

1 THE SUTTON LAW FIRM, PC
2 Bradley W. Hertz, State Bar No. 138564
3 bhertz@campaignlawyers.com
4 James R. Sutton, State Bar No. 135930
5 jsutton@campaignlawyers.com
6 Nicholas L. Sanders, State Bar No. 307402
7 nsanders@campaignlawyers.com
8 22815 Ventura Boulevard, # 405
9 Los Angeles, CA 91364
10 Telephone: (818) 593-2949
11 Facsimile: (415) 732-7701

12 Attorneys for Petitioner/Plaintiff
13 SAN BERNARDINO COUNTY
14 FIRE PROTECTION DISTRICT

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

18 SAN BERNARDINO COUNTY
19 FIRE PROTECTION DISTRICT,

20 Petitioner/Plaintiff,

21 v.

22 BOB PAGE, in his official capacity
23 as San Bernardino County Registrar
24 of Voters; and DOES 1 through 10,
25 inclusive,

26 Respondents/Defendants.

27 ROBERT CABLE; DAVID JARVI;
28 RUTH MUSSER-LOPEZ; CHARLES
PRUITT; and ALBERT VOGLER,

Real Parties in Interest.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 08 2022

BY


GLORIA MARIN, DEPUTY

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

Case No: **CIV SB 2201601**

**VERIFIED PETITION FOR
WRIT OF MANDATE AND
COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

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

PRIORITY ELECTION MATTER

(Entitled to Calendar Preference
per California Code of Civil
Procedure Section 35; Deemed
Verified per California Code of
Civil Procedure Section 446)



VERIFIED PETITION FOR WRIT OF MANDATE AND
COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1 Petitioner and Plaintiff SAN BERNARDINO COUNTY FIRE
2 PROTECTION DISTRICT (“Petitioner” or the “District”) hereby petitions this Court for
3 a writ of mandate and injunctive and declaratory relief directed to Respondent and
4 Defendant BOB PAGE, in his official capacity as San Bernardino County Registrar of
5 Voters (the “Registrar”), and DOES 1 through 10, inclusive (collectively,
6 “Respondents”), and alleges as follows:

7 **INTRODUCTION**

8 1. Petitioner brings this action because Real Parties in Interest
9 ROBERT CABLE; DAVID JARVI; RUTH MUSSER-LOPEZ; CHARLES PRUITT;
10 and ALBERT VOGLER (“Real Parties”), in their capacities as the Proponents of the
11 “Initiative to Repeal the Special Tax Associated With Fire Protection District Service
12 Zone Five (FP-5)” (the “Initiative” or the “FP-5 Initiative”), have violated, and are
13 continuing to violate, the California Elections Code and applicable case law; the
14 Registrar is planning to place the legally invalid FP-5 Initiative on the June 7, 2022
15 ballot; and judicial relief is required to protect the District’s voters.

16 2. Real Parties failed to include the full text of their Initiative, as
17 required by law, and included materially false and/or misleading information, in the
18 Initiative Petition that they caused to be circulated among the District’s voters.

19 3. Real Parties’ Initiative Petition, a true and correct copy of which is
20 attached hereto as Exhibit “1” and incorporated herein by this reference, purports to seek
21 the repeal of the special tax associated with Fire Protection Service Zone FP-5 (the “FP-5
22 tax”). However, by failing to adequately or accurately inform petition signers of crucial
23 details about the proposed repeal, and failing to include key documents that are expressly
24 referred to in the Initiative, Real Parties unlawfully deprived the District’s voters of their
25 rights to be sufficiently informed about what they were being asked to sign and
26 ultimately, vote on.

1 4. Real Parties and/or their agents intentionally misrepresented and/or
2 intentionally made false statements concerning the contents, purport or effect of the
3 Initiative Petition to persons who signed, desired to sign, were requested to sign, made
4 inquiries with reference to the Initiative Petition, and/or to whom it was presented for
5 signing, in violation of California Elections Code section 18600(a).

6 5. Real Parties and/or their agents willfully and knowingly circulated,
7 published, or exhibited false statements or misrepresentations concerning the contents,
8 purport or effect of the Initiative Petition for the purpose of obtaining signatures to, or
9 persuading or influencing any person to sign the Initiative Petition, in violation of
10 California Elections Code section 18600(b).

11 6. Real Parties' Initiative Petition contained objectively inaccurate
12 information and calculated untruths that substantially misled and misinformed
13 reasonable voters, and a writ of mandate or other appropriate relief should be issued to
14 invalidate the Initiative and order it to be removed from the ballot. Real Parties do not
15 have a constitutional right to include false and misleading information in their Initiative
16 Petition. The people have a right to rely on the integrity of the initiative process from
17 beginning to end. Because the initiative process bypasses the normal legislative process,
18 safeguards are necessary to prevent abuses and provide for an informed electorate (See
19 San Francisco Forty-Niners v. Nishioka (1999) 75 Cal.App.4th 637.)

20 7. Accordingly, and as alleged herein, Petitioner seeks judicial relief by
21 way of: (1) a writ of mandate compelling Respondents to refrain from taking any action
22 that would cause the legally invalid FP-5 Initiative to appear on the ballot (in particular,
23 the June 7, 2022 ballot); (2) injunctive relief preventing Respondents from taking any
24 action that would cause the legally invalid FP-5 Initiative to appear on the ballot; (3) a
25 judicial declaration that the FP-5 Initiative is legally invalid and shall not appear on the
26 ballot; and (4) such other and further relief as the Court deems just and proper.

1 **PRIORITY MATTER**

2 8. Pursuant to California Code of Civil Procedure section 35(a), as a
3 case that involves the certification of a ballot measure, this matter “shall be given
4 precedence.”

5 **PRE-ELECTION PROCEDURAL CHALLENGES TO**
6 **INITIATIVES ARE APPROPRIATE AND NECESSARY.**

7 9. Pre-election procedural challenges to ballot measures are appropriate
8 and necessary where an initiative’s validity, and the manner in which an initiative
9 petition was presented to the voters for signing, are in serious question, and where such
10 challenges can be resolved before expenditures of time and money are spent on futile
11 election campaigns. There is no constitutional right to place invalid initiatives on the
12 ballot, and when legal challenges to initiatives are presented to the Court, the Court has
13 the power and duty to order that an illegal measure not be presented to the voters.

14 10. The presence of an invalid measure on the ballot steals attention,
15 time, and money from the valid measures that are on the same ballot; it will confuse
16 some voters and frustrate others. A Court ruling that a measure is invalid after the voters
17 have voted in favor of the measure denigrates the legitimate use of the initiative process.

18 11. Accordingly, insofar as the FP-5 Initiative is unlawful and legally
19 invalid, this Court has the power and the duty to direct the Registrar remove it from the
20 ballot in advance of the June 7, 2022 election

21 **THE NEED FOR PROMPT RELIEF IN THIS CASE**

22 12. Petitioner is entitled to prompt relief to prevent the legally invalid
23 FP-5 Initiative from appearing on the June 7, 2022 ballot, and California Code of Civil
24 Procedure section 35 specifically provides that the Courts are to give precedence to this
type of election-related matter.

25 13. Upon information and belief, the Registrar’s current schedule
26 anticipates that the election materials for the June 7, 2022 election will initially be sent to
27 the printer on or about March 11, 2022. Legal challenges to ballot materials, such as the
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1 FP-5 Initiative and related information that would be provided to the voters about the
2 Initiative, are required to be filed no later than March 22, 2022, and, upon information
3 and belief, the final printing deadline for the election materials is in early April 2022.
4 Therefore, Petitioner requests that this Court issue the requested writ of mandate or other
5 appropriate relief no later than early April 2022.

6 **PARTIES**

7 14. Petitioner/Plaintiff SAN BERNARDINO COUNTY FIRE
8 PROTECTION DISTRICT is an official District within San Bernardino County,
9 California, which was formed by the San Bernardino County Local Agency Formation
10 Commission ("LAFCO") pursuant to the Fire Protection District Law of 1987
11 (California Health and Safety Code sections 13800 et seq.) to provide public safety
12 services to the cities, towns, and unincorporated areas in its territory. The District is a
13 community-based, all hazard emergency services organization that provides emergency
14 mitigation and management for fire suppression, emergency medical services (paramedic
15 and non-paramedic), ambulance services, hazardous materials (HAZMAT) response,
16 arson investigation, technical rescue including water borne, flooding and mudslide,
17 winter rescue operations, hazard abatement, and responses to terrorism/weapons of mass
18 destruction. The District's services and specialized programs include helicopter rescue,
19 dozer, fire/hazard abatement hand crews, air transport, and honor guard. The District also
20 provides for the management of community safety services such as fire prevention,
21 building construction plans and permits, household hazardous waste, local oversight and
22 collection programs for hazardous materials, HAZMAT facility inspections, planning
23 and engineering, and public education and outreach. The District currently covers
24 19,278 of San Bernardino County's 20,053 square miles. Specifically, FP-5 serves more
25 than one million people in the over 60 communities/cities within four Regional Service
26 Zones (Mountain, North Desert, South Desert, and Valley), which include the cities of
27 Grand Terrace, Needles, San Bernardino, Twentynine Palms, Upland, the Town of
28 Yucca Valley, and the unincorporated communities of Helendale, San Antonio Heights,

1 and San Bernardino County not already receiving fire and emergency medical services
2 from other districts. Additionally, the District provides contractual fire protection
3 services to the cities of Adelanto and Fontana. The District is beneficially interested in
4 this matter.

5 15. Respondent/Defendant BOB PAGE is the San Bernardino County
6 Registrar of Voters (the "Registrar"), is responsible for administering, coordinating and
7 conducting elections within San Bernardino County, including for the San Bernardino
8 County Fire Protection District, and is properly named as a Respondent/Defendant
9 herein. Upon information and belief, the Registrar will place the legally invalid FP-5
10 Initiative on the ballot, unless this Court directs him not to do so.

11 16. The true and correct capacities of Respondents/Defendants DOES 1
12 through 10, and each of them, are unknown to Petitioner at this time, and therefore
13 Petitioner sues said Respondents/Defendants by such fictitious names. Petitioner will file
14 DOE amendments and/or ask leave of court to amend this pleading to assert the true
15 names and capacities of these Respondents/Defendants when they have been ascertained.

16 17. Petitioner is informed and believes, and based thereon alleges, that
17 each Respondent/Defendant designated as a DOE has certain official duties with regard
18 to the placement of the FP-5 Initiative on the ballot, falls within the jurisdiction of this
19 Court, and is properly named as a DOE Respondent/Defendant herein.

20 18. Real Parties in Interest ROBERT CABLE; DAVID JARVI; RUTH
21 MUSSER-LOPEZ; CHARLES PRUITT; and ALBERT VOGLER are the official
22 Proponents of the FP-5 Initiative and are responsible for the Initiative's contents, for the
23 manner in which the legally invalid Initiative Petition was circulated, and for the legal
24 violations that render the Initiative improper for the ballot.

JURISDICTION AND VENUE

25 19. The wrongful conduct alleged herein occurred in, and continues to
26 occur in, San Bernardino County, California. This Court has jurisdiction over the subject
27 matter of this action, and venue is properly in this Court.
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1 action;” or “[w]hen it appears, during the litigation, that a party to the action is doing, or
2 threatens, or is about to do, or is procuring or suffering to be done, some act in violation
3 of the rights of another party to the action respecting the subject of the action, and
4 tending to render the judgment ineffectual.”

5 32. In the absence of this Court’s injunction, Respondents will allow the
6 legally invalid Initiative to appear on the June 7, 2022 ballot, thereby causing Petitioner
7 and others to suffer irreparable harm for which there is no adequate remedy at law.

8 33. Because the Initiative is legally invalid, Petitioner is entitled to
9 temporary, preliminary and permanent injunctive relief compelling Respondents not to
10 take any action that would enable the Initiative to appear on the ballot.

11 34. Petitioner does not have a plain, speedy or adequate remedy in the
12 ordinary course of law in that no damages or other legal remedy can adequately
13 compensate Petitioner and the residents and taxpayers of the District for the irreparable
14 harm they will suffer as a result of the legally invalid Initiative appearing on the ballot.
15 Accordingly, Petitioner is entitled to injunctive relief as requested herein.

16 **Declaratory Relief**

17 35. Pursuant to California Code of Civil Procedure section 1060, “[a]ny
18 person . . . who desires a declaration of his or her rights or duties with respect to another
19 . . . , may, in cases of actual controversy relating to the legal rights and duties of the
20 respective parties, bring an original action . . . in the superior court for a declaration of
21 his or her rights and duties He or she may ask for a declaration of rights or duties,
22 either alone or with other relief; and the court may make a binding declaration of these
23 rights or duties, whether or not further relief is or could be claimed at the time. The
24 declaration may be either affirmative or negative in form and effect, and the declaration
25 shall have the force of a final judgment. The declaration may be had before there has
26 been any breach of the obligation in respect to which said declaration is sought.”

27 36. In the absence of this Court’s declaration regarding the Initiative’s
28 legal invalidity, Respondents will allow the Initiative to appear on the June 7, 2022

1 ballot, thereby causing Petitioner and the residents and taxpayers of the District to suffer
2 irreparable harm for which there is no adequate remedy at law.

3 37. Because the Initiative is legally invalid, Petitioner is entitled to a
4 declaration stating this, so that Respondents will not take any action that would enable
5 the Initiative to appear on the ballot.

6 38. Petitioner does not have a plain, speedy or adequate remedy in the
7 ordinary course of law in that no damages or other legal remedy can adequately
8 compensate Petitioner and the residents and taxpayers of the District for the irreparable
9 harm they will suffer as a result of the legally invalid Initiative appearing on the ballot.
10 Accordingly, Petitioner is entitled to declaratory relief as requested herein.

11 APPLICABLE SUBSTANTIVE LAW

12 Applicable Statutory Law

13 39. California Elections Code sections 9300, et seq. are contained in
14 Division 9, Chapter 4, Article 1 of the California Elections Code and pertain to District
15 initiative elections.

16 40. Elections Code section 9301 provides, in relevant part, that “[a]ny
17 proposed ordinance may be submitted to the governing board of the district by an
18 initiative petition filed with the district elections official.”

19 41. Elections Code sections 9302 and 9303 require publication in a
20 newspaper and/or posting of a “Notice of Intention to Circulate Initiative Petition” and a
21 statement of reasons for the proposed petition.

22 42. Elections Code section 9304 provides, in relevant part, that “. . . the
23 proponents shall file with the district elections official a copy of the notice and statement
24 . . . , together with the written text of the initiative”

25 43. Elections Code section 9305 provides that “[a]fter filing a copy of
26 the . . . written text of the initiative . . . with the district elections official pursuant to
27 section 9304, the petition may be circulated among the voters of the district. . . .”
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1 44. Elections Code section 18600(a) provides, in relevant part,
2 that “Every person is guilty of a misdemeanor who, [c]irculating, as principal or agent,
3 or having charge or control of the circulation of, or obtaining signatures to, any . . . local
4 initiative . . . petition, intentionally misrepresents or intentionally makes false statements
5 concerning the contents, purport or effect of the petition . . . , to any person who signs, or
6 who desires to sign, or who is requested to sign, or who makes inquiries with reference
7 to it, or to whom it was presented for the person’s signature.”

8 45. Elections Code section 18600(b) provides, in relevant part, that
9 “Every person is guilty of a misdemeanor who, [w]illfully and knowingly circulates,
10 publishes, or exhibits any false statement or misrepresentation concerning the contents,
11 purport or effect of any . . . local initiative . . . petition . . . for the purpose of obtaining
12 any signature to, or persuading or influencing any person to sign, that initiative petition.”

13 **Applicable Case Law**

14 46. California courts have found that “[t]he purpose of the full text
15 requirement is to provide sufficient information so that registered voters can intelligently
16 evaluate whether to sign the initiative petition and to avoid confusion.” (Mervyn's v.
17 Reyes (1999) 69 Cal.App.4th 93, 99.) In Mervyn's, where pages of a general plan were
18 omitted from an initiative petition, the initiative was found to be invalid as a matter of
19 law.

20 47. In Creighton v. Reviczky (1985) 171 Cal.App.3d 1225, a municipal
21 petition regarding the adoption of a specific plan, but which did not include the text of
22 the affected ordinance, “failed to provide the electors with the information which they
23 needed in order to exercise intelligently their rights” and therefore was invalid.

24 48. In Myers v. Stringham (1925) 195 Cal. 672, 675–676, an attempt to
25 amend a city’s zoning ordinance which failed to set forth the full section being amended
26 was “unintelligible” and “meaningless,” and therefore invalid.

1 49. In Nelson v. Carlson (1993) 17 Cal.App.4th 732, 738–740, the court
2 invalidated a petition challenging a city’s general plan and land use plan amendment
3 because a copy of the plan was not attached to the petition.

4 50. In Defend Bayview/Hunters Point Committee v. City and County of
5 San Francisco (2008) 167 Cal. App. 4th 846, after signatures were collected to qualify a
6 referendum for the ballot regarding a San Francisco redevelopment plan, the petition was
7 rejected because it failed to include the redevelopment plan that was the subject of the
8 petition.

9 51. In Billig v. Voges (1990) 223 Cal.App.3d 962, a petition was
10 rejected on the grounds that it failed to satisfy the full text requirement because it
11 included only a summary of the ordinance and only one of three exhibits that had been
12 referenced in the ordinance.

13 52. In San Francisco Forty-Niners v. Nishioka (1999) 75 Cal.App.4th
14 637), where an initiative petition contained objectively inaccurate information and
15 calculated untruths that substantially misled and misinformed reasonable voters, a writ of
16 mandate or other appropriate relief was issued to invalidate the Initiative and prevent it
17 from appearing on the ballot.

18 53. Pursuant to the above-referenced procedural and substantive law,
19 including applicable statutory and case law, and based on the facts to be demonstrated at
20 the time of trial, Petitioner is entitled to the relief sought herein. Furthermore, not only
21 did Real Parties fail to comply with the applicable law, but they also failed to
22 substantially comply with the applicable law. The Registrar must not be permitted to
23 exacerbate Real Parties’ legal errors by causing the Initiative to appear on the ballot.

24 **THE FP-5 INITIATIVE VIOLATES THE FULL TEXT REQUIREMENT**

25 **The Initiative’s Operative Language Violates the Full Text Requirement**

26 54. The FP-5 Initiative’s operative language, at Section 2, states
27 “REPEAL FP-5 SPECIAL TAX: *The special tax for Service Zone FP-5, authorized in*
28 *2006 in the amount of \$117 per parcel, per year with an annual 3% cost of living*

1 *increase, and set yearly by the Board of Directors of the San Bernardino County Fire*
2 *Protection District via Resolution, is hereby repealed.” (Emphasis in original; see*
3 *Exhibits 1 & 2.)*

4 55. Real Parties, in referring to the 2006 authorization of the FP-5
5 special tax and the amount of the tax at that time – sixteen years ago – but not referring
6 to the current re-authorization or the current amount of the tax, violated the full text
7 requirement. Real Parties further violated the full text requirement by depriving
8 potential signers of the Initiative Petition of accurate information about, among other
9 things, the amount of the tax, who pays the tax, who benefits from the tax, what
10 jurisdictions will be impacted by the Initiative if it passes, what the impact will be, and
11 other important and required information that average reasonable potential signers would
12 need to know before making an informed decision as to whether or not to sign the
13 Initiative Petition and which way to vote on the measure.

14 **Real Parties’ Omission of Resolution No. 2006-283**

15 **Caused the Initiative to Violate the Full Text Requirement.**

16 56. Real Parties’ failure to include Resolution No. 2006-283 as part of
17 the Initiative Petition violated the full text requirement by depriving potential Initiative
18 Petition signers and voters of information they needed, and still need, in order to
19 intelligently evaluate the history of the FP-5 special tax and to determine whether or not
20 to sign the Initiative Petition, and whether to vote Yes or No on the Initiative.

21 57. Had Real Parties included Resolution No. 2006-283 as part of the
22 Initiative Petition, potential initiative signers would have seen that FP-5 was organized
23 and operated under the authority of Chapter 2.2 of Division 2, Title 3 of the Government
24 Code (commencing with Section 25210.1) and was authorized to provide fire protection
25 and emergency medical services.

26 58. Had Real Parties included Resolution No. 2006-283 as part of the
27 Initiative Petition, potential initiative signers would have seen that the proceedings for
28 formation of FP-5 were conducted at the request of affected property owners.

1 59. Had Real Parties included Resolution No. 2006-283 as part of the
2 Initiative Petition, potential initiative signers would have seen that on April 18, 2006, a
3 duly-noticed public hearing on the proposed formation of FP-5 and the special tax
4 election was held, and all parties desiring to be heard were heard, and testimony and
5 evidence for and against the formation of FP-5 and the special tax were duly considered.

6 60. Had Real Parties included Resolution No. 2006-283 as part of the
7 Initiative Petition, potential initiative signers would have seen that an election occurred
8 in which more than two-thirds of the property owners voted in favor of the special tax.

9 **Real Parties' Omission of the August 1, 2006 "Report/ Recommendation**
10 **to the Board of Supervisors of San Bernardino County, California and**
11 **Record of Action" Caused the Initiative to Violate the Full Text Requirement.**

12 61. Real Parties' failure to include the August 1, 2006 "Report/
13 Recommendation to the Board of Supervisors of San Bernardino County, California and
14 Record of Action" (the "August 1, 2006 Report") as part of the Initiative Petition
15 violated the full text requirement by depriving potential Initiative Petition signers and
16 voters of information they needed, and still need, in order to intelligently evaluate the
17 history of the FP-5 special tax and to determine whether or not to sign the Initiative
18 Petition, and whether to vote Yes or No on the Initiative.

19 62. Had Real Parties included the August 1, 2006 Report as part of the
20 Initiative Petition, potential initiative signers would have seen that Pat A. Dennen, then-
21 Fire Chief/Fire Warden of the San Bernardino County Consolidated Fire District,
22 provided certain Background Information and made Recommendations regarding the
23 results of the election for increased fire and emergency medical services.

24 63. Had Real Parties included the August 1, 2006 Report as part of the
25 Initiative Petition, potential initiative signers would have seen that then-Fire Chief/Fire
26 Warden Dennen recommended that Resolution 2006-283 be adopted and stated that a
27 duly-held election occurred in which more than two-thirds of the voters were in favor of
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1 a special tax per parcel for the purpose of financing an increased level of fire and
2 emergency medical services in connection with FP-5.

3 **Real Parties' Omission of Resolution No. 2020-95**

4 **Caused the Initiative to Violate the Full Text Requirement.**

5 64. Real Parties' failure to include Resolution No. 2020-95 as part of
6 the Initiative Petition violated the full text requirement by depriving potential Initiative
7 Petition signers and voter of information they needed, and still need, in order to
8 intelligently evaluate the current status of the FP-5 special tax and to determine whether
9 or not to sign the Initiative Petition, and whether to vote Yes or No on the Initiative.

10 65. Had Real Parties included Resolution No. 2020-95 as part of the
11 Initiative Petition, potential initiative signers would have seen that on August 1, 2006,
12 the electors of Service Zone FP-5 (formerly known as County Service Area 70,
13 Improvement Zone FP-5) (Helendale/Silver Lakes) duly authorized a special tax levy for
14 financing fire protection services.

15 66. Had Real Parties included Resolution No. 2020-95 as part of the
16 Initiative Petition, potential initiative signers would have seen that between August 1,
17 2006 and October 16, 2018, Service Zone FP-5 was expanded to include Needles,
18 Twentynine Palms, San Bernardino, Upland and San Antonio Heights.

19 67. Had Real Parties included Resolution No. 2020-95 as part of the
20 Initiative Petition, potential initiative signers would have seen that the current area of
21 Service Zone FP-5 includes: (a) All of the unincorporated territory in San Bernardino
22 County not within another fire agency's jurisdictional boundaries; (b) the land within the
23 incorporated boundaries of the following Cities and Towns: Grand Terrace, Needles, San
24 Bernardino, Upland, and Yucca Valley; and © the land within the boundaries of the
25 following Districts: the Helendale Community Services District, the City of Twentynine
26 Palms Water District, and the Crest Forest Fire Protection District.

1 68. Had Real Parties included Resolution No. 2020-95 as part of the
2 Initiative Petition, potential initiative signers would have seen that the current area of
3 Service Zone FP-5 does not include: (a) the land within the incorporated boundaries of
4 the following Cities and Towns: Chino; Chino Hills; Montclair (including its
5 Unincorporated Sphere of influence); Ontario; Rancho Cucamonga; Rialto; Colton;
6 Loma Linda; Highland; Redlands; Yucaipa; Big Bear Lake; Adelanto; Hesperia;
7 Victorville; Apple Valley; and Barstow; and (b) the land within the boundaries of the
8 following Districts: Fontana Fire Protection District; Chino Valley Independent Fire
9 Protection District; Apple Valley Fire Protection District; Victorville Fire Protection
10 District; Running Springs Water District; Morongo Valley Community Services District;
11 Yermo Community Services District; Newberry Springs Community Services District;
12 Rancho Cucamonga Fire Protection District; Big Bear Lake Fire Protection District;
13 Hesperia Fire Protection District; Barstow Fire Protection District; Arrowbear Park
14 County Water District; Big Bear City Community Services District; Baker Community
15 Services District; Daggett Community Services District; and Rubidoux Community
16 Services District.

17 **Real Parties' Omission of the June 9, 2020 "Report/ Recommendation**
18 **to the Board of Directors of the San Bernardino County Fire Protection District,**
19 **and Record of Action" Caused the Initiative to Violate the Full Text Requirement.**

20 69. Real Parties' failure to include the June 9, 2020 "Report/
21 Recommendation to the Board of Directors of the San Bernardino County Fire Protection
22 District and Record of Action" (the "June 9, 2020 Report") as part of the Initiative
23 Petition violated the full text requirement by depriving potential Initiative Petition
24 signers and voters of information they needed, and still need, in order to intelligently
25 evaluate the current status of the FP-5 special tax and to determine whether or not to sign
26 the Initiative Petition, and whether to vote Yes or No on the Initiative.
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1 70. Had Real Parties included the June 9, 2020 Report as part of the
2 Initiative Petition, potential initiative signers would have seen that Dan Munsey, the Fire
3 Chief/Fire Warden of the San Bernardino County Fire Protection District, provided
4 certain Background Information and made certain Recommendations regarding the
5 Special Tax for Service Zone FP-5.

6 71. Had Real Parties included the June 9, 2020 Report as part of the
7 Initiative Petition, potential initiative signers would have seen that Fire Chief/Fire
8 Warden Munsey recommended that Resolution 2020-95 be adopted and stated that such
9 Resolution would set the amount of the existing special tax for 2020-2021, which
10 represents no change from the 2019-2020 special tax amount. This item of information –
11 that the amount of the FP-5 tax did not increase from 2019-2020 to 2020-2021, even
12 though it was permitted to increase by 3% – was extremely important for potential
13 Initiative Petition signers to have in order to intelligently evaluate the current status of
14 the FP-5 special tax and whether or not to sign the Initiative Petition, and whether to vote
15 Yes or No on the Initiative.

16 72. Had Real Parties included the June 9, 2020 Report as part of the
17 Initiative Petition, potential initiative signers would have seen that the total estimated
18 revenue from the FP-5 special tax for 2020-2021 is \$41.5 million – funds which the San
19 Bernardino County Fire Protection District uses to provide for the safety, health and
20 social service needs of County residents. This item of information – that the Initiative’s
21 repeal of the FP-5 special tax would cause a \$41.5 million loss of revenue in one year
22 alone – was extremely important for potential Initiative Petition signers to have in order
23 to intelligently evaluate the FP-5 special tax and whether or not to sign the Initiative
24 Petition, and whether to vote Yes or No on the Initiative.

25 **The Initiative’s “Findings” Violate the Full Text Requirement**

26 73. The Initiative contains the following “Findings” in Section 1(a):
27 “(1) In 2006, the San Bernardino County Board of Supervisors, acting as
28 “governing body” proposed, and *just 1,022 voters* in the community of Helendale

1 *approved*, the creation of County Service Area 70, Improvement Zone FP-5 (hereafter
2 FP-5). This imposed a yearly special tax of \$117.00 per parcel with an annual
3 inflationary increase of up to 3%, to finance fire and emergency services within the FP-5
4 boundaries.

5 (2) In 2008, the County formed a “Fire Protection District” (hereafter,
6 “Fire District”) and annexed the original FP-5, its boundaries, purpose and tax into said
7 Fire District.

8 (3) Thereafter . . . , the County added additional areas to FP-5 expanding the
9 parcel tax burden without a vote of the people living in those add-on areas. In 2018 . . . ,
10 the County annexed “...all unincorporated territory...” along with additional incorporated
11 areas into FP-5, imposing the parcel tax without the vote of the people residing in those
12 areas.

13 (4) Even though the Constitution of California prohibits taxation without
14 two-thirds voter' approval, in 2020, the Fire District Board of Directors, without voter
15 approval, imposed a tax on every parcel in FP-5 set at \$157.26 for the year 2020-2021.

16 (5) The County’s sidestep of the provisions of the California Constitution
17 has victimized property owners whose parcels have been annexed and who are now
18 required to pay an ever increasing (up to 3% per year) annual parcel tax they didn’t vote
19 on. Further, without a prohibition in place, additional victims and their properties will
20 potentially be added to FP-5 and its tax without their vote of approval.”

21 74. Real Parties’ “Findings” violated the full text requirement by, among
22 other things, referring so specifically to the Board of Supervisors’ 2006 proposal; the
23 Helendale election; the creation of FP-5; the 2008 formation of the Fire Protection
24 District; the various annexations; and the tax amounts and related details, but failing to
25 attach or include the relevant documents as alleged above, as well as other relevant
26 information.
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1 **The Initiative's "Purposes" Violate the Full Text Requirement**

2 75. The Initiative contains the following "Purposes" in Section 1(b):

3 (1) "Article XIII C, Section 3 of the Constitution of California provides, in
4 part, 'Notwithstanding any other provision of this Constitution ...the initiative power
5 shall not be prohibited or otherwise limited in matters of reducing or repealing any local
6 tax, assessment, fee or charge.

7 (2) The purpose of this measure is to repeal the special tax associated with
8 Fire Protection Service Zone FP-5 in its entirety. This is in accordance with the express
9 power of voters granted by Article XII C, Section 3 of the Constitution of California.

10 (3) Adoption of this initiative measure is essential to the preservation of the
11 quality of life, property values, and the health, safety, and general welfare interests of the
12 residents and property owners within the San Bernardino County Fire Protection
13 District."

14 76. Real Parties' "Purposes" violated the full text requirement by,
15 among other things, referring so specifically to Article XIII C, Section 3 of the
16 Constitution of California but failing to attach or include this Constitutional provision
17 and other relevant documents as alleged above, as well as other relevant information.

18 **Real Parties' Initiative Effort Violates California Elections Code**
19 **Section 18600 and the San Francisco Forty-Niners v. Nishioka Case.**

20 77. Throughout Real Parties' Initiative Petition – including the
21 operative provision, Notice of Intent, Findings and Purposes – there are false statements
22 concerning the contents, purport or effect of the Initiative Petition that were made
23 to persons who signed, desired to sign, were requested to sign, made inquiries with
24 reference to the Initiative Petition, and/or to whom it was presented for signing.

25 78. In connection with their circulation of the Initiative Petition, Real
26 Parties and/or their agents willfully and knowingly circulated, published, or exhibited
27 false statements or misrepresentations concerning the contents, purport or effect of the
28 Initiative Petition for the purpose of obtaining signatures to, or persuading or influencing
any person to sign the Initiative Petition.

1 79. Real Parties' actions violated California Elections Code sections
2 18600(a) and (b) and, because Real Parties' Initiative Petition contained objectively
3 inaccurate information and calculated untruths that substantially misled and misinformed
4 reasonable voters, the Initiative is subject to being invalidated – the remedy that the
5 Court applied in San Francisco Forty-Niners v. Nishioka (1988) 75 Cal.App.4th 637.

6 80. As will be demonstrated in Petitioner's moving papers and other
7 briefs and documents to be filed in this case, the false statements, misrepresentations
8 and/or objectively inaccurate information and calculated untruths that substantially
9 misled and misinformed, and will continue to substantially mislead and misinform, the
District's reasonable voters include, but are not limited to, the following:

- 10 (a) "The California Constitution states, "*No local government may impose,*
11 *extend, or increase any special tax unless and until that tax is submitted to*
12 *the electorate and approved by a two-thirds vote.*" Despite this clear
13 language, the FP-5 special tax was imposed by elected representatives on
14 one million county residents without their consent. . . . Citizens must follow
15 the law and so must their representatives!!" (See Exhibit 1, Notice of
Intent; Emphasis in original.)
- 16 (b) "REPEAL FP-5 SPECIAL TAX: *The special tax for Service Zone FP-5,*
17 *authorized in 2006 in the amount of \$117 per parcel, per year with an*
18 *annual 3% cost of living increase, and set yearly by the Board of Directors*
19 *of the San Bernardino County Fire Protection District via resolution, is*
20 *hereby repealed.*" (See Exhibit 2, Section 2; emphasis in original.)
- 21 (c) "In 2006 . . . just 1,022 voters in the community of Helendale approved, the
22 creation of County Service Area 70, Improvement Zone FP-5 (hereafter
FP-5)." (See Exhibit 2, Findings, Section 1(a)(1).)
- 23 (d) "Thereafter, despite significant protest, the County added additional areas
24 to FP-5 expanding the parcel tax burden without a vote of the people living
25 in those add-on areas. In 2018, despite extraordinary protest, the County
26 annexed ". . . all unincorporated territory . . ." along with additional
27 incorporated areas into FP-5, imposing the parcel tax without the vote of
28

1 the people residing in those areas. (See Exhibit 2, Findings, Section
2 1(a)(3).)

3 (e) “Even though the Constitution of California prohibits taxation without
4 two-thirds voter approval, in 2020, the Fire District Board of Directors,
5 without voter approval, imposed a tax on every parcel in FP-5 set at
6 \$157.26 for the year 2020-2021.” (See Exhibit 2, Findings, Section
7 1(a)(4).)

8 (f) “The County’s sidestep of the provisions of the California Constitution has
9 victimized property owners whose parcels have been annexed and who are
10 now required to pay an ever increasing (up to 3% per year) annual parcel
11 tax they didn’t vote on. Further, without a prohibition in place, additional
12 victims and their properties will potentially be added to FP-5 and its tax
13 without their vote of approval.” (See Exhibit 2, Findings, Section 1(a)(5).)

14 (g) “Adoption of this initiative measure is essential to the preservation of the
15 quality of life, property values, and the health, safety, and general welfare
16 interests of the residents and property owners within the San Bernardino
17 County Fire Protection District.” (See Exhibit 2, Purposes, Section
18 1(b)(3).)

19 **FIRST CAUSE OF ACTION**

20 **(Petition for Writ of Mandate Compelling**

21 **the Registrar to Not Print the FP-5 Initiative on the Ballot)**

22 **(Directed at Respondents and Defendants)**

23 81. Petitioner incorporates by reference all of the allegations contained
24 in paragraphs 1 - 29 and 39 - 80 as though fully set forth herein.

25 82. Based on the foregoing allegations regarding writs of mandate
26 pursuant to California Code of Civil Procedure sections 1085, et seq., Petitioner is
27 entitled to a writ of mandate prohibiting Respondent/Defendant Registrar and DOE
28 Respondents/Defendants, and their officers, agents, and all persons acting by, through, or
in concert with them, from taking any action that would cause the legally invalid FP-5
Initiative to be placed on the ballot.

(Injunctive Relief Enjoining the Registrar From

Placing the FP-5 Initiative on the June 7, 2022 Ballot)

(Directed at Respondents and Defendants)

83. Petitioner incorporates by reference all of the allegations contained in paragraphs 1 - 26; 30 - 34; and 39 - 80 as though fully set forth herein.

84. Based on the foregoing allegations regarding injunctive relief pursuant to Code of Civil Procedure section 525, et seq., Petitioner is entitled to a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Respondent/Defendant Registrar and DOE Respondents/Defendants, and their officers, agents, and all persons acting by, through, or in concert with them, from taking any action that would cause the legally invalid FP-5 Initiative to be placed on the ballot.

THIRD CAUSE OF ACTION

(Declaratory Relief That the FP-5 Initiative Violates

the Law and Must Not Be Placed on the Ballot)

(Directed at Respondents and Defendants)

85. Petitioner incorporates by reference all of the allegations contained in paragraphs 1 - 26 and 35 - 80 as though fully set forth herein.

86. An actual controversy has arisen between Petitioner and Real Parties, in that Petitioner believes and contends, for the reasons set forth above, that the FP-5 Initiative violates the law and must not be placed on the ballot. Further, Petitioner is informed and believe, and on that basis contend, that Real Parties are of the belief that the FP-5 Initiative does not violate the law and must be placed on the ballot.

87. A judicial determination and declaration as to the legality of the FP-5 Initiative, as set forth above, is therefore necessary and appropriate to determine the respective rights and duties of the parties.

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EXHIBIT 1

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

NOTICE OF INTENT TO CIRCULATE PETITION

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the San Bernardino County Fire Protection District for the purpose of repealing the special tax associated with Fire Protection Service Zone Five (FP-5). A statement of the reasons for the proposed action as contemplated in the petition is as follows: Vote "YES" to repeal the special tax associated with FP-5. The California Constitution states, "No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote." Despite this clear language, the FP-5 special tax was imposed by elected representatives on one million county residents without their consent. A "YES" vote will repeal the tax, leave money in your pocket, and send a message to politicians. Citizens must follow the law and so must their representatives!! See www.redbreannan.org for details.

/s/ Robert Cable

/s/ David Jarvi

/s/ Ruth Musser-Lopez

/s/ Charles Pruitt

/s/ Albert Vogler

FULL TEXT OF PROPOSED MEASURE TO IMPLEMENT THE INITIATIVE

INITIATIVE TO REPEAL THE SPECIAL TAX ASSOCIATED WITH FIRE PROTECTION SERVICE ZONE FIVE (FP-5)

The people of the San Bernardino County Fire Protection District do ordain as follows: **SECTION 1. (a) Findings:** (1) In 2006, the San Bernardino County Board of Supervisors, acting as "governing body" proposed, and just 1,022 voters in the community of Helendale approved, the creation of County Service Area 70, Improvement Zone FP-5 (hereafter FP-5). This imposed a yearly special tax of \$117.00 per parcel with an annual inflationary increase of up to 3%, to finance fire and emergency services within the FP-5 boundaries. (2) In 2008, the County formed a "Fire Protection District" (hereafter, "Fire District") and annexed the original FP-5, its boundaries, purpose and tax into said Fire District. (3) Thereafter, despite significant protest, the County added additional areas to FP-5 expanding the parcel tax burden without a vote of the people living in those add-on areas. In 2018, despite extraordinary protest, the County annexed "...all unincorporated territory..." along with additional incorporated areas into FP-5, imposing the parcel tax without the vote of the people residing in those areas. (4) Even though the Constitution of California prohibits taxation without two-thirds voter approval, in 2020, the Fire District Board of Directors, without voter approval, imposed a tax on every parcel in FP-5 set at \$157.26 for the year 2020-2021. (5) The County's sidestep of the provisions of the California Constitution has victimized property owners whose parcels have been annexed and who are now required to pay an ever increasing (up to 3% per year) annual parcel tax they didn't vote on. Further, without a prohibition in place, additional victims and their properties will potentially be added to FP-5 and its tax without their vote of approval. **(b) Purposes:** (1) Article XIII C, Section 3 of the Constitution of California provides, in part, "Notwithstanding any other provision of this Constitution...the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge." (2) The purpose of this measure is to repeal the special tax associated with Fire Protection Service Zone FP-5 in its entirety. This is in accordance with the express power of voters granted by Article XIII C, Section 3 of the Constitution of California. (3) 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 the residents and property owners within the San Bernardino County Fire Protection District. **SECTION 2. REPEAL FP-5 SPECIAL TAX: The special tax for Service Zone FP-5, authorized in 2006 in the amount of \$117 per parcel, per year with an annual 3% cost of living increase, and set yearly by the Board of Directors of the San Bernardino County Fire Protection District via resolution, is hereby repealed.**

NOTICE TO THE PUBLIC: YOU HAVE THE RIGHT TO SEE AN "OFFICIAL TOP FUNDERS" SHEET. THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

All signers of this petition must be registered to vote in San Bernardino County Fire Protection District

Official Use Only

1. Print Your Name: _____ Signature: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
2. Print Your Name: _____ Signature: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
3. Print Your Name: _____ Signature: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
4. Print Your Name: _____ Signature: _____	Residence Address ONLY: _____ City: _____ Zip: _____	

DECLARATION OF THE CIRCULATOR (To be completed in your own hand after the above signatures have been obtained.)

I, _____, am 18 years of age or older. My residence address is:

(Print Name)

(Address, City, State, Zip)

I circulated this section of the petition and witnessed each of the appended signatures being written. Each signature on this petition is, to the best of my information and belief, the genuine signature of the person whose name it purports to be. I showed each signer a valid and unfalsified "Official Top Funders" sheet. All signatures on this document were obtained between the dates of:

and

(Month, Day, Year)

(Month, Day, Year)

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on:

at

(Month, Day, Year)

(Place of Signing)

(Complete Signature Indicating Full Name of Circulator)

EXHIBIT 2

**FULL TEXT OF PROPOSED MEASURE TO IMPLEMENT THE INITIATIVE
INITIATIVE TO REPEAL THE SPECIAL TAX ASSOCIATED WITH FIRE
PROTECTION SERVICE ZONE FIVE (FP-5)**

The people of the San Bernardino County Fire Protection District do ordain as follows:

SECTION 1. (a) Findings:

(1) In 2006, the San Bernardino County Board of Supervisors, acting as “governing body” proposed, and **just 1,022 voters** in the community of Helendale **approved**, the creation of County Service Area 70, Improvement Zone FP-5 (hereafter FP-5). This imposed a yearly special tax of \$117.00 per parcel with an annual inflationary increase of up to 3%, to finance fire and emergency services within the FP-5 boundaries.

(2) In 2008, the County formed a “Fire Protection District” (hereafter, “Fire District”) and annexed the original FP-5, its boundaries, purpose and tax into said Fire District.

(3) Thereafter, despite significant protest, the County added additional areas to FP-5 expanding the parcel tax burden without a vote of the people living in those add-on areas. In 2018, despite extraordinary protest, the County annexed “...all unincorporated territory...” along with additional incorporated areas into FP-5, imposing the parcel tax without the vote of the people residing in those areas.

(4) Even though the Constitution of California prohibits taxation without two-thirds voter approval, in 2020, the Fire District Board of Directors, without voter approval, imposed a tax on every parcel in FP-5 set at \$157.26 for the year 2020-2021.

(5) The County’s sidestep of the provisions of the California Constitution has victimized property owners whose parcels have been annexed and who are now required to pay an ever increasing (up to 3% per year) annual parcel tax they didn’t vote on. Further, without a prohibition in place, additional victims and their properties will potentially be added to FP-5 and its tax without their vote of approval.

(b) Purposes:

(1) Article XIII C, Section 3 of the Constitution of California provides, in part, “Notwithstanding any other provision of this Constitution...the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge.”

(2) The purpose of this measure is to repeal the special tax associated with Fire Protection Service Zone FP-5 in its entirety. This is in accordance with the express power of voters granted by Article XIII C, Section 3 of the Constitution of California.

(3) 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 the residents and property owners within the San Bernardino County Fire Protection District.

SECTION 2. REPEAL FP-5 SPECIAL TAX: *The special tax for Service Zone FP-5, authorized in 2006 in the amount of \$117 per parcel, per year with an annual 3% cost of living increase, and set yearly by the Board of Directors of the San Bernardino County Fire Protection District via resolution, is hereby repealed.*

FILED

MAY 13 2021

BY Sm DEPUTY
REGISTRAR OF VOTERS

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