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The Honorable Xavier Becerra,
Attorney General
California Department of Justice
PO Box 944225
Sacramento, CA 94244-2550

RE: Circulating Title and Summary for Initiative 19-0008

Dear Attorney General Becerra:

This firm represents Californians to Stop Higher Property Taxes, a committee primarily formed to oppose qualification and adoption of initiative 17-0055 (which has already qualified for the ballot) and initiative 19-0008. This letter concerns the circulating title and summary issued for initiative 19-0008 recently issued by your office. As you know, initiative 19-0008 proposes to amend Proposition 13 by changing the Constitutional limitation on property taxes for certain non-residential property.

A recent editorial by the Southern California News Group described the title and summary as the “most disreputable ballot description we’ve seen.” Indeed, the Editorial Board concluded that your “betrayal of public trust” in this matter is “shameful.” The *San Diego Union-Tribune* editorial agreed that you “should be ashamed.” And the editor of the *San Francisco Chronicle’s* editorial page called your title and summary process “undemocratic” and a “huge disservice to the electorate.” Columnist Dan Walters, with *CalMatters*, concluded that it is time to take the title and summary process away from your office.

As indicated more fully below, the circulating title and summary issued by your office is also demonstrably false. As a consequence of this error, voters are being provided false information about the purported effect of the proposed initiative, jeopardizing the proponents’ very qualification of the measure for the ballot (Elec. Code § 18600; *San Francisco Forty-Niners v. Nishioka* (1999) 75 Cal.App.4th 637 [Initiative petition which contains objectively inaccurate information, and calculated untruths that substantially mislead and misinform a reasonable voter, is unlawful under Elections Code, and where such a petition is submitted, writ may issue to prevent circulation of undisputed falsehoods.].)

This error was caused when your office deviated from your constitutional and statutory duty to summarize the chief purpose and point of the proposed initiative. Instead, your office strayed into the Legislative Analyst’s duty to offer an “opinion” as to the fiscal impact of the initiative. Worse yet, your opinion is contradicted by the actual history of property tax collections in the state and the opinion of the Legislative Analyst, resulting in a title and summary that is argumentative and prejudicial, all in violation of the Elections Code.

SUMMARY OF LEGAL ISSUE AND ARGUMENT

The proposed initiative (19-0008) would require certain commercial and industrial property to be taxed based on the property's fair market value, as determined by annual reassessment of such property. Thus, the initiative amends Proposition 13, which established that the value of all locally-assessed real property is generally the purchase price of the property adjusted annually for inflation, capped at 2% per year. Once the property's value is determined, the constitutionally limited tax rate of 1% (unless a lower amount is set by a County) would be applied to that new valuation each year.

The initiative provides that any new property tax revenue generated by the initiative is dedicated first to reimburse the state General Fund for any loss in revenue caused by the initiative, and second to cover the substantial administrative costs associated with the new tax assessment system, as well as any taxpayer refunds required by a prior year's overassessment made by a county assessor. The Legislative Analyst estimated that approximately \$1 billion would first be allocated to reimburse these costs. The remaining funds, if any, would be split 60% to local government and 40% to public education.

A. The Attorney General's Duty

Elections Code section 303.5 provides that a circulating title and summary consists of two components: (1) the summary of the chief purpose and points of a proposed initiative measure, in 100 words or less "that affects the Constitution or laws of the state;" and (2) a statement describing the anticipated fiscal impact of the proposed measure, if enacted.

Not surprisingly, the other provisions of the Elections Code also contemplate a difference between the initiative summary and the fiscal impact statement. Indeed, the requirement is found in two different statutes and assigned to two different state officials (See, Elec. Code § 9004 [circulating title and summary prepared by Attorney General]; and § 9005 [estimate of fiscal impact prepared by Legislative Analyst and Department of Finance].)

With respect to the fiscal impact statement provided to your office by the Legislative Analyst and Department of Finance under Elections Code section 9005, it is necessarily described in the statute as an "opinion" and "estimate" of the impact the initiative will have on state and local government finances.

Both requirements are subject to the same legal standard. The circulating title and summary and estimate of fiscal impact must be truthful, impartial, and not argumentative or likely to create prejudice either for or against the proposed initiative (Elec. Code § 9051).

B. The Circulating Title and Summary does not describe the proposed initiative's effect on the Constitution and laws of the state – It states your opinion about the fiscal impact of the proposed initiative.

Instead of summarizing the initiative and the change in *law* that it proposes, the circulating title and summary states your opinion that the measure will increase funding for

schools – not once, but three times:

“INCREASES FUNDING FOR PUBLIC SCHOOLS, COMMUNITY COLLEGES,
AND LOCAL GOVERNMENT SERVICES...”

“Increases funding for K-12 public schools, community colleges, and local
governments...”

“Increased education funding will supplement existing school funding guarantee.”

Whether the initiative will result in an increase in school funding is an opinion on the fiscal impact of the initiative, not a description of the law proposed. The law proposes to change the way commercial and industrial property is taxed. The law also proposes to allocate any increase in revenue derived from that change. It is also noteworthy that the Initiative is not self-executing in this regard. It requires the Legislature to enact a statute “for determining the additional revenue generated in each county in each fiscal year,” which will then be used to calculate the allocation of any new tax revenue generated by the Initiative (See, proposed § 8.6(a).)

One of the potential beneficiaries provided for by the initiative is the public school system, but before schools can benefit, there must be an actual increase in tax revenue. However, another potential outcome of the initiative is a decrease in funding for public schools from the prior year. Thus, the three statements are not only inappropriate as part of the circulating title and summary, they are false.

C. The proposed initiative may or may not result in an increase in funding for public schools.

Under current law, all real property is taxed at a maximum rate of 1% based on the “full cash value” of that property. The full cash value (assessed value) is the lesser of the fair market value at the time of purchase, as adjusted either for inflation (up to 2% per year), or the property’s then fair market value, reduced by factors that result in a decline in value (Cal. Const. Art. XIII A, § 2). The initiative changes the determination of “full cash value” for certain commercial and industrial property to the fair market value, as determined by the county assessor each year.

When the statewide cumulative fair market value of such real property grows by more than the rate of inflation, particularly over 2%, then the initiative will result in an increase in property tax revenue over the prior year. However, when the statewide cumulative value of real property declines, there will be a decrease in property tax revenue from the prior year. This decline can occur for multiple years until the value of real property rebounds. The initiative actually exacerbates this effect by removing the 2% cap on annual growth of full cash value. Doing so makes it even more likely that a more modest statewide decline in commercial and industrial property value will result in schools receiving less property tax revenue than they received in the prior year.

The potential for a decrease in property tax revenue from year-to-year is not just speculation. It occurs frequently. According to data found on the Board of Equalization's website, since 1990, the annual market value of commercial and industrial property has declined eight times. In 2010 alone, the decline was more than 19% in value from the prior year. This decline in value would have resulted in a significant reduction in actual property tax revenue collected from the prior year.

The Legislative Analyst was careful to recognize that his estimate of fiscal impact, measured by tax revenue received, is subject to change. He stated that the amount of property taxes paid would by commercial and industrial property owners would increase "in most years." He also stated that the "amount of revenue raised in a given year would depend heavily on the strength of the state's real estate markets in that year." Finally, he noted that the "new revenue stream would fluctuate more from year to year than property taxes have historically." Indeed, these important clarifying caveats are specifically referenced in the summary of estimate of fiscal impact on state and local government provided by the Legislative Analyst and Department of Finance.

Lastly, even if there is a resulting increase in property tax revenue, substantial reimbursement of the state General Fund, county assessor costs, as well as refunds of prior year overassessments all take priority over school funding. In fact, school funding is the last in order of funding priority under the initiative, yet your title and summary identifies it as the first priority and references three times, while excluding any mention of the priority allocations. According to the Legislative Analyst, schools would not receive any increase in funding unless the initiative results in an increase in property tax revenue of nearly \$1 billion. Your title and summary makes no mention of this contingency.

In fact, your circulating title and summary includes no caveats – it falsely informs voters that school funding will only increase, year after year. It is notable that the circulating title and summary prepared for this measure is quite different than the circulating title and summary prepared by your office for the nearly identical initiative that has already qualified for the ballot by the same proponents (17-0055). That title and summary properly described the legal effect of the initiative (not a prediction of fiscal impact) as follows: "dedicates portion of *any* increased revenue to local services and to supplement, not replace, state's minimum-funding guarantee to schools" (emphasis added).

In other words, the prior title and summary for essentially the same initiative was not false. One is left to wonder why the circulating title and summary for initiative 19-0008 was changed so dramatically from the circulating title and summary provided for initiative 17-0055?

The following comparison illustrates the complete re-write of the prior circulating title and summary (deleted text shown in ~~strikeout type~~ and new text shown in underlined type):

~~REQUIRES INCREASES FUNDING FOR PUBLIC SCHOOLS, COMMUNITY COLLEGES, AND LOCAL GOVERNMENT SERVICES BY CHANGING TAX ASSESSMENT OF CERTAIN COMMERCIAL AND INDUSTRIAL REAL~~

~~PROPERTY TO BE TAXED BASED ON FAIR MARKET VALUE. DEDICATES PORTION OF ANY INCREASED REVENUE TO EDUCATION AND LOCAL SERVICES. INITIATIVE CONSTITUTIONAL AMENDMENT.~~

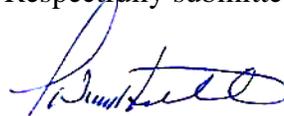
~~Increases funding for K-12 public schools, community colleges, and local governments by requiring that Taxes certain commercial and industrial real property be taxed based on fair current -market value. —rather than, under current law, the purchase price with limited inflation. Exempts from this change: residential properties; agricultural properties; and owners of commercial and industrial properties with combined value of \$3 million or less. Increased education funding will supplement existing school funding guarantees. certain small businesses. Dedicates portion of any increased revenue to local services and to supplement, not replace, state's minimum funding guarantee to schools. Provides tax Exempts small businesses from personal property tax; on for other businesses, exempts \$500,000 worth of tangible personal property. used for business and all personal property used for certain small businesses.~~

D. Remedy

The proponents of initiative 19-0008 are presently circulating petitions among the voters with a false circulating title and summary. The qualification of the measure is imperiled by your office's error and non-compliance with the Elections Code. We urge you to correct the error as quickly as possible and to issue an amended circulating title and summary to the proponents. If the initiative ultimately qualifies for the ballot, the circulating title and summary should be disregarded when preparing a title and summary and ballot label for the qualified initiative next summer. If the same error is carried into the Voter Information Guide and ballots, our client will be compelled to seek relief from the Courts.

If you have any further questions, please do not hesitate to contact the undersigned.

Respectfully submitted,



Thomas W. Hiltachk

TWH/km

Cc: Anabel Renteria, Initiative Coordinator