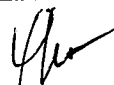


MEMORANDUM

DATE: SEPTEMBER 21, 2010
TO: STATION MANAGER
FROM: LANCE H. OLSON 
RE: **IMMEDIATE REQUEST TO PULL FALSE
ADVERTISEMENT OPPOSING PROPOSITION 25**

I am writing to you on behalf of my client, Yes on 25, Citizens for an On-Time Budget, which is the campaign committee that qualified Proposition 25 for the November 2, 2010 General Election ballot and is actively engaged in the campaign in support of Proposition 25. It has come to the attention of my client that your station has begun to broadcast an advertisement, sponsored by the campaign committee opposing Proposition 25, which contains demonstrably false statements about the effects of the ballot measure--statements which have been refuted by a California Court of Appeal in a very recent court decision. We ask that you stop broadcasting this completely discredited ad.

The advertisement charges that Proposition 25 "makes it easier for politicians to raise our income taxes, sales taxes and taxes on our homes" This claim is absolutely and unequivocally false. Indeed, the authors of the advertisement, the No on 25/Yes on 26 campaign committee, made the exact same argument in court proceedings earlier this year, and California's Third District Court of Appeal unambiguously declared that Proposition 25 does nothing to make it easier for the Legislature to raise taxes. (See *Yes on 25 v. Superior Court*, Aug. 6, 2010, C065707.)

In a press release announcing their new ad opposing Proposition 25, the No on 25/Yes on 26 committee justifies their claim by relying on the exact same arguments they made to the Court of Appeal. They cite to Proposition 25's "notwithstanding" clause in an effort to explain why Proposition 25 would change the current 2/3rds vote requirement for raising taxes. The Court of Appeal rejected this exact same argument in stating that "we find nothing in the substantive provisions of Proposition 25 that would allow the Legislature to circumvent the existing constitutional requirement of a two-thirds vote to raise taxes." (Op. at 3-4.)

The No on 25/Yes on 26 committee has resorted to spreading this falsehood even in light of the clear and unambiguous language of Proposition 25. In the Purpose and Intent section of Proposition 25, the initiative states: "This measure will not change Proposition 13's property tax limitations in any way. This measure will not change the two-thirds vote requirement for the Legislature to raise taxes." (Ballot Pamp., Gen. Elec. (Nov. 2, 2010) Text of

Lance H. Olson

Bruce J. Hagel

Diane M. Fishburn

Elizabeth L. Gade

Deborah B. Caplan

N. Eugene Hill

Richard C. Miodich

Richard R. Rios

Christopher W. Waddell

Stephen A. Valizan

Lacey E. Keys

Matthew R. Cody

Joshua R. Daniels



Proposition 25, § 3.) This is the language that millions of voters relied on in qualifying Proposition 25 for the ballot and it is how Proposition 25 will be reproduced in the official voter pamphlet sent to every voter. Moreover, the Attorney General has summarized Proposition 25 in the official ballot label and title and summary by stating that Proposition 25 “Retains two-thirds vote requirement for taxes.” (Ballot Pamp., Gen. Elec. (Nov. 2, 2010) Official Title and Summary.) In light of the actual language of Proposition 25, the Court of Appeal affirmed the Attorney General’s interpretation of Proposition 25. (Op. at 13.)¹ The statements in the No on 25/Yes on 26 advertisement are clearly false and grossly misrepresent the legal effect of Proposition 25.

The advertisement also asserts that Proposition 25 “make[s] it easier to increase [politicians’] own tax-free expense accounts.” Currently, legislators’ expense counts cannot be changed without a two-thirds vote requirement. (Cal. Const., art. IV, § 4(b).) As with the argument regarding taxes, the No on 25/Yes on 26 committee erroneously misinterprets the “notwithstanding” clause of Proposition 25. The “notwithstanding” clause would not repeal every other two-thirds vote requirement existing in the California Constitution. The Court of Appeal’s decision rejected such a broad interpretation of the measure in stating that “Proposition 25 would affect only the budget bill and other bills providing for *appropriations* related to the budget bill.” (Op. at 13, original emphasis.) The budget bill and other bills providing for appropriations related to the budget only refer to appropriations, or the “‘itemized recommended expenditure’ for the ensuing fiscal year.” (*Id.* at 14 [citing to *Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1197].) Consequently, the argument that Proposition 25 reduces the two-thirds vote requirement for legislators’ expense accounts is also false.

Your station is not obligated to accept this advertisement, nor is it required to account in any way for its decision to reject such an advertisement. (*Columbia Broadcasting System v. Democratic National Committee*, 412 U.S. 94 (1973); *You Can’t Afford Dodd Committee*, 81 F.C.C.2d 579 (1980).) Repeated efforts by organizations, such as the No on 25/Yes on 26 committee, which are *not* candidate committees, to obtain a private right of access have been consistently rejected by the FCC. (*See e.g., National Conservative Political Action Committee*, 89 F.C.C.2d 626 (1982).) As you know, there is no legal obligation on the part of your station to run any commercial, paid advertisement sponsored by a business organization.

Similarly, the no-censorship provisions of the Communications Act apply only to candidate uses of a station—not to advertisements run by ballot measure organizations such as No on 25/Yes on 26—and thus licensees can be held liable for slanderous or libelous statements made in such advertisements. (*E.g., Felix v. Westinghouse Radio Stations*, 186 F.2d 1 (3d Cir.), *cert. denied*, 314 U.S. 909 (1950).)

¹ Enclosed for your review are copies of the text of Proposition 25 and Court of Appeal decision, which includes the Attorney General’s official ballot label and title and summary. These sources are also available on-line. The Court of Appeal decision can be downloaded at <http://www.courtinfo.ca.gov/opinions/nonpub/C065707.PDF>. The text of Proposition 25 and the official title and summary can be accessed at <http://www.voterguide.sos.ca.gov/propositions/25/>.

STATION MANAGER

SEPTEMBER 21, 2010

Page 3

Although the Yes on 25 campaign committee respects a policy of running advertisements that provide contrasting views on issues of public importance, your station clearly need not and should not carry an advertisement that makes an inflammatory and demonstrably false charge based on a theory that has been entirely discredited by the California Court of Appeal. In light of the fact the advertisement's statements have been so clearly rejected by the California courts, there is simply no good reason for your station to broadcast this political commercial.

The Yes on 25 committee appeals to your best judgment and urges you not to carry this blatantly false advertisement. Please contact me as soon as possible to let me know of your station's decision. Thank you for your time and attention to this important matter.

NOT TO BE PUBLISHED

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

FILED

AUG - 9 2010

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY _____ Deputy

C065707

(Super. Ct. No.
34201080000610)

YES ON 25, CITIZENS FOR AN ON-TIME
BUDGET,

Petitioner,

v.

THE SUPERIOR COURT OF SACRAMENTO
COUNTY,

Respondent;

EDMUND G. BROWN, JR., as Attorney
General, etc., et al.,

Real Parties in Interest.

EDMUND G. BROWN, JR., as Attorney
General, etc.,

Petitioner,

v.

THE SUPERIOR COURT OF SACRAMENTO
COUNTY,

Respondent;

DEBRA BOWEN, as Secretary of State,
etc., et al.,

Real Parties in Interest.

C065708

(Super. Ct. No.
34201080000610)

The Attorney General of the State of California, and Yes on 25, Citizens for an On-Time Budget, seek a peremptory writ of mandate directing respondent superior court to vacate its judgment entered on August 5, 2010, insofar as it compels revision of the ballot title and summary and the ballot label for Proposition 25 prepared by the Attorney General.¹

Respondent court ruled these ballot materials are misleading because the language, "RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES," suggests that passage of Proposition 25 is necessary to continue the current constitutional provision requiring a two-thirds vote to raise taxes. (See Cal. Const., art. XIII A, § 3.) Accordingly, the court directed that the language be deleted from both the ballot title and summary and the ballot label.

The writ petitions were filed in this court on Friday, August 6, 2010, and the Secretary of State has indicated that Monday, August 9, 2010, is the deadline for transmitting copy for the ballot pamphlet to the State Printer. Thus, to preserve our jurisdiction, we stayed submission of the ballot materials to the State Printer pending further order of this court. We also informed the parties that we are considering the issuance of a peremptory writ in the first instance, and that any opposition must be filed before 10:00 a.m.

¹ The Attorney General and the Yes on 25, Citizens for an On-Time Budget, separately petitioned for a writ of mandate, each raising the same issue. We have consolidated the petitions for purposes of disposition only.

on August 9, 2010. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.)²

Opposition was timely filed by real party in interest, who makes little effort to defend the rationale for respondent court's ruling. Instead, real party in interest believes that the court erred by not finding the language, "RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES, is "false and misleading because Proposition 25 does not preclude a special class of bills created by Proposition 25--bills that include an[] appropriation and a tax increase and are designated in the budget bill as related to the budget--from being adopted by a majority vote." Stated more simply, real party in interest argues Proposition 25 would "perpetrate a gross fraud on the voters" by "establish[ing] an alternative mechanism through which tax increases could be adopted by a simple majority vote" if the tax increases are included in a budget bill, thereby allowing the Legislature to circumvent the existing two-thirds vote requirement for a tax increase.

Having reviewed the petitions and opposition thereto, we shall issue the requested peremptory writ of mandate. As we will explain, the challenged language does not misleadingly suggest that approval of Proposition 25 is necessary to maintain the existing two-thirds vote requirement for raising taxes. And we find nothing in the substantive provisions of Proposition 25 that would allow the

² The judgment is appealable. However, given the immediate time constraints for printing of the ballot for the November statewide election, petitioners' remedy by appeal is inadequate. (*Lungren v. Superior Court* (1996) 48 Cal.App.4th 435, 438 (hereafter *Lungren*)).

Legislature to circumvent the existing constitutional requirement of a two-thirds vote to raise taxes.

To preserve this court's jurisdiction pending finality of this decision, we issue a mandatory stay that effectively grants petitioners the relief to which we conclude they are entitled. (See *Lungren, supra*, 48 Cal.App.4th at pp. 437, 443; see also *People ex rel. S. F. Bay etc. Com v. Town of Emeryville* (1968) 69 Cal.2d 533, 537.)

BACKGROUND

California's Constitution provides that a two-thirds vote of both houses of the Legislature is required to pass the budget and any budget-related appropriations, except for appropriations for public school funding, which may be approved by a simple majority. (Cal. Const., art IV, § 8, subd. (b); § 12, subd. (d).) It also requires the Legislature to pass the budget by midnight on June 15 (Cal. Const., art. IV, § 12, subd. (c)(3)); however, no penalty is imposed upon the Legislature should it fail to adopt a budget in a timely manner. Proposition 13, adopted in 1978, added provisions to the Constitution that state the Legislature can change the tax rate only by a two-thirds vote of each house. (*Id.*, art. XIII A, § 3.)

Proposition 25 is an initiative measure that will be on the statewide General Election ballot on November 2, 2010. Entitled the "On-Time Budget Act of 2010," it would amend article IV of our state Constitution by changing the legislative vote requirement needed to pass the state budget and budget-related appropriations bills from two-thirds to a simple majority. Proposition 25 also provides that, if the Legislature fails to pass a budget bill by June 15, all of

the legislators will forfeit salary and reimbursement for expenses for each day until the Legislature adopts a budget bill.

Section 3 of Proposition 25 sets forth the "Purpose and Intent" of the measure as follows:

"1. The People enact this measure to end budget delays by changing the legislative vote necessary to pass the budget from two-thirds to a majority vote and by requiring Legislators to forfeit their pay if the Legislature fails to pass the budget on time.

"2. This measure will not change Proposition 13's property tax limitations in any way. This measure will not change the two-thirds vote requirement for the Legislature to raise taxes."

On July 20, 2010, the Secretary of State placed the official ballot pamphlet for the November 2010 election on public display. (Elec. Code, § 9092.) The ballot pamphlet includes the official ballot title and summary and the official ballot label prepared by the Attorney General for each initiative measure. (Elec. Code, §§ 9050, 9051.) The ballot materials for Proposition 25 submitted by the Attorney General read:

"BALLOT TITLE AND SUMMARY

"CHANGES LEGISLATIVE VOTE REQUIREMENT TO PASS BUDGET AND BUDGET-RELATED LEGISLATION FROM TWO-THIRDS TO A SIMPLE MAJORITY. RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES. INITIATIVE CONSTITUTIONAL AMENDMENT.

"Changes the legislative vote requirement necessary to pass the state budget and spending bills related to the budget from two-thirds to a simple majority.

"Provides that if the Legislature fails to pass a budget bill by June 15, all members of the Legislature will permanently forfeit any reimbursement for salary and expenses for every day until the day the Legislature passes a budget bill.

"BALLOT LABEL

"CHANGES LEGISLATIVE VOTE REQUIREMENT TO PASS BUDGET AND BUDGET-RELATED LEGISLATION FROM TWO-THIRDS TO A SIMPLE MAJORITY. RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES. INITIATIVE CONSTITUTIONAL AMENDMENT. Legislature permanently forfeits daily salary and expenses until budget passes. . . ."

Real party in interest, Allan Zaremberg, President of the California Chamber of Commerce and Committee Chair of Stop Hidden Taxes--No on 25/Yes on 26, filed a petition for writ of mandate in respondent court, challenging the Attorney General's ballot title and summary and ballot label on the ground that they inaccurately summarize the effect of Proposition 25. In particular, he argued that the language, "RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES," is false and misleading, and that the initiative measure, read as a whole, would repeal by implication the two-thirds requirement and allow the Legislature to raise taxes by a simple majority vote. This is so, real party in interest asserted, because, among other things, "no substantive provision of Proposition 25 makes any reference to the preservation of the two-thirds vote requirement to raise taxes."

Following a hearing on August 5, 2010, respondent court rejected real party in interest's construction of Proposition 25, concluding it is "clear" the measure would not affect the two-thirds requirement for raising taxes.

Notwithstanding this conclusion, respondent court was troubled by the language, "RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES."

In its view, the language is misleading because a voter reading these pre-election materials might surmise that, absent a "yes" vote on Proposition 25, the two-thirds requirement for raising taxes would be repealed. The court explained: "Don't you think that the . . . man or the woman walking into the polls and looking at this title and summary has the impression that it's necessary to pass this proposition and if this proposition is not passed that the two-thirds requirement [for taxes] goes away? [¶] I mean, what else is the meaning of retain?"

Thus, the court ordered the language, "RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES" stricken from both the ballot title and

(hereafter *Horneff*); *Lungren, supra*, 48 Cal.App.4th at pp. 439-440.) The ballot title and summary must be true, impartial, and not argumentative or likely to create prejudice for or against a proposed measure. (Elec. Code, § 9051, subd. (c); *Lungren, supra*, 48 Cal.App.4th at p. 440.) "The main purpose of these requirements is to avoid misleading the public with inaccurate information." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243 (hereafter *Amador Valley*)).

Implicit in these guidelines is that the Attorney General exercises judgment and discretion in discerning the chief purposes and points of an initiative measure (*Epperson v. Jordan* (1938) 12 Cal.2d 61, 66, 70 (hereafter *Epperson*)), which must be presented to the electorate in clear and understandable language. (See *Lungren, supra*, 48 Cal.App.4th at p. 440.) "As a general rule, the title and summary prepared by the Attorney General are presumed accurate, and substantial compliance with the "chief purpose and points" provision is sufficient. [Citation.]" (*Tinsley v. Superior Court* (1983) 150 Cal.App.3d 90, 108 (hereafter *Tinsley*)).

In preparing the ballot title and summary and the ballot label, the Attorney General is afforded considerable latitude. (*Tinsley, supra*, 150 Cal.App.3d at p. 108.) This deference stems in part from the recognition that drafting a title and summary "can be a difficult task where multiple reasonable interpretations of the referendum . . . are possible." (*Zarembeg v. Superior Court* (2004) 115 Cal.App.4th 111, 117.)

If reasonable minds may differ as to its sufficiency, the title and summary prepared by the Attorney General must be upheld

(*Amador Valley*, *supra*, 22 Cal.3d at p. 243) because "all legitimate presumptions should be indulged in favor of the propriety of the attorney-general's actions." (*Epperson*, *supra*, 12 Cal.2d at pp. 66, 70); *Holmes v. Jones* (2000) 83 Cal.App.4th 882, 888.) "[O]nly in a clear case should a title [and summary] so prepared be held insufficient." (*Epperson*, *supra*, 12 Cal.2d at p. 66; *Brennan v. Board of Supervisors* (1981) 125 Cal.App.3d 87, 92-93.)

Elections Code section 9092 allows a pre-election challenge to the sufficiency of the Attorney General's ballot materials. In ruling on such challenge, however, the courts are not vested with a wide range of discretion. (*Horneff*, *supra*, 110 Cal.App.4th at p. 821.) Relief may be granted "only upon clear and convincing proof that the [challenged ballot materials] in question [are] false, misleading, or inconsistent with the requirements of this code[.]" (Elec. Code, § 9092.)

Given these heightened standards, respondent court's judgment striking language set forth in the ballot title and summary and ballot label cannot stand. This is so because both the ballot title and summary and the ballot label for Proposition 25 closely track the actual language of the measure and its statement of "Purpose and Intent." (Cf. *Lungren*, *supra*, 48 Cal.App.4th at pp. 441 ["The electorate can hardly be deceived by [an] essentially verbatim recital of the straightforward text of the measure itself"].) The ballot title and summary inform the electorate that Proposition 25 will (1) lower from two-thirds to a simple majority, the vote requirement for passing a budget and budget-related legislation, (2) require legislators to forfeit salary and

reimbursement for living expenses for every day they fail to pass a budget after the June 15 deadline, and (3) leave unchanged the two-thirds vote requirement for raising taxes. These descriptions follow the language of the initiative and its statement of "Purpose and Intent." "By essentially repeating the operative language of [the initiative], the Attorney General has complied with the mandate that he provide the electorate with 'a true and impartial statement of the purpose of the measure[.]'" (*Id.* at p. 443.)

We disagree with respondent court's perception that the language, "RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES," is misleading because some voters might misconstrue it to mean the measure would have to pass in order to continue the two-thirds bar for raising taxes. The ballot title and summary plainly states Proposition 25 would "change" the vote requirement for budget bill from two-thirds to a simple majority and "retain[]" the two-thirds vote requirement for taxes. In context, the ballot title and summary draw for the voters a distinction between the laws that will be changed (those pertaining to the number of votes needed to adopt the budget (Cal. Const., art IV, § 12)) and the laws that will not be changed (those pertaining to the number of votes needed to raise taxes (Cal. Const., art. XIII A, § 3)).

In our view, use of the word "retains" does not suggest that approval of Proposition 25 is necessary to maintain the two-thirds requirement for raising taxes. "Retain" means "to hold or continue to . . . use." (Webster's 3d New Internat. Dict. (1971) p. 1938.) The common understanding of the term as used in the ballot title and summary would be that the existing two-thirds vote requirement

for raising taxes will "continue" if Proposition 25 is approved-- an understanding consistent with the measure's stated "Purpose and Intent."

At most, our perception compared to that of respondent court indicates that reasonable minds may differ; but a difference of opinion does not rise to the level of clear and convincing proof that the challenged language in the ballot title and summary and the ballot label is misleading. (*Tinsley, supra*, 150 Cal.App.3d at p. 108.)

As the Attorney General argued in respondent court, because debates regarding changes to California's budget process routinely include a discussion of whether the vote requirement for raising taxes should be lowered, it is reasonable to believe the voters would want to know whether and how Proposition 25 will affect the two-thirds requirement for taxes. By noting that Proposition 25 retains the two-thirds requirement for raising taxes, the title and summary convey the limits as set forth in the measure's section of "Purpose and Intent."

Stated succinctly, the Attorney General reasonably concluded that stating Proposition 25 retains the two-thirds majority for raising taxes is necessary to provide voters with an understanding of the potential impact of the measure. Given the substantial deference that must be afforded to the Attorney General's ballot materials (*Epperson*, 12 Cal.2d at pp. 66, 70), respondent court erred when it balanced the deference owed the Attorney General's ballot materials with the court's own "common sense" interpretation of the challenged language (an interpretation that was not raised by the

opponents of the initiative measure). (Cf. *Lungren, supra*, 48 Cal.App.4th at p. 441.)

We also reject real party in interest's contention that aside from Proposition 25's nonbinding statement of "Purpose and Intent," the *substantive* provisions of the initiative measure would allow for the raising of taxes in appropriations bills attached to a budget bill passed by a majority vote.

The contention relies on the following provision contained in Proposition 25, which would amend article IV, section 12 of the state Constitution as follows: "(e)(1) Notwithstanding any other provision of law or this Constitution, the budget bill and other bills providing for appropriations related to the budget bill may be passed in each house by rollcall vote entered in the journal, a majority of the membership concurring, to take effect immediately upon being signed by the Governor or upon a date specified in the legislation. . . ."

Real party in interest argues that, because of the aforesaid substantive provision of Proposition 25 (assuming it were adopted by the voters), if a tax increase were included in an appropriations bill related to the budget bill, a simple majority vote would control despite the existence of the two-thirds vote requirement of article XIII A, § 3 of the Constitution, because the "notwithstanding" clause overrides conflicting provisions of the state Constitution. Thus, it follows that the language, "RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES," is false and misleading because the real intent behind Proposition 25 is "to create an alternate mechanism for certain

bills--bills that can (and almost certainly would) contain tax increases--to be adopted by a simple majority vote."

However, Proposition 25 would affect only the budget bill and other bills providing for *appropriations* related to the budget bill. Indeed, the annual budget bill is a list of appropriations, "'itemizing recommended expenditures' for the ensuing fiscal year." (*Planned Parenthood Affiliates v. Swoap* (1985) 173 Cal.App.3d 1187, 1197.) By definition, appropriations are not taxes. Accordingly, we find nothing in the substantive provisions of Proposition 25 that would give a green light to the Legislature to circumvent the existing constitutional requirement of a two-thirds vote to raise taxes.

Moreover, the "Purpose and Intent" section of Proposition 25 clearly states: "This measure will not change Proposition 13's property tax limitations in any way. This measure will not change the two-thirds vote requirement for the Legislature to raise taxes."

A court must refer to the *entire* initiative to determine its purpose and intent, even when there is no ambiguity in the statutory provisions. (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1039.) "'The [initiative's] language must . . . be construed in the context of the statute as a whole and the [initiative's] overall . . . scheme." (*Id.* at p. 1037.)

In our view, Proposition 25 cannot be interpreted to operate as an end-run around the two-thirds vote requirement for raising taxes. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 979 [a "literal" construction of a measure "will not control when such a

construction would frustrate the manifest purpose of the enactment as a whole."]; see also *Westly v. Board of Administration* (2003) 105 Cal.App.4th 1095, 1109 ["The rules of statutory construction are the same for initiative enactments as for legislative enactments. [Citation.] The goal is to determine and effectuate voter intent."].)

From the inception of this litigation, petitioners, including the proponents of Proposition 25, have stated repeatedly that there is nothing in initiative that will permit the Legislature, either directly in the budget bill or in an appropriations bill relating to the budget bill, to raise taxes by a simple majority vote. And they have stood firm that the measure's statement of "Purpose and Intent" means exactly what the initiative provides: Proposition 25 will not change the present vote requirement for raising taxes. To attempt at some point in the future to take a different tack would perpetrate a gross fraud on the voters of this state.

In his opposition to the writ of mandate filed in respondent court, the Attorney General states: "What Proposition 25 does not do is change the vote requirement needed for the Legislature to increase taxes"; "The measure would only amend the article of the Constitution that contains legislative vote requirements for the budget The measure does not touch the article of the Constitution that requires a two-thirds vote for taxes" (original italics); "[T]he express intent of the measure is to retain the integrity of Article XIII A, § 3, and avoid changing the voting requirement for tax increases"; "Proposition 25 would not allow for the Legislature to pass a budget-related bill that included a

tax with a majority vote; such a bill would still be subject to the two-thirds vote required under article XIII A, § 3."

In its opposition to the writ of mandate filed in respondent court, the Yes on 25 group said among other things: "The Attorney General's circulating title and summary [which mirrors almost exactly the title and summary here at issue] appeared on each of the petitions in support of the Act that was circulated among the voters for signature. Approximately a million voters -- having been told that this measure would not affect the two-third vote requirement for taxes -- signed the petition"; "[The] claim . . . that Proposition 25 would allow . . . changes [in taxes] to be adopted by a majority is absolutely wrong The Legislature would either have to adopt the entire measure by two-thirds, or adopt the appropriations portion by a majority vote and separately adopt the tax provisions by a two-thirds vote"; "[T]he only reasonable interpretation of Proposition 25 . . . is that it is only intended to reform the budget appropriation process and that it does not change the two-thirds vote requirement to increase taxes" (Original italics.)

At the hearing in respondent court, the Attorney General conceded that, if Proposition 25 passes, given its statement of purpose and intent of retaining a two-thirds majority for taxes, any effort by the Legislature to include a tax bill within an appropriations bill could be challenged as a violation of the "stated purpose of Proposition 25, *and they would be right.*" (Italics added.)

At that same hearing, counsel for the Yes on 25 group conceded that, to construe Proposition 25 as permitting the Legislature to raise taxes by a majority vote "would lead to an absurd result and . . . violate every known protocol of statutory construction."

Stated succinctly, petitioners have staked out a position on the continuing vitality of the two-thirds vote requirement for raising taxes from which there can, in the law, be no retreat.

DISPOSITION

Petitioners have sought the issuance of a peremptory writ in the first instance, and real party in interest has filed opposition thereto. The procedural requirements delineated in *Palma v. U.S. Industrial Fasteners, Inc.*, *supra*, 36 Cal.3d 171 have been satisfied, and we are authorized to issue the requested relief.

Let a peremptory writ of mandate issue directing respondent court to vacate its judgment entered on August 5, 2010, insofar as it compels the Secretary of State to delete from the ballot title and summary and the ballot label the language, "RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES." The Attorney General's original ballot title and summary and ballot label, attached as Appendix A to this opinion, are the materials to be delivered by the Secretary of State to the State Printer for inclusion on the November ballot. This decision is final forthwith as to this court. (See Cal. Rules of Court, rule 8.490(b)(3).)

The temporary stay order issued by this court on August 6, 2010, is vacated, and the following stay order shall remain in effect until this decision is final for purposes of review:

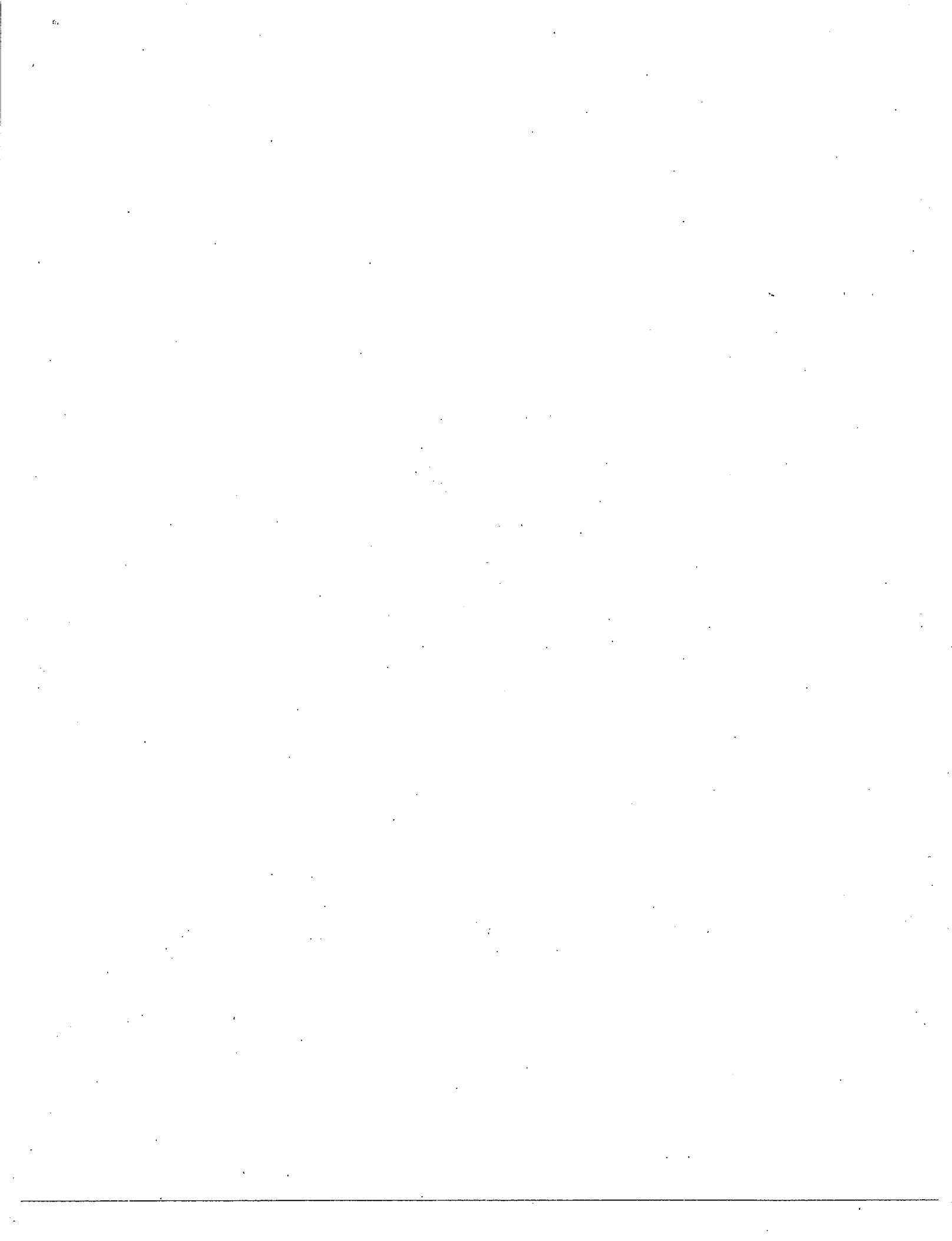
The Secretary of State shall not cause to be submitted to the State Printer (nor shall the State Printer use) any language for ballot title and summary and the ballot label for Proposition 25 except for the language included in Appendix A to this opinion.

BY THE COURT:

SCOTLAND, P.J.

RAYE, J.

HULL, J.



OFFICIAL TITLE AND SUMMARY
PREPARED BY THE ATTORNEY GENERAL

Proposition 25

July 2, 2010
Initiative 09-0057

BALLOT TITLE AND SUMMARY

CHANGES LEGISLATIVE VOTE REQUIREMENT TO PASS BUDGET AND BUDGET-RELATED LEGISLATION FROM TWO-THIRDS TO A SIMPLE MAJORITY. RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Changes the legislative vote requirement necessary to pass the state budget and spending bills related to the budget from two-thirds to a simple majority.
- Provides that if the Legislature fails to pass a budget bill by June 15, all members of the Legislature will permanently forfeit any reimbursement for salary and expenses for every day until the day the Legislature passes a budget bill.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- In some years, the contents of the state budget and related legislation could be changed due to the lower legislative vote requirements in this measure. The extent of these changes would depend on a number of factors, including the state's financial circumstances, the composition of the Legislature, and its future actions.
- In any year the Legislature has not sent a budget to the Governor on time, there would be a reduction in state legislator compensation costs of about \$50,000 for each late day.

SUBJECT TO COURT
ORDERED CHANGES

APPENDIX A

OFFICIAL TITLE AND SUMMARY
PREPARED BY THE ATTORNEY GENERAL

Proposition 25

July 2, 2010
Initiative 09-0057

BALLOT LABEL

CHANGES LEGISLATIVE VOTE REQUIREMENT TO PASS BUDGET AND BUDGET-RELATED LEGISLATION FROM TWO-THIRDS TO A SIMPLE MAJORITY. RETAINS TWO-THIRDS VOTE REQUIREMENT FOR TAXES. INITIATIVE CONSTITUTIONAL AMENDMENT. Legislature permanently forfeits daily salary and expenses until budget bill passes. Fiscal Impact: In some years, the contents of the state budget could be changed due to the lower legislative vote requirement in this measure. The extent of changes would depend on the Legislature's future actions.

SUBJECT TO COURT
ORDERED CHANGES

October 14, 2009

09 - 0057

VIA MESSENGER

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Krystal M. Paris

RECEIVED

OCT 15 2009

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: *Passing the Budget on Time Act of 2010*

Dear Ms. Paris:

Pursuant to Elections Code section 9002, we request that the Attorney General prepare a title and summary of a measure entitled "Passing the Budget on Time Act of 2010." The text of the measure, a check for \$200.00, the address at which we are registered to vote and the signed statement certifying that we will not willfully allow initiative signatures to be used for purposes other than qualification of the measure are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

James C. Harrison
Thomas A. Willis
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Sincerely,

 James C. Harrison

 Thomas A. Willis

JH:NL
Enclosures
(00092365)

SECTION 1. Title.

This measure shall be known and may be cited as the "On-Time Budget Act of 2010."

SECTION 2. Findings and Declarations.

The People of the State of California find and declare that:

1. For more than 20 years, the California Legislature has been unable to meet its constitutional duty to pass a Budget Act by June 15. In many of those years, the Legislature did not pass a Budget Act until the month of August, and in 2008, the Budget Act was not passed until September 16, more than three months late.
2. Late budget passage can have a sudden and devastating effect on individual Californians and California businesses. Individuals and families can be deprived of essential governmental services and businesses are subject to protracted delays in payments for services rendered to the State.
3. A major cause of the inability of the Legislature to pass a budget in a timely manner is the supermajority two-thirds vote required to pass a budget. Political party leaders refuse to compromise to solve the State's budget problem and have used the two-thirds vote requirement to hold up the budget or to leverage special interest concessions that benefit only a handful of politicians.

4. ~~California, Rhode Island and Arkansas are the only states in the country that require a vote of two-thirds or more of the legislature to pass a budget.~~
5. A second major cause of the inability of the Legislature to pass a budget on time is that individual Legislators have no incentive for doing so. Whether they adopt a budget on time or not has no effect upon those elected to represent the voters. In order to give the Legislature an incentive to pass the annual state budget on time, Legislators should not be paid or reimbursed for living expenses if they fail to enact the budget on time. This measure requires incumbents to permanently forfeit their salaries and expenses for each day the budget is late.

SECTION 3. Purpose and Intent.

1. The People enact this measure to end budget delays by changing the legislative vote necessary to pass the budget from two-thirds to a majority vote and by requiring Legislators to forfeit their pay if the Legislature fails to pass the budget on time.

2. This measure will not change Proposition 13's property tax limitations in any way. This measure will not change the two-thirds vote requirement for the Legislature to raise taxes.

SECTION 4. Section 12 of Article IV of the California Constitution is amended to read:

SEC. 12 (a) Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided.

(b) The Governor and the Governor-elect may require a state agency, officer or employee to furnish whatever information is deemed necessary to prepare the budget.

(c)(1) The budget shall be accompanied by a budget bill itemizing recommended expenditures.

(2) The budget bill shall be introduced immediately in each house by the persons chairing the committees that consider the budget.

(3) The Legislature shall pass the budget bill by midnight on June 15 of each year.

(4) Until the budget bill has been enacted, the Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature.

(d) No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools, *and*

appropriations in the budget bill and in other bills providing for appropriations related to the budget bill, are void unless passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring.

(e)(1) Notwithstanding any other provision of law or of this Constitution, the budget bill and other bills providing for appropriations related to the budget bill may be passed in each house by rollcall vote entered in the journal, a majority of the membership concurring, to take effect immediately upon being signed by the Governor or upon a date specified in the legislation. Nothing in this subdivision shall affect the vote requirement for appropriations for the public schools contained in subdivision (d) of this section and in subdivision (b) of Section 8 of this article.

(2) For purposes of this section, other bills providing for appropriations related to the budget bill shall consist only of bills identified as related to the budget in the budget bill passed by the Legislature.

(ef) The Legislature may control the submission, approval, and enforcement of budgets and the filing of claims for all state agencies.

(fg) For the 2004-05 fiscal year, or any subsequent fiscal year, the Legislature may not send to the Governor for consideration, nor may the Governor sign into law, a budget bill that would appropriate from the General Fund, for that fiscal year, a total amount that, when combined with all appropriations from the General Fund for that fiscal year made as of the date of the budget bill's passage, and the amount of any General

Fund moneys transferred to the Budget Stabilization Account for that fiscal year pursuant to Section 20 of Article XVI, exceeds General Fund revenues for that fiscal year estimated as of the date of the budget bill's passage. That estimate of General Fund revenues shall be set forth in the budget bill passed by the Legislature.

(h) Notwithstanding any other provision of law or of this Constitution, including Sections 4 and 8 of Article III and Sections 4 and 12(c) of this Article, in any year in which the budget bill is not passed by the Legislature by midnight on June 15, there shall be no appropriation from the current budget or future budget to pay any salary or reimbursement for travel or living expenses for Members of the Legislature during any regular or special session for the period from midnight on June 15 until the day that the budget bill is presented to the Governor. No salary or reimbursement for travel or living expenses forfeited pursuant to this subdivision shall be paid retroactively.

SECTION 5. Severability.

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, such finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.