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13 BOARD OF SUPERVISORS OF THE
14 COUNTY OF SAN BERNARDINO

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN BERNARDINO**
17 **UNLIMITED JURISDICTION**

18 BOARD OF SUPERVISORS OF THE
19 COUNTY OF SAN BERNARDINO,

20 Petitioner/Plaintiff,

21 v.

22 LYNNA MONELL, in her official
23 capacity as Clerk of the Board of
24 Supervisors of the County of San
25 Bernardino; and DOES 1 through
26 100, inclusive,

27 Respondents/Defendants.
28

STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
CLERK OF SUPERIOR COURT
JUL 02 2020

[NO FILING FEE DUE PER
CALIFORNIA GOVERNMENT
CODE SECTION 6103]

Case No:
CIV SB 2025319
**PETITION FOR WRIT
OF MANDATE AND
COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

[California Code of Civil Procedure
Sections 1085, 525 & 1060, et seq.]

1 **INTRODUCTION**

2 1. This Petition for Writ of Mandate and Complaint for Injunctive and
3 Declaratory Relief (the "Petition") arises out of the November 3, 2020 vote by a majority
4 of San Bernardino County's voters to adopt a county-wide charter amendment initiative
5 ballot measure officially entitled "San Bernardino County Supervisor Compensation
6 Reduction and Term Limits" and known as "Measure K."

7 2. According to its Statement of Purpose, Measure K's purpose is to "establish
8 appropriate term limits [one term] and compensation [\$5,000 per month] for County
9 Supervisors for the part time service performed by County Supervisors on behalf of the
10 citizens."

11 3. As alleged herein, Measure K suffers from the following fatal flaws, which
12 make it unconstitutional, legally invalid, and/or otherwise unenforceable:

- 13 (a) Measure K violates Article XI, Section 1(b) of the California Constitution,
14 which requires that County Boards of Supervisors, and not the voters via
15 the initiative process, shall prescribe Supervisors' compensation;
- 16 (b) Measure K violates the First and Fourteenth Amendments to the United
17 States Constitution by purporting to enact a single lifetime term limit
18 provision for members of the County Board of Supervisors;
- 19 (c) Measure K violates the initiative power of the electorate by intruding on
20 matters that are exclusively delegated to the local governing body;
- 21 (d) Measure K violates Article II, Section 8(d) of the California Constitution by
22 embracing more than a single subject;
- 23 (e) Measure K violates Article XI, Section 4(d) of the California Constitution,
24 and California Government Code Sections 25000. et. seq. by impairing
25 essential government functions;
- 26 (f) Measure K violates California Government Code Section 36502(b)'s
27 prohibition on retroactive term limits;
- 28 (g) Measure K violates California Government Code Section 1235's
prohibition on the adjustment of sitting officials' salaries; and/or

1 (h) Measure K violates the law because its term limit provision is not severable
2 from its compensation provision.

3 4. Accordingly, and as alleged herein, Petitioner/Plaintiff Board of
4 Supervisors of the County of San Bernardino seeks judicial relief by way of: (1) a writ of
5 mandate compelling Respondents and Defendants not to take any actions that would
6 cause the implementation of Measure K's provisions; (2) injunctive relief preventing
7 Respondents and Defendants from taking any actions that would cause the
8 implementation of Measure K's provisions; (3) a judicial declaration that Measure K is
9 invalid and unenforceable; (4) a judicial declaration that if Measure K is valid and
10 enforceable, its provisions do not take effect until 2022 at the earliest; and (5) such other
11 and further relief as the Court deems just and proper.

12 **PARTIES**

13 5. Petitioner/Plaintiff BOARD OF SUPERVISORS OF THE COUNTY OF
14 SAN BERNARDINO ("Petitioner" or the "Board of Supervisors") is the governing body
15 of the County of San Bernardino, California ("San Bernardino County" or the "County").
16 San Bernardino County, which is the largest geographic county in the United States, is a
17 body corporate and politic, and as such has and shall have all the powers that are now or
18 may be hereafter specified by the Constitution and laws of the State of California, and by
19 the County Charter, and such other powers as are necessarily implied. The Board of
20 Supervisors is the entity to which Measure K is directed.

21 6. Respondent/Defendant LYNNA MONELL, named herein in her official
22 capacity as Clerk of the Board of Supervisors of the County of San Bernardino (the
23 "Clerk of the Board" or "Respondent Monell"), is the Clerk of the Board of Supervisors,
24 has certain official duties with regard to the implementation of Measure K. and is
25 properly named as a Respondent/Defendant herein.

26 7. The true and correct capacities of Respondents/Defendants DOES 1 through
27 100, and each of them, are unknown to Petitioner at this time, and therefore Petitioner
28 sues said Respondents/Defendants by such fictitious names. Petitioner will file DOE

1 amendments and/or ask leave of court to amend this Petition to assert the true names and
2 capacities of these Respondents/Defendants when they have been ascertained.

3 8. Petitioner is informed and believes, and based thereon alleges, that each
4 Respondent/Defendant herein designated as a DOE has certain official duties with regard
5 to the passage or implementation of Measure K, falls within the jurisdiction of this Court,
6 and is properly named as a DOE Respondent/Defendant herein.

7 **JURISDICTION, STANDING, AND VENUE**

8 9. At all times relevant hereto, Petitioner was and is the governing body of the
9 County, is the entity to which Measure K is directed, is beneficially interested in this
10 matter, and has standing to bring this action.

11 10. At all times relevant hereto, the Clerk of the Board of Supervisors has
12 certain official duties with regard to the implementation of Measure K, comes within the
13 jurisdiction of this Court, and is properly named as a Respondent/Defendant herein.

14 11. The wrongful conduct alleged herein – the expected implementation of
15 Measure K notwithstanding its illegality – occurred in the County of San Bernardino,
16 State of California, this Court has jurisdiction over the subject matter of this action, and
17 venue is properly in this Court.

18 **STATEMENT OF FACTS**

19 **Measure K Qualifies for the Ballot**

20 12. On or about September 13, 2019, the text of Measure K, along with
21 additional required documents, was submitted to the County of San Bernardino's
22 Registrar of Voters (the "Registrar"). A true and correct copy of the text of Measure K is
23 attached hereto as Exhibit 1 and incorporated herein by this reference.

24 13. On or about March 20, 2020, signatures on the Measure K initiative petition
25 were submitted to the Registrar.

26 14. On or about May 1, 2020, the Registrar certified the signatures on the
27 Measure K initiative petition as sufficient.

28 15. On or about May 19, 2020, the Registrar presented his certificate of
sufficiency to the Board of Supervisors.

1 16. Also on or about May 19, 2020, pursuant to California Elections Code
2 Section 9111, the Board of Supervisors directed County staff to determine how Measure
3 K, if adopted by the voters, would affect the appointments to boards of outside agencies
4 and to determine other unintended consequences and report back on June 9, 2020.

5 17. On or about June 9, 2020, the Board of Supervisors received the County
6 staff report, and decided to submit Measure K to the County's voters and to consolidate
7 the Measure K election with the November 3, 2020 Presidential General Election.

8 **The Measure K Ballot Question**

9 18. On or about June 23, 2020, the Board of Supervisors determined that the
10 question to be presented to the County's voters with regard to Measure K would be:

11 "Shall the measure entitled 'The San Bernardino County Supervisor
12 Compensation Reduction and Term Limits' that will amend the County
13 Charter to impose a term limit of one term for all Districts beginning
14 December of 2020 and reduce the total compensation of each member of
15 the Board of Supervisors to \$5,000 per month be adopted?"

16 **The Impartial Analysis of Measure K**

17 19. On or about August 17, 2020, the San Bernardino County Counsel's office
18 issued an Impartial Analysis of Measure K. Among the points raised in the Impartial
19 Analysis were that "A yes vote by a majority of the voters in this Measure will impose a
20 term limit of one term on Supervisors effective December 2020 and set Supervisor total
21 compensation at \$5,000 per month." The Impartial Analysis also states that "There is a
22 legal question as to whether this term limit can apply to all sitting Supervisors in
23 December 2020."

24 **Measure K is Adopted by the Voters**

25 20. On or about November 3, 2020, the voters of San Bernardino County cast
26 their ballots for or against Measure K. Upon information and belief, Measure K is
27 expected to be formally approved by a majority of the County's voters and certified as
28 such.

1 **The Clerk of the Board is Required to Take Certain Actions**

2 **Regarding Measure K, Unless This Court Intervenes.**

3 21. Once the election results are certified, which, upon information and belief,
4 will be on or about December 8, 2020, Respondents will be legally obligated to undertake
5 certain official duties with regard to the implementation of Measure K's provisions,
6 unless this Court grants the relief requested in this action.

7 22. Specifically, pursuant to California Government Code Section 23713, the
8 Clerk of the Board will be required to certify and authenticate two copies of the complete
9 text of Measure K. One copy of such certification and authentication shall be recorded in
10 the office of the recorder of the county and then filed in the office of the county elections
11 official. The second copy of such certification and authentication shall be filed with the
12 Secretary of State, along with additional documents.

13 **Powers and Duties of the Board of Supervisors**

14 23. San Bernardino County is the largest county in the continental United
15 States, encompasses approximately 20,000 square miles, and includes 24 incorporated
16 cities and towns. For Fiscal Year 2019-2020, the County has an Adopted Modified
17 Budget of \$7.238 Billion. For Fiscal Year 2020-2021, the County has a Recommended
18 Budget of \$6.997 Billion. Given the size and complexity of San Bernardino County, the
19 office of Supervisor is recognized as a position that requires a considerable investment of
20 time and due diligence from Board Members in order to effectively fulfill their duties in
21 service to the public. These duties include but are not limited to: ensuring fiscal
22 responsibility; representing the interest of the public during public meetings and hearings
23 of the Board of Supervisors and other public committees; participating in the response to
24 natural disasters and other emergencies; conducting meetings with members of the public;
25 ensuring that the County is effectively represented with respect to federal, state, and other
26 local government agencies; and reviewing issues impacting the County and its residents,
27 businesses, developed and natural environment, and health and safety. The position of
28 Supervisor requires Supervisors to be responsive to the needs of the public on a 24 hours
a day, seven days a week basis.

1 24. Furthermore, members of the Board of Supervisors also have duties with
2 respect to, and must attend the meetings of, many other public entities and other entities.
3 Each member of the Board of Supervisors serves on such public entity or other entity
4 governing boards, commissions and committees, as designated by or appointed in
5 accordance with, and performs such duties as are required by, the Constitution of the
6 State of California, the Charter, general law, ordinance, or contract, as may be amended
7 from time to time. Such public entities and other entity governing boards, commissions,
8 and committees include, without limitation, as of July 28, 2020, the following:

- 9 a) Agua Mansa Industrial Growth Association
- 10 b) Arrowhead Regional Medical Center Joint Conference Committee
- 11 c) Behavioral Health Commission
- 12 d) Big Bear Area Regional Wastewater Agency
- 13 e) Big Bear Valley Recreation and Park District
- 14 f) Bloomington Recreation and Park District
- 15 g) Board of Supervisors Governed County Service Areas
- 16 h) CAL-ID Remote Access Network Board
- 17 i) California State Association of Counties
- 18 j) Children and Families Commission (First 5)
- 19 k) Children's Policy Council
- 20 l) Crafton Hills Open Space Conservancy
- 21 m) Head Start Shared Governance Board
- 22 n) High Desert Corridor Joint Powers Authority
- 23 o) Indian Gaming Local Benefit Committee
- 24 p) Indian Wells Valley Groundwater Authority
- 25 q) In-Home Supportive Services Public Authority
- 26 r) Inland Counties Emergency Medical Agency
- 27 s) Inland Empire Economic Partnership
- 28 t) Inland Empire Health Plan
- u) Inland Empire Public Facilities Corporation

- 1 v) Inland Valley Development Agency
2 w) Interagency Council on Homelessness
3 x) Mojave Desert Air Quality Management District
4 y) Mojave Desert and Mountain Recycling Authority
5 z) Morongo Basin Transit Authority
6 aa) Mountain Area Regional Transit Authority
7 bb) National Association of Counties
8 cc) Ontario International Airport Authority
9 dd) Omnitrans Board of Directors
10 ee) Quad State Local Governments Authority
11 ff) San Bernardino County Employees' Retirement Association Board of
12 Retirement
13 gg) San Bernardino County Financing Authority
14 hh) San Bernardino County Fire Protection District
15 ii) San Bernardino County Flood Control District
16 jj) San Bernardino County Industrial Development Authority
17 kk) San Bernardino County Law Library Board of Trustees
18 ll) San Bernardino County Local Agency Formation Commission
19 mm) San Bernardino County Transportation Authority
20 nn) San Bernardino International Airport Authority
21 oo) San Bernardino Municipal Water District Advisory Committee on Water
22 Policy
23 pp) Santa Ana River Parkway Policy Advisory Group
24 qq) Santa Ana Watershed Project Authority OWOW Steering Committee
25 rr) Solid Waste Advisory Taskforce
26 ss) South Coast Air Quality Management District
27 tt) Southern California Associated Governments
28 uu) Southern California Water Coalition
vv) Successor Agency to the San Bernardino County Redevelopment Agency

1 ww) Upper Santa Ana River Washland Management and Habitat Conservation
2 Plan Taskforce

3 xx) Urban Counties Caucus

4 yy) Victor Valley Economic Development Authority

5 zz) Victor Valley Transit Authority

6 aaa) Victor Valley Wastewater Reclamation Authority

7 **APPLICABLE SUBSTANTIVE LAW**

8 **California Constitution, Article XI, Sections 1(b) and 4(b)**

9 25. Measure K must not be implemented because it violates Article XI,
10 Section 1(b) of the California Constitution.

11 26. Article XI, Section 1(b) of the California Constitution sets forth the powers
12 vested in each county and states that, except as provided in Section 4(b), each governing
13 body shall prescribe the compensation of its members. (See California Constitution,
14 Article XI, Section 1(b).)

15 27. Even charter counties, such as San Bernardino County, are permitted to
16 exercise only those powers granted to them by the Constitution and Legislature.
17 (Younger v. County of San Diego (1979) 93 Cal.App.3d 864, 872 [“[Charter] counties
18 constitute merely political subdivisions of the state . . . [and] have independently only
19 such legislative authority that has been expressly conferred by the Constitution and laws
20 of the state. If the latter sources are silent in regard to the delegation of such authority,
21 the authority must still rest with the Legislature.”].)

22 28. This limitation requires that county charters be consistent with the general
23 scheme of government. (Whelan v. Bailey (1934) 1 Cal.App.2d 334 [“In other words,
24 such charters are authorized and may be framed for the purpose of giving a certain local
25 control over the means of carrying out governmental functions in such counties, with the
26 limitation that anything in the charters, so authorized, shall be consistent with the
27 Constitution and shall relate only to matters authorized by that fundamental law. While a
28 county is thus authorized to provide for a measure of self-government, this authorization
must be and is confined to providing for such functions as are properly governmental in

1 their nature and which are consistent with our general scheme of government.”];
2 disapproved on other grounds.)

3 29. California Constitution Article XI, Section 4 sets forth specific powers for
4 charter counties. Section 4(b) permits county charters to provide for Supervisor
5 compensation. This grant of limited self-governance by charter counties permits
6 Supervisors to set different compensation schemes from those provided for in the
7 Government Code. However, Section 4(b) does not subvert the clear intent of Article XI,
8 Section 1(b), which permits only the governing body to set Supervisor compensation. In
9 addition to the limited grant of power for a charter to set Supervisor compensation,
10 Section 4(b) also affirms Article XI, Section 1(b)’s requirement that Supervisor
11 compensation be set only by the governing body. This Section provides that if a county
12 charter provides for the Legislature to prescribe the salary of the governing body, such
13 compensation shall be prescribed by the governing body. Upon information and belief,
14 such language is in response to a case in which Supervisors of a charter county sued
15 under a prior state constitutional provision relating to charter county
16 compensation. (Brown v. Francisco (1954) 123 Cal.App.2d 413 [analyzing applicability
17 of county compensation ordinance under California Constitution Article XI, Section 7½,
18 where county charter did not set specific terms of compensation].) In other words,
19 Section 4(b) merely clarifies that where the charter does not provide for Supervisor
20 compensation, such compensation shall be prescribed by the governing body. The
21 amount of compensation under any circumstances, therefore, is subject to the limits of
22 Section 1(b), and must be set by the governing body. (See, e.g., Brown, at 416 [“The
23 most important rule, however, to be observed in giving construction to ambiguous or
24 apparently conflicting provisions of a constitution, is that the interpretation must not be
25 narrow, but broad, and that the object to be accomplished by the law is not to be left out
26 of view.”].)

27 30. Courts have recognized that Article XI, Section 1(b) provides that only
28 County Boards of Supervisors have the right to set Supervisor salaries, and that such
salaries may not be set by citizen initiative. (Meldrim v. Board of Supervisors of Contra

1 Costa County (1976) 57 Cal.App.3d 341 and Jahr v. Casebeer (1999) 70 Cal.App.4th
2 1250 [citizen initiative cannot set Supervisorial compensation].) Section 4(b) affirms
3 Section 1(b)'s limited grant of power, and both of these sections were amended in the
4 State Constitution in 1970 via Proposition 12, entitled "Compensation of County
5 Supervisors." Proposition 12 removed the power to set county Supervisors' salaries from
6 the California State Legislature and vested such power in the Boards of Supervisors
7 (COMPENSATION OF COUNTY SUPERVISORS California Proposition 12 (1970)
8 (https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1729&context=ca_ballot_p
9 [rops](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1729&context=ca_ballot_p))).) Section 4(b) provides that if a County charter includes a provision that
10 compensation is to be set by legislative action, then only the County's governing body
11 may do so. Section 4(b) does not modify or otherwise affect Section 1(b)'s provision that
12 Supervisor compensation may be set only by the County's legislative body. To find
13 otherwise is plainly inconsistent with the Constitution, and is inconsistent with the
14 general scheme of county government.

15 31. Although Boards of Supervisors are required to place county charter
16 amendments on the ballot for approval or rejection by the county's voters, such action is
17 distinguishable from measures such as Measure K, which are placed on the ballot via the
18 citizen initiative process, as opposed to the governing body via an ordinance.

19 32. Accordingly, Measure K violates California Constitution Article XI,
20 Section 1(b) by seeking to set Supervisor compensation via citizen initiative.

Exclusive Delegation

21 33. Measure K must not be implemented because it exceeds the initiative power
22 of the electorate by intruding on matters that are exclusively delegated to the governing
23 body, in this case the San Bernardino County Board of Supervisors.

First and Fourteenth Amendments to the United States Constitution

24 34. Measure K must not be implemented because its single lifetime term limit
25 provision for members of the County Board of Supervisors violates the First and
26 Fourteenth Amendments to the United States Constitution.
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1 35. Term limits laws implicate voters' rights to vote for qualified candidates, as
2 well as citizens' rights to run for elective office. (See, e.g., Bates v. Jones (9th Cir. 1997)
3 131 F.3d 843 and Burdick v. Takushi (1992) 504 US 428.) Courts look at the degree to
4 which a state's term limit law infringes on these rights, in order to differentiate between,
5 and determine the legality of, different term limit laws. (Legislature v. Eu (1991) 54
6 Cal.3d 492.)

7 36. Courts have stated that lifetime term limit laws – those which prohibit an
8 incumbent from ever again running for the same office – impair these rights to a higher
9 degree than consecutive term limit laws – those which permit an incumbent to run for the
10 same office after being out of office for a period of time. (See, e.g., League of Women
11 Voters v. Diamond (D. Maine 1997) 965 F.Supp. 96, 103 [“The Act [Maine’s state term
12 limit law] does not impose a complete prohibition on incumbents. Candidates may sit out
13 for the required two years and run in the next election or they may run for a different state
14 office.”].)

15 37. Measure K's term limit provision is the most restrictive term limit possible,
16 and is a complete prohibition on incumbents. While courts have generally upheld term
17 limits laws, all court decisions analyzing First and Fourteenth Amendment infringements
18 imposed by such laws relate to restrictions which are less-restrictive than those contained
19 in Measure K; these include limits on consecutive terms, as well as lifetime bans which
20 permit an incumbent to run for at least a second term in office.

21 38. Upon information and belief, the term limit provision contained in Measure
22 K is stricter than any other term limit in any state or local jurisdiction within the United
23 States.

24 39. Measure K impermissibly infringes on voters' and incumbents' First and
25 Fourteenth Amendment rights.

26 40. Under Measure K, San Bernardino County voters will never be able to vote
27 for an incumbent Supervisor, or a person who has previously been a Supervisor – even if
28 voters prefer experienced Supervisorial candidates – and incumbent Supervisors, and
those who have previously been Supervisors, are forever prohibited from seeking election

1 to the office of Supervisor.

2 **The Single Subject Rule**

3 41. Measure K must not be implemented because it does not embrace a single
4 subject.

5 42. Ballot initiatives are prohibited from “embracing more than a single
6 subject.” (California Constitution, Article II, Section 8(d).)

7 43. In order for an initiative to encompass a single subject, all of its parts must
8 be “reasonably germane” to each other. (Brosnahan v. Brown (1982) 32 Cal.3d 236
9 [finding “Victims’ Bill of Rights” provisions reasonably germane to victims’ rights].)

10 44. The purpose of the “single subject rule” is to provide “an integral safeguard
11 against improper manipulation or abuse of [the initiative] process.” (Senate of the State
12 of California v. Jones (1999) 21 Cal.4th 1142, 1158 [invalidating statewide citizen
13 initiative because term limits provision not reasonably germane to redistricting
14 provision].)

15 45. While both provisions of Measure K affect San Bernardino County
16 Supervisors, they are not reasonably germane to each other because the two provisions of
17 Measure K address different concerns, and are meant to accomplish different outcomes.

18 46. By its own terms, Measure K’s term limits provision seeks to address the
19 concern of alleged special interest influence over County affairs, whereas Measure K’s
20 compensation provision seeks to address the concern of alleged overpayment of the
21 County’s Supervisors.

22 47. Measure K’s term limits provision is meant to encourage more people to
23 serve as County Supervisors, whereas Measure K’s compensation provision is meant to
24 either punish sitting Supervisors or to change the position of Supervisor from full-time to
25 part-time.

26 48. Upon information and belief, Measure K purports to impose an
27 unconstitutional compensation provision as a way to manipulate voters into believing that
28 the measure’s disparate provisions will lead to “reform.” Such action constitutes a misuse
of the initiative process, and must not be permitted.

Impairment of Essential Government Functions

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49. Measure K must not be implemented because it impairs essential government functions.

50. The California Constitution, as well as state law, sets forth specific obligations for County Supervisors and County governments. (See, e.g., California Constitution Article XI & California Government Code Sections 25000, et seq.).

51. One such obligation is that charter counties perform all functions required by statute – including those set forth by local and state legislative bodies. (California Constitution, Article XI, Section 4(d).)

52. In order to accomplish these responsibilities, charter counties must govern themselves in a way that is consistent with the general scheme of government. (Whelan v. Bailey (1934) 1 Cal.App.2d 334 [abrogated on separate grounds related to attorneys fees].)

53. Citizen initiatives are precluded from impairing the exercise of essential government functions.

54. San Bernardino County is the largest county in the United States, based on geography. It is charged by the state with upholding the law and implementing policies which affect its enormous geographic area. Upon information and belief, it is impossible for the essential government functions to be accomplished by part-time Supervisors.

55. Measure K, in the words of its proponents, seeks to create a part-time San Bernardino County legislative body by stripping members of the Board of Supervisors of the majority of their salary and otherwise interfering with aspects of the position that allow the Supervisors to accomplish the job for which they are elected.

56. Measure K oversteps the bounds of permissible initiatives because it deprives the County of a government structure capable of undertaking the duties required of it under the Constitution and laws of California, and thereby impairs the exercise of essential government functions.

1 **Retroactive Term Limits**

2 57. Measure K must not be implemented because its term limits provision
3 violates the California Government Code's prohibition on the retroactive application of
4 local term limits.

5 58. The State Legislature has proclaimed that local term limits may be imposed,
6 but not retroactively. (California Government Code Section 36502(b).)

7 59. Measure K states that its single lifetime term limit "shall apply to all
8 Supervisors of all Districts beginning in December 2020." (Measure K, Section 2,
9 Section 1.) This plain language purports to apply the term limit to the current Second and
10 Fourth District Supervisors, who won election in 2018 and whose terms extend through
11 2022. It also purports to apply to the First and Third District Supervisors, both of whom
12 won election to the Board in March 2020, but will not be sworn in until December 7,
13 2020. Additionally, the language purports to apply to the Fifth District Supervisor, who
14 won election in November 2020 and will be sworn in on December 7, 2020.

15 In each of these instances, Measure K, which has not yet gone into effect, purports
16 to retroactively apply its term limit to all five Supervisors, each of whom won election to
17 the Board prior to Measure K's effective date.

18 **California Government Code Section 1235**

19 60. Measure K must not be implemented because its compensation provision
20 violates the California Government Code's prohibition on the adjustment of sitting
21 officials' salaries.

22 61. The State Legislature prohibits the salaries of elected public officials from
23 being reduced "during an election year after any candidate for that particular office has
24 filed the requisite forms declaring his or her candidacy for that particular office."
(California Government Code Section 1235.)

25 62. In 2019, three candidates for the office for the office of Supervisor – for the
26 First, Third and Fifth Supervisorial districts – filed the requisite forms declaring their
27 candidacy. In 2020, they were elected to serve on the Board of Supervisors, but Measure
28 K seeks to reduce their salaries, in clear violation of Government Code Section 1235.

1 63. In 2018, two candidates for the office of Supervisor – for the Second and
2 Fourth Supervisorial districts – filed the requisite forms declaring their candidacy and
3 were elected to serve on the Board of Supervisors until 2022, but Measure K seeks to
4 reduce their salaries, in clear violation of Government Code Section 1235.

5 64. In addition to Government Code Section 1235, the law further protects the
6 vested compensation rights of incumbents, and prevents alteration of the terms and
7 conditions of incumbent compensation absent an express legislative statement that such
8 changes apply to incumbents. (Regan v. County of San Matco (1939) 14 Cal.2d 713;
9 Olson v. Cory (1980) 27 Cal.3d 532.) Measure K includes no express statement that its
10 compensation provision applies to incumbents or Supervisorial candidates elected in
11 November 2020, and its compensation provision therefore does not apply to any
12 Supervisor sitting or elected in 2020.

Severability

13 65. Measure K must not be implemented because its term limits provision is not
14 severable from its non-germane and unconstitutional compensation provision.

15 66. A measure which embraces more than a single subject, as Measure K does,
16 is not severable, because the Constitution specifically prohibits such a measure from
17 being submitted to the electorate. (California Constitution Article II, Section 8(d); Senate
18 of State of California v. Jones (1999) 21 Cal.4th 1142.)

19 67. Even if Measure K constitutes a single subject, its incorporation of an
20 unconstitutional compensation provision constitutes an improper manipulation of the
21 voters and an abuse of the initiative process.

22 68. San Bernardino County voters were misled by Measure K’s proponents,
23 who knew, or should have known, that its provisions were incapable of being fully
24 implemented.

25 69. To the extent voters believed that Measure K’s provisions would lead to a
26 particular type of governmental reform, they did so based on the proponents’ assurances
27 that the combination of Measure K’s provisions could result in the policy outcomes
28 promised.

1 77. Code of Civil Procedure Section 525 provides that “an injunction is a writ
2 or order requiring a person to refrain from a particular act. It may be granted by the court
3 in which the action is brought, or by a judge thereof; and when granted by a judge, it may
4 be enforced as an order of the court.”

5 78. Code of Civil Procedure Section 526 provides that an injunction may be
6 granted “[w]hen it appears by the complaint that the plaintiff is entitled to the relief
7 demanded, and the relief, or any part thereof, consists in restraining the commission or
8 continuance of the act complained of, either for a limited period or perpetually;” “[w]hen
9 it appears by the complaint or affidavits that the commission or continuance of some act
10 during the litigation would produce waste, or great or irreparable injury, to a party to the
11 action;” or “[w]hen it appears, during the litigation, that a party to the action is doing, or
12 threatens, or is about to do, or is procuring or suffering to be done, some act in violation
13 of the rights of another party to the action respecting the subject of the action, and tending
14 to render the judgment ineffectual.”

15 79. In the absence of this Court’s injunction, Respondents will be required to
16 disregard the constitutional, statutory, and case law restrictions on the use of the initiative
17 power as described herein and will unlawfully implement the provisions of Measure K,
18 thereby causing Petitioner and others to suffer irreparable harm for which there is no
19 adequate remedy at law.

20 80. Because Measure K is unconstitutional, invalid, and unenforceable as
21 described above, Petitioner is entitled to temporary, preliminary and permanent injunctive
22 relief enjoining Respondents from enforcing the provisions of Measure K.

23 81. Petitioner has no plain, speedy, and adequate remedy in the ordinary course
24 of law in that no damages or other legal remedy can adequately compensate him and the
25 residents and taxpayers of San Bernardino County for the irreparable harm they will
26 suffer from the unconstitutional and unlawful implementation of Measure K.

27 82. Accordingly, Petitioner is entitled to injunctive relief preventing the
28 implementation of the provisions of Measure K.

1 **THIRD CAUSE OF ACTION**

2 **(Declaratory Relief That Measure K's Provisions are Illegal and Unenforceable)**
3 **(Against All Respondents and Defendants)**

4 83. Petitioner incorporates by reference all of the allegations contained in
5 paragraphs 1 through 70 as though fully set forth herein.

6 84. An actual controversy has arisen between Petitioner and Respondents, in
7 that Petitioner believes and contends, for the reasons set forth above, that Measure K is
8 unconstitutional, invalid, and unenforceable. Further, Petitioner is informed and believes,
9 and on that basis contends, that Respondents are of the belief that the County is required
10 to implement the provisions of Measure K.

11 85. Additional controversies have arisen as to the meaning of Measure K, in the
12 event it is found to be constitutional, valid, and enforceable. Specifically, Petitioner
13 believes and contends that if Measure K is found to be constitutional, valid, and
14 enforceable, its compensation and term limits provisions cannot legally take effect until
15 2022 at the earliest, and in some cases, 2024. Further, Petitioner is informed and
16 believes, and on that basis contends, that Respondents are of the belief that the
17 compensation provision legally takes effect in 2020 (or perhaps early 2021) and that the
18 term limit provision takes effect in 2022.

19 86. A judicial determination and declaration as to the constitutionality, legal
20 validity, enforceability, and/or meaning of Measure K, as set forth above, is therefore
21 necessary and appropriate to determine the respective rights and duties of the parties.

22 **PRAYER**

23 WHEREFORE, Petitioner/Plaintiff prays for judgment as follows:

24 1. On the First Cause of Action, that this Court issue alternative and
25 peremptory writs of mandate prohibiting Respondents/Defendants, and their officers,
26 agents, and all persons acting by, through, or in concert with them, from taking any
27 actions that would cause the implementation of Measure K's provisions;

28 2. On the Second Cause of Action, that this Court issue a temporary
restraining order, preliminary injunction, and permanent injunction prohibiting

1 Respondents/Defendants, and their officers, agents, and all persons acting by, through, or
2 in concert with them, from taking any actions that would cause the implementation of
3 Measure K's provisions;

4 3. On the Third Cause of Action, that this Court issue its judgment declaring
5 that Measure K is unconstitutional, legally invalid, and unenforceable, or, in the
6 alternative, declaring the meaning and effective dates of Measure K's provisions;

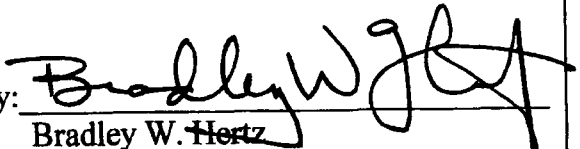
7 4. That this Court award Petitioner the costs of this proceeding; and

8 5. That this Court grant Petitioner such other, different, or further relief as the
9 Court may deem just and proper.

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Dated: December 1, 2020

THE SUTTON LAW FIRM, PC

By: 

Bradley W. Hertz
Attorneys for Petitioner/Plaintiff
BOARD OF SUPERVISORS OF THE
COUNTY OF SAN BERNARDINO

EXHIBIT 1
TEXT OF MEASURE K

FULL TEXT OF PROPOSED AMENDMENTS TO THE CHARTER OF THE COUNTY OF SAN BERNARDINO

(Additions are shown in underline and deletions are shown in ~~strikeout~~)

THE SAN BERNARDINO COUNTY SUPERVISOR COMPENSATION REDUCTION AND TERM LIMITS INITIATIVE

The people of the County of San Bernardino hereby declare and ordain as follows:

SECTION 1. STATEMENT OF PURPOSE

The purpose of this measure is to establish appropriate term limits and compensation for County Supervisors for the part time service performed by County Supervisors on behalf of the citizens.

SECTION 2. CHARTER AMENDMENT

SECTION 1: Sections 2 of Article 1 of the Charter of the County of San Bernardino is hereby amended in their entirety to read as follows:

“**SECTION 2.** At each general election, there shall be elected two or three supervisors, as the case may be, for a term of four years beginning at noon on the first Monday in December next following their election and ending at noon on the first Monday in December four years thereafter. Supervisors shall be elected from the First, Third, and Fifth Supervisorial Districts in those years in which a presidential election is held, and supervisors shall be elected from the Second and Fourth Supervisorial Districts in those years in which a gubernatorial election is held. No person shall be elected and qualified for the office of member of the Board of Supervisors if such person has been elected or served in such office for ~~three consecutive terms~~ one term. This shall apply to all Supervisors of all Districts beginning in December 2006 2020. The limitation on terms shall not apply to any unexpired term to which a person is elected or appointed if the remainder of the unexpired term to which a person is elected or appointed is less than one-half of the full four-year term of office.”

SECTION 2: A new Section 10 is hereby added to Article VI of the Charter of the County of San Bernardino, to read in its entirety as follows:

“**SECTION 10:** The total compensation of each member of the Board of Supervisors shall be five thousand dollars (\$5,000.00) per month, which amount shall include the actual cost to the County of all benefits of whatever kind or nature including but not limited to salary, allowances, credit cards, health insurance, life insurance, leave, retirement, memberships, portable communications devices, and vehicle allowances. This compensation shall be in full compensation for all services by the respective member of the Board of Supervisors.

The foregoing compensation provisions shall not be changed except by a vote of the people at the time of a general election.

SECTION 3: The following portion of Section 1 of Article VI of the Charter of the County of San Bernardino is hereby repealed in its entirety and of no further force or effect:

~~**SECTION 1.** The annual compensation (including salary and benefits) of members of the Board of Supervisors, shall be set by, but shall never exceed, the average of the compensation payable to members of the Board of Supervisors in the following comparison California Counties: Riverside, Orange, and San Diego. For purposes of this section, “compensation” shall be defined as all salary paid, and the amount of all benefits payable to the Board member or payable on~~

~~behalf of the Board member, but compensation shall not include amounts a county is otherwise legally obligated to pay to third parties, including but not limited to employer contributions to a defined benefit retirement system, Medicare, workers compensation or Social Security, and reimbursement for reasonable and necessary business expenses. Compensation shall be set as follows: On December 1, 2013, compensation to be paid to members of the Board of Supervisors shall initially be established based on a survey of the compensation payable to members of the Board of Supervisors in the comparison counties. If the compensation paid to members of the Board of Supervisors is greater than the average compensation payable to Board members in comparison counties, salary shall be reduced such that compensation is within the comparison amount. If the compensation paid to members of the Board of Supervisors is less than the average compensation payable to Board members in the comparison counties, salary shall be increased such that compensation does not exceed average compensation payable in the comparison counties. Thereafter, compensation shall be recomputed every four years on December 1 based on a new survey of the compensation then payable to members of the Board of Supervisors in the comparison counties. Notwithstanding the foregoing, no member of the Board of Supervisors shall have the member's compensation reduced during their current term of office.~~

SECTION 3. EFFECTIVE DATE

- A. To the extent permitted by law, the provisions of this Charter Amendment shall be effective upon voter approval of the initiative as provided by California law.
- B. On the effective date of this initiative measure as provided by California law (the "Effective Date"), all provisions this initiative measure are inserted into and become part of the San Bernardino Code of Ordinances.
- C. No provision of the San Bernardino Code of Ordinances that is inconsistent with this initiative measure shall be enforced after the Effective Date.

SECTION 4. SEVERABILITY

If any word or words of this initiative measure, or its application to any situation, are held invalid or unenforceable, in a final judgment that is no longer subject to rehearing, review or appeal by a court of competent jurisdiction, then that word or those words are severed and the remaining part of this initiative measure, and the application of any part of this initiative measure to other situations, shall continue in full force and effect. We, the people of the County of San Bernardino, declare that we would have adopted this initiative measure, and each word to it, irrespective of the fact that any other condition, word or application to any situation, be held invalid.

SECTION 5. DETERMINING CONSISTENCY

- A. To ensure that the intent of this measure prevails and is subject to express, objective standards that cannot be changed through subsequent discretionary actions or interpretations, words shall be incorporated according to the intent expressed in this initiative measure and shall be applied in accordance with their plain meaning, rather than according to any contrary provision or interpretation in the Charter of the County of San Bernardino.

B. Adoption of this initiative measure is essential to the preservation of the quality of life, property values and the health, safety and general welfare interests of residents and property owners within San Bernardino County.

SECTION 6. CONFLICTING MEASURES

If any measure, appearing on the same ballot as this measure, addresses the same subject matter in a way that conflicts with the treatment of the subject matter in this measure, and if each measure is approved by a majority vote of those voting on each measure, then as to the conflicting subject matter the measure with the highest affirmative vote shall prevail, and the measure with the lowest affirmative vote shall be deemed disapproved as to the conflicting measure.

SECTION 7. AMENDMENT

No term or provision of this initiative measure may be changed or amended without a majority vote of the people on a ballot measure submitted to the electorate at a county-wide general election.

FILED

SEP 13 2019

BY TL DEPUTY
REGISTRAR OF VOTERS

**VERIFICATION NOT REQUIRED
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE SECTION 446**
