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6 *Exempt from filing fees pursuant
to Government Code section 6103*

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8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
9 **(CENTRAL DIVISION)**

10 JULIAN-CUYAMACA FIRE PROTECTION
DISTRICT,

11 Petitioner,

12 v.

13 MICHAEL VU, IN HIS CAPACITY AS
14 THE SAN DIEGO COUNTY REGISTRAR
OF VOTERS, COUNTY OF SAN DIEGO,

15 Respondents,

16 WILLIAM EVERETT, KAREN KIEFER,
and PATRICIA LANDIS

17 Real Parties in Interest.

18 CASE NO. 37-2018-00042240-CU-WM-CTL

19 **EX PARTE PETITION FOR ALTERNATIVE
WRIT OF MANDATE AND APPLICATION
FOR CALENDAR PREFERENCE
IMMEDIATE ACTION REQUIRED:
ELECTION-RELATED MATTER
ENTITLED TO CALENDAR PREFERENCE
(CCP § 35) IN ORDER TO COMPLY WITH
NOVEMBER 6, 2018 GENERAL ELECTION
BALLOT REQUIREMENTS**

20 IC Judge: Timothy B. Taylor
Department: C-72

21 Hearing Date: August 30, 2018
Hearing Time: 8:30 a.m.

22 Case Filed: August 22, 2018
Trial Date: None Set

23 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

24 **PLEASE TAKE NOTICE THAT** on August 30, 2018, at 8:30 a.m., or as soon thereafter as
25 this matter may be heard, in Department C-72 of the above-entitled court, Petitioner, the Julian-
Cuyamaca Fire Protection District (“Petition”) will apply *ex parte* to the Court for an order directing
26 Respondents to do all acts necessary to place the voters’ duly qualified Citizen’s Initiative to Repeal
and Replace Julian-Cuyamaca Fire Protection District Benefit Fee on the ballot for the November 6,
27 2018 election.

1 This application is made pursuant to Rules of Court, Rule 3.1202, subdivision (c).

2 **I. INTRODUCTION**

3 Petitioner hereby applies, *ex parte*, for an immediate issuance of an Alternative Writ of
4 Mandate directing Respondents to do all acts necessary to place the voters' duly qualified Citizen's
5 Initiative to Repeal and Replace Julian-Cuyamaca Fire Protection District (the "District") Benefit Fee
6 ("Initiative") on the ballot for the November 6, 2018 election ("Election").

7 The grounds for this application are that: (1) Petitioner has been informed by the County of
8 San Diego (the "County") that because the District did not comply with California Elections Code
9 section 9310, that the Initiative will not be placed on the upcoming November 6, 2018 general election
10 unless ordered by a Court to do so; (2) the District is now in compliance with California Elections Code
11 section 9310 and has ordered the Initiative to be submitted to a vote of the electorate; (3) the County
12 has notified the District that it will place the Initiative on the November 6, 2018 if ordered by this Court
13 to do so; (4) due to election requirements, the final date to obtain this order is August 31, 2018; and
14 (5) failing to have the Initiative on the November 2018 ballot would be a significant restraint on the
15 electorate's power of initiative.

16 **II. THE REQUISITE NOTICE HAS BEEN GIVEN**

17 California Rules of Court, Rules 3.1203 and 3.1204 (b) prescribe the notice requirements for an
18 *ex parte* application. On August 23, 2018 counsel for Petitioner gave notice of this *ex parte* application
19 to Respondents. (Declaration of Gena B. Burns ("Burns Decl."), ¶ 10, Ex. D.) Respondents do not
20 oppose this motion. (*Id.*) On August 24, 2018, counsel for Petitioner gave notice of this *ex parte*
21 application to Real Parties. (Burns Decl., ¶ 11, Ex. E.) Real Parties Karen Kiefer and Patricia Landis
22 oppose this motion. (Burns Decl., ¶ 11.) As of August 28, 2018, Real Party William Everett has not
23 communicated his position to Petitioner's counsel. (*Id.*) Petitioner's counsel provided a copy of this
24 application, the proposed order, and the declaration of Gena B. Burns via email to all parties on August
25 28, 2018. (Burns Decl., ¶ 12.)

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III. FACTUAL BACKGROUND

Real Parties in Interest, William Everett, Karen Kiefer, and Patricia Landis (“Real Parties”) are the listed proponents of Citizens’ Initiative to Repeal and Replace Julian-Cuyamaca Fire Protection District Benefit Fee (the “Initiative”). Real Parties circulated the Initiative among the voters of the District for signatures. (Burns Decl., ¶ 3, Ex. A.) On April 20, 2018, the proponents of the Initiative submitted the petition signatures to the County of San Diego Registrar of Voters for signature verification pursuant to California Elections Code section 9309. (Burns Decl. ¶ 4, Ex. B.) On May 11, 2018 the Registrar of Voters certified that the initiative petition had qualified with a sufficient number of signatures for the November 2018 ballot. (Burns Decl. ¶ 5.) Pursuant to the California Elections Code, once an initiative is certified by the district election official (the County Registrar of Voters), the Board of Directors must either adopt the ordinance, without alteration, either at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented; or submit the ordinance, without alteration, to the voters pursuant to section 1405. (Cal. Elec. Code § 9310.) Further, because the Initiative proposes a special tax pursuant to Article XIII, section 2(d) of the California Constitution, the District’s Board of Director (the “Board”) is *required* to submit it to a vote of the electorate. The Board inadvertently overlooked this procedure. (Burns Decl. ¶ 6.)

On Friday, August 17, 2018, Respondents, through its County Counsel, informed the District that because the District did not take the action as set forth in California Elections Code section 9310 that the Initiative could not be placed on the November ballot. (Burns Decl. ¶ 7.) However, Respondents, again through its County Counsel, indicated the Initiative could appear on the November ballot only after the District's Board of Directors: (1) took the necessary steps to comply with section 9310, and (2) obtained a court order. (Burns Decl. ¶ 7.) Accordingly, on August 21, 2018,¹ the Board Adopted Resolution 2018-05. (Burns Decl. ¶ 8, Ex. C.)

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¹ The August 21, 2018 meeting was called as a special meeting which required the Board to provide 24 hours' notice pursuant to the Ralph M. Brown Act, Cal. Gov't Code § 54950 *et seq.* As such, once the Board was aware of the issue, it acted expeditiously. (Burns Decl. ¶ 8.)

IV. LEGAL ANALYSIS

a. The Requested Writ Relief is Appropriate

Election disputes are matters in which writ relief is appropriate because of the lack of a plain, speedy and adequate remedy through the usual appeal process. *Hill v. Superior Court of County of Sacramento*, (1911) 15 Cal.App. 307, 313. Further, judicial review of an initiative's validity may be invoked before the measure is submitted to the voters, which is typically done through a writ of mandate. See e.g., *Brosnahan v. Eu* (1982) 31 Cal. 3d 1.

b. The County cannot Refuse to Place the Initiative on the Ballot

Recognizing that California stands apart from other states by virtue of its direct statutory initiative process, the courts have long held that:

The initiative and referendum are not rights "granted the people, but ... power[s] reserved by them." Declaring it "the duty of the courts to jealously guard this right of the people", the courts have described the initiative and referendum as articulating "one of the most precious rights of our democratic process. [I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it."

Rossi v. Brown (1995) 9 Cal.4th 688, 695 (internal citations omitted).

Courts have uniformly condemned local governments when these legislative bodies have refused to place duly qualified initiatives on the ballot. See *Farley v. Healey* (1967) 67 Cal.2d 325, 327; *McFadden v. Jordan* (1948) 32 Cal.2d 330, 332; *Citizens for Responsible Behavior v. Superior Cour*, (1991) 1 Cal.App.4th 1013, 1021; *deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1209; *Citizens Against a New Jail v. Board of Supervisors* (1976) 63 Cal.App.3d 559, 561. “Given compliance with the formal requirements for submitting an initiative, the registrar must place it on the ballot unless he is directed to do otherwise by a court on a compelling showing that a proper case has been established for interfering with the initiative power.” *Save Stanislaus Area Farm Econ. v. Bd. of Supervisors*, 13 Cal. App. 4th 141, 148, 16 Cal. Rptr. 2d 408 (1993) (citations omitted). **“The law is clear: A local government is not empowered to refuse to place a duly certified initiative on the ballot.”** *Id.* at 149 (1993) (emphasis added). Accordingly, it is improper for the County to refuse to place the Initiative on the November 2018 ballot.

On this basis alone, Petitioner respectfully requests that the Court order Respondents to place the voters' duly qualified Citizen's Initiative to Repeal and Replace Julian-Cuyamaca Fire Protection District Benefit Fee on the ballot for the November 6, 2018 election.

c. Regardless, the District has Substantially Complied with the California Elections Code

Courts liberally construe provisions regarding the initiative power such that questions can be resolved in favor of maintaining the people's right to enact laws via the initiative power. *Costa v. Superior Court* (2006) 37 Cal. 4th 986, 1013.

Thus, when California courts have encountered relatively minor defects in the electoral process as a realistic and practical matter, past decisions have generally concluded that it would be inappropriate to preclude the electorate from voting on a measure on the basis of such a discrepancy or defect. In such cases, as long as the fundamental purposes underlying the applicable constitutional or statutory requirements have been fulfilled, the decisions have concluded that there has been "substantial compliance" with the applicable constitutional or statutory provisions and that invalidation of a petition and preclusion of a vote on the measure is not warranted.

Id. Procedural requirements imposed on the Legislature and local governments do not constrain the electorate's initiative power without evidence that such was their intended purpose. *California Cannabis Coal. v. City of Upland* (2017) 3 Cal. 5th 924, 93. See also, *Farley v. Healey* (1967) 67 Cal. 2d 325, 327 ("[g]iven compliance with the formal requirements for submitting an initiative, the registrar must place it on the ballot unless he is directed to do otherwise by a court on a compelling showing that a proper case has been established for interfering with the initiative power.")

In this instance, the adoption of the Resolution by the District's Board of Directors was a procedural step² and there is not a present challenge to the substance of the Initiative. *Native Am. Sacred Site & Envt'l Protection Ass'n v City of San Juan Capistrano* (2004) 120 CA4th 961 (city's duty to adopt qualified voter-sponsored initiative, or place it on ballot, is ministerial and mandatory).

² Most challenges to initiatives concern the form or substance of the initiative themselves rather than acts of the governing agency. See e.g., *Hebard v. Bybee*, 65 Cal. App. 4th 1331 (1998); *Myers v. Patterson*, 196 Cal. App. 3d 130 (1987); *Hayward Area Planning Ass'n v. Superior Court*, 218 Cal. App. 3d 53 (1990); *Mervyn's v. Reyes*, 69 Cal. App. 4th 93 (1998); *Assembly v. Deukmejian*, 30 Cal. 3d 638 (1982). Accordingly, it seems highly unlikely that a procedure, which essentially amounts to a rubber stamp to submit an initiative to the electorate, is an appropriate reason to halt the initiative process.

1 Significantly, section 9310 and Article XIII, section 2(d) of the California Constitution *require* the
2 Board of Directors to submit this Initiative for a special tax to the electorate. Likewise, the County
3 confirmed that it proceeded with all requisite steps under the California Elections Code to place the
4 Initiative on the November ballot, but the District must obtain a Court order by August 31, 2018 in
5 order to proceed. (Burns Decl. ¶ 7.) There is no concern that the electorate will be confused or
6 prejudiced. In fact, the Initiative states that, “the Initiative that be submitted to the voters within the
7 boundaries of the Julian-Cuyamaca Fire Protection District in conjunction with the statewide general
8 election to be held on November 6, 2018.” (Burns Decl., ¶ 3, Ex. A, at p. 2; ¶ 14.) As such, not
9 having the Initiative on the ballot would cause much more confusion and be far more prejudicial to the
10 electorate. There is also no indication that the intent of section 9310 was to allow local government to
11 withhold an initiative from the electorate. In fact, the intended purpose of these statutes is to require
12 “public officials to act expeditiously on initiatives.” *Tuolumne Jobs & Small Business Alliance v.*
13 *Superior Court* (2014) 59 Cal.4th 1029, 1037.

14 The District is now in compliance with the requirements of the California Elections Code.
15 Likewise, not placing the Initiative on the ballot would be highly prejudicial to the voters, contrary to
16 the initiative power as well as the intent of the California Elections Code. Petitioner respectfully
17 requests that the Court order Respondents to take all necessary actions to place the voters’ duly
18 qualified Citizen’s Initiative to Repeal and Replace Julian-Cuyamaca Fire Protection District Benefit
19 Fee on the ballot for the November 6, 2018 election.

20 d. **The District’s Resolution Meets the Legal Requirements**

21 The District has attempted to obtain stipulations to an order that the Initiative appear on the
22 November 6, 2018 ballot, but Real Parties have declined on the grounds that the Resolution was
23 drafted incorrectly. They argue that the entire two pages of the Initiative should have been included in
24 the Resolution and printed on the ballot. That is not the correct process. The full text of an initiative
25 is not included on a ballot. California Elections Code § 13119 sets forth what information is to be
26 included on a ballot:

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(a) The ballots used when voting upon a measure proposed by a local governing body or submitted to the voters as an initiative or referendum measure pursuant to Division 9 (commencing with Section 9000), including a measure authorizing the issuance of bonds or the incurrence of debt, shall have printed on them the words "Shall the measure (stating the nature thereof) be adopted?" Opposite the statement of the measure to be voted on, and to its right, the words "Yes" and "No" shall be printed on separate lines, with voting squares. If a voter stamps a cross (+) in the voting square after the printed word "Yes," his or her vote shall be counted in favor of the adoption of the measure. If he or she stamps a cross (+) in the voting square after the printed word "No," his or her vote shall be counted against its adoption.

(b) If the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.

(c) The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.

(d) For purposes of this section, "local governing body" means the governing body of a city, county, city and county, including a charter city or charter county, or district, including a school district.

Accordingly, this is the information that was included in the Resolution. The Board did not alter the text of the Initiative.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court order Respondents to place the voters' duly qualified Citizen's Initiative to Repeal and Replace Julian-Cuyamaca Fire Protection District Benefit Fee on the ballot for the November 6, 2018 election.

Dated: August 28, 2018

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By:

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