Initiative would deter anyone
8 from voting. The data cited in paragraphs 14 and 15 of the verified Petition demonstrate that
9 persons holding current California driver's license or identification cards (government-issued
10 photo identification) exceed those registered to vote by over 12 million, putting the lie to any
11 claim that this requirement limits the right to vote or imposes a substantial burden on voting.

12 Conversely, the United States Supreme Court has stated the benefits of anti-fraud bills
13 such as the Vote SAFE Initiative. In *Crawford*, the Court noted the important benefits that public
14 confidence brings:

15 Public confidence in the integrity of the electoral process has independent
16 significance, because it encourages citizen participation in the democratic
17 process...the electoral system cannot inspire public confidence if no safeguards
exist to deter or detect fraud or to confirm the identity of voters.

18 (*Crawford v. Marion County Election Board, supra*, 128 S.Ct. at p. 1620 (italics added).)

19 Clearly, there is no reason to suspect the Measure will reduce the quantity of voting and
20 therefore does not limit voting.

21 **iii. The Measure Differs from Historically Proscribed "limits" on
22 Voting.**

23 Historically, States have attempted to place various "limits" on voting. The Supreme
24 Court has struck several such limitations as unconstitutional. Such unconstitutional limits have,
25 in more recent years, included poll taxes (*Harper v. Virginia St. Bd. Of Elections* (1966) 383 U.S.
26 663) and ballot-access fees for candidates (*Bullock v. Carter* (1972) 405 U.S. 134). Similarly, in
27 1974, the Supreme Court struck down California's filing fee system as an unconstitutional limit
28 on voting. (See *Lubin v. Panish* (1974) 415 U.S. 709.)

However, anti-fraud initiatives such as the Vote SAFE Initiative at issue differ

1 significantly from these historically proscribed limits. Indeed, the Supreme Court has expressly
2 upheld an initiative virtually identical to the Vote SAFE Initiative as an “evenhanded restriction
3 that protect[s] the integrity and reliability of the electoral process itself.” (*Crawford v. Marion*
4 *County Election Board, supra*, 128 S.Ct. at p. 1616.)

5 Here, the Vote SAFE Initiative is even less restrictive than the anti-fraud initiative
6 approved by the Supreme Court in *Crawford*. In *Crawford*, voters lacking identification were
7 required to bring photo identification or sign an appropriate affidavit at the circuit county clerk’s
8 office within 10 days of the election. (*Crawford v. Marion, County Election Board, supra*, 128
9 S.Ct. at pp. 1613-14.) However, the Vote SAFE Initiative does not even require this burden;
10 here, a voter lacking photo identification will merely sign an affirmation at her polling place and
11 provide the accompanying identification number⁶ she listed on her voter registration form. She
12 will then cast a provisional ballot that the county elections office will count in accordance with
13 vote-by-mail procedures. (Elec. Code, §14310.) The voter is not required to travel to the
14 elections office after Election Day. Thus, not only is the Vote SAFE Initiative not an
15 unconstitutional “limit” on voting, it is even less restrictive than measures previously upheld.

16 The Vote SAFE Initiative does not “limit” voting. It does not “limit” voting according to
17 its common definition. It does not “limit” voting according to constitutional jurisprudence.
18 Accordingly, the Title and Summary inaccurately describe the Vote SAFE Initiative as a “limit on
19 voting.” The Court should amend them accordingly.

20 **b. The Vote SAFE Initiative Does Not “Prohibit Citizens From Voting at**
21 **the Polls Unless They Present a Government-issued Photo-**
22 **identification Card.”**

23 The first sentence of the Summary states that the Vote SAFE Initiative “[p]rohibits
24 citizens from voting at the polls unless they present a government-issued photo-identification
25 card.”

26 This sentence is patently inaccurate. No citizen will be prohibited from voting at the
27 polls. Citizens with such identification will cast regular ballots. Citizens without the requisite
28 identification will cast a provisional ballot. After verifying the provisional ballot according to

28 ⁶ Either the voter’s driver license number of the last four digits of their social security number.
(42 U.S.C. § 15483(a)(5)(A)(i).)

1 vote-by-mail procedures, it will be counted the same as any other ballot.

2 Therefore, the first sentence is inaccurate, and the court should amend the Summary
3 accordingly.

4 **c. The Title and Summary Includes Confusing Language Likely to
Mislead the Public.**

5 Looking at the second sentence of the Summary, not only does it not cure the inaccuracies
6 of the first sentence, but it makes the entire Summary sound so contradictory that it is likely to
7 mislead the public. In an about-face from the first sentence, which describes the provision as
8 prohibiting voting, sentence two of the Summary states that the Vote SAFE Initiative
9 “[e]stablishes provisional voting for citizens at the polls who fail to present government-issued
10 photo-identification.”

11 Both of these sentences cannot be correct. In fact, they are contradictory, and demonstrate
12 why the Title and Summary is confusing and likely to mislead the public.

13 Titles and Summaries cannot mislead the public with inaccurate information. (*Amador*
14 *Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d at p. 243.) Such
15 facially-contradictory language is clearly confusing and is likely to mislead the voters.

16 Finally, the overseas military voter provision of the Vote SAFE Initiative, affords greater
17 protection, and more time for overseas military voters’ ballots to be received and counted at an
18 election. Thus, even assuming *arguendo* that the photo voter identification for “in person” voters
19 who seek to vote at precinct polling locations and the separate driver’s license number or last four
20 social security numbers identification requirements for ‘vote-by-mail’ voters were deemed to be
21 limitations on voting, that is clearly not the case with respect to the liberalized overseas military
22 voter ballot return provision. As such this fourth sentence of the summary creates confusion
23 likely to be prejudicial to persons who are presented Initiative No. 09-0008.

24 For the foregoing reasons, the Title and Summary are inaccurate. This Court must
25 exercise its powers to amend both to more accurately reflect the chief purpose and points of the
26 Vote SAFE Initiative.

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1
2 **2. The Inaccuracy Found In the Title And Summary Is Greater Than In**
3 **Previous Cases.**

4 In three recent cases, California courts have refused to invalidate titles and summaries.
5 (See *Lungren v. Superior Court, supra*, 48 Cal.App.4th 435; *Zaremborg v. Superior Court, supra*,
6 115 Cal.App.4th 111; and *Amador Valley Jt. Union High School Dist. v. State Board of*
7 *Equalization, supra*, 22 Cal.3d 208.) However, the inaccuracy found in the instant case is far
8 clearer, and can be easily distinguished from these historical cases.

9 **a. The Attorney General’s Conduct Here is Uniquely and Qualitatively**
10 **Inconsistent with His Legal Duties. This Case is Distinguishable From**
11 **His Title and Summary Determination in *Lungren*.**

12 In *Lungren*, challengers to California’s Proposition 209 sought to invalidate the Attorney
13 General’s title and summary. The challengers argued that the Attorney General’s title and
14 summary were misleading because they did not include the words “affirmative action.” (*Lungren*
15 *v. Superior Court, supra*, 48 Cal.App.4th at p. 439.) The challengers argued that the true purpose
16 of Proposition 209 was to end affirmative action, and leaving that key phrase out of the Title and
17 Summary misled voters. (*Id.*) However, the court struck down the trial court’s re-write of that
18 Title and Summary that added a term (“affirmative action”) not used in the language of
19 Proposition 209, and upheld the Attorney General’s language, reasoning that the Attorney
20 General had closely followed, and indeed had taken its language directly from the language of the
21 proposition:

22 [T]he Title, Summary and label provided by the Attorney General are essentially
23 verbatim recitations of the operative terms of the measure. The Attorney General
24 has *added nothing, omitted nothing* and the words used are all subject to common
25 understanding. The electorate can hardly be deceived by this essentially verbatim
26 recital of the straightforward text of the measure itself.

27 (*Id.* at 441 (italics added).)

28 Here, the Attorney General’s title and summary took a diametrically opposite position
29 from the Attorney General’s approach in *Lungren*. Here, the Attorney General used his own
30 interpretive “spin” in describing what the Vote SAFE Initiative does. The Attorney General’s
31 title and summary in this case is not “essentially verbatim recitations.” Rather, the language
32 “limits voting,” and “prohibits citizens from voting” are found nowhere in the Vote SAFE

1 Initiative. Additionally, the Attorney General has not “added nothing.” On the contrary, he has
2 added much to the initiative, reading into it limits and prohibitions into the Vote SAFE Initiative
3 that are found nowhere in the Measure’s text. Finally, the Attorney General’s chosen language is
4 subject to a common understanding so vastly different from the actual effect of the Vote SAFE
5 Initiative that voters will be clearly misled into believing the measure is something it is not.
6 Thus, the Attorney General’s conduct here goes so far beyond the standards set by *Lungren* that
7 the Court must act to remedy the inaccuracies.

8 It is instructive in analyzing the Attorney General’s title and summary for the Vote SAFE
9 Initiative to compare it with former Attorney General Bill Lockyer’s title and summary for a
10 substantially similar photo identification ballot measure,⁷ provided as follows:

11 **VOTER IDENTIFICATION REQUIREMENT. INITIATIVE STATUTE.**

12 Requires that voters present one of four types of picture identification before
13 voting: (1) California driver’s license; (2) California Department of Motor
14 Vehicles issued identification card; (3) military identification card; or (4) United
15 States Passport. Requires that election precinct officers confirm the identity of
16 each voter and record their identification number. Provides that failure to comply
17 with these requirements will constitute election fraud, punishable as a felony.
18 Allows voters who cannot provide identification to vote, in the form of a
19 provisional ballot.

20 The foregoing language only confirms that Attorney General Brown is engaging in political
21 wordsmithing, subterfuge and partisan gamesmanship. In fact, the words “limit” and “prohibit”
22 do not appear once in the 2005 text. Although the earlier measure did not address absentee
23 voting, it otherwise imposed substantially the same requirements for in person voting at the polls
24 as does the Vote SAFE Initiative – namely, that the voter shall present qualifying photo
25 identification when voting at the polls. It is precisely this set of circumstances under which this
26 Court’s “broad powers of review” concerning fairness and accuracy should be utilized. (*Brennan*
27 *v. Bd. of Supervisors of S. F.*, *supra*, 125 Cal.App.3d 87, 91.)

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⁷ See “Every Vote Counts – The Voter Identification Act,” 2005 [California Ballot Measure Initiative No. SA2005RF0036].

1 Section 13314 provides that a peremptory writ of mandate shall issue for activities
2 inconsistent with the law, or which constitute a neglect of official duties in the preparation of
3 petition titles and summaries. (Elec. Code, § 13314(a).) The Attorney General has a duty to
4 provide the electorate with a title and summary that is neither false nor misleading, that faithfully
5 expresses the initiative's chief purposes and points, and that constitutes a fair and impartial
6 characterization of the Vote SAFE Initiative. The Attorney General's failure to do so amounts to
7 an abuse of his discretion in violation of Code of Civil Procedure section 1085, a broad device
8 permitting courts to compel the performance of official acts. (Cal. Code Civ. Proc., § 1085.)

9 For the foregoing reasons, the Court should grant the Petition for Writ of Mandate, as
10 prayed for in the Verified Petition.

11 Date: October 13, 2009

Respectfully submitted,

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GEORGE RUNNER

1 POSSIBLE ALTERNATIVE BALLOT TITLES AND SUMMARIES

2
3 1. ALTERNATIVE A:

4 **VOTER IDENTIFICATION REQUIREMENT. INITIATIVE STATUTE.**

5 Requires that voters present government issued photo identification before voting at the
6 polls. Establishes provisional voting for citizens at the polls who fail to present
7 government-issued photo identification. Requires that provisional ballots and mail-in
8 ballots be deemed invalid unless the accompanying envelope is marked with the voter's
9 California driver's license number, state identification card number or the last four digits
10 of social security number. Establishes that ballots from absent overseas military personnel
11 are timely if postmarked by and received within 15 days of election day.

12
13 2. ALTERNATIVE B:

14 **VOTER IDENTIFICATION REQUIREMENT. INITIATIVE STATUTE.**

15 Requires that voters present government-issued picture identification before
16 voting at the polls. All "vote-by-mail" voters, and voters who cast a provisional
17 ballot, including those who must vote by provisional ballot because they fail to
18 provide photo identification at the polls, must write either their California driver's
19 license number or identification card number, or the last four digits of their social
20 security number on such ballots to have their votes counted. Establishes that
21 ballots from absent overseas military personnel are timely if postmarked by and
22 received within 15 days of election day