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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SACRAMENTO**

10 DEWAYNE COX, an individual,

11 Petitioner,

12 v.

13 ALEX PADILLA, as the Secretary of State of
14 California,

15 Respondent.
16

17 JERRY HILL, in his official capacity as State
Printer; XAVIER BECERRA, in his official
18 capacity as ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA,

19 Real Parties In Interest.
20

Case No.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF
MANDATE**

[ELEC. CODE, §§ 9092, 13314]

Date:

Time:

Dept:

Judge:

Petition Filed: 07/29/20

[Proposition 23]
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TABLE OF CONTENTS

I. INTRODUCTION	1
A. The Subject of Proposition 23: End-Stage Renal Disease and Dialysis Clinics	1
B. Proposition 23	1
II. THE ATTORNEY GENERAL’S PROPOSED BALLOT LABEL AND TITLE AND SUMMARY THAT ARE THE SUBJECT OF THIS PETITION FOR WRIT OF MANDATE.....	2
A. Ballot Label.....	3
B. Title and Summary	3
III. FACTUAL BACKGROUND	4
A. Existing Law Regarding the Regulation and Staffing of Chronic Dialysis Clinics	4
B. Proposition 23	6
IV. STANDARD OF REVIEW	7
V. ARGUMENT	9
A. THE BALLOT LABEL FOR PROPOSITION 23 VIOLATES THE ELECTIONS CODE BUT CAN BE EASILY REMEDIED.....	9
1. The Ballot Label Does Not Accurately Describe the Character and Real Purpose of Proposition 23.....	9
2. The Ballot Label Creates a False Impression that the Current Law is Deficient.	9
3. The Ballot Label is Misleading Because it Inaccurately Describes the Requirements of Proposition 23.....	11
4. The Ballot Label Language Can Be Easily Fixed.	12
B. THE BALLOT TITLE AND SUMMARY FOR PROPOSITION 23 SUFFERS FROM THE SAME DEFECT AS THE BALLOT LABEL	13
VI. CONCLUSION	14

TABLE OF AUTHORITIES

CASES

<i>Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization</i> (1978) 22 Cal.3d 208	8
<i>Becerra v. Superior Court</i> (2017) 19 Cal.App.5th 967	8
<i>Brennan v. Board of Supervisors</i> (1981) 125 Cal.App.3d 87.....	7
<i>Citizens for Responsible Government v. City of Albany</i> (1997) 56 Cal.App.4th 1199	7, 11
<i>Clark v. Jordan</i> (1936) 7 Cal.2d 248.....	8
<i>Horneff v. City and County of San Francisco</i> (2003) 110 Cal.App.4th 814	8
<i>Horwath v. City of East Palo Alto</i> (1989) 212 Cal.App.3d 766.....	8
<i>Huntington Beach City Council v. Superior Court</i> (2002) 94 Cal.App.4th 1417	8, 10, 11
<i>Lungren v. Superior Court</i> (1996) 48 Cal.App.4th 435	8, 11
<i>McDonough v. Superior Court (City of San Jose)</i> (2012) 204 Cal.App.4th 1169	8, 11
<i>Stanson v. Mott</i> (1976) 17 Cal.3d 206	7
<i>Tinsley v. Superior Court</i> (1983) 150 Cal.App.3d 90.....	8
<i>Yes on 25, Citizens for an On-Time Budget v. Superior Court</i> (2010) 189 Cal.App.4th 1445	8, 9

CODES

Business and Professions Code Division 2, Chapter 5	6
California Code of Regulations Sections 75172-75208.....	4

1	California Health and Safety Code	
2	Section 1225.....	4
3	Elections Code	
4	Section 9051.....	3, 7, 9, 13
5	Section 9052.....	3
6	Section 9092.....	7
7	Section 13247.....	3
8	Section 13314.....	7
9	Federal Code of Regulations Title 42	
10	Sections 494.1 – 494.180	4, 6
11	Insurance Code,	
12	Section 791.02.....	12
13		
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I. INTRODUCTION

This lawsuit seeks to correct a false statement and the false impression it creates for voters in the proposed ballot label and title and summary for Proposition 23. Because they create a false impression, the ballot label and title and summary—which were prepared by Real Party in Interest ATTORNEY GENERAL XAVIER BECERRAA—are argumentative and prejudicial in violation of the Elections Code. This Court is empowered to correct such errors, and a correction in this case would be easily done—perhaps with the addition of just one word.¹

A. The Subject of Proposition 23: End-Stage Renal Disease and Dialysis Clinics

About 80,000 Californians suffer from end-stage renal disease – kidney failure. Dialysis mimics the function of the kidney by removing blood from a patient and filtering it through a machine to remove waste and excess fluids. This process is required to be performed about three times per week for about four hours each time. Without this treatment, the patient will die. Most people receive such treatment at a chronic dialysis clinic (“CDC”). There are about 600 such clinics in California staffed by thousands of highly trained health care professionals. CDCs typically operate six days per week for up to 16 hours per day, and the operation of such clinics is highly regulated by both state and federal law.

State and federal laws that regulate dialysis clinics have long required licensed and specialty medical personnel to operate CDCs, including a medical director, nurse manager, dietician, and social worker, and other certified technicians. In addition, a registered nurse must be on site at all times patients are being treated.

B. Proposition 23

Proposition 23 would impose additional regulations on the operations of CDCs in California. Specifically, it would add four sections to the Health and Safety Code that would place unnecessary and costly burdens on the operation of CDCs. The financial supporter of Proposition 23 is a labor union that has been attempting to organize workers in such clinics for several years. Two years ago, the same union placed Proposition 8 on the ballot targeting the

¹ Even if additional words are required, the label likely would still meet the word limitations. The current ballot label uses only 62 of the allowed 75 words.

1 same dialysis clinics with costly and unnecessary burdens. Voters rejected Proposition 8 by a
2 wide margin.

3 Primary among the new provisions in Proposition 23 is the requirement to have a licensed
4 physician on site at every CDC while patients are being treated. Because CDCs typically operate
5 six days per week for up to 16 hours per day, the initiative would require each CDC to retain
6 multiple physicians to comply with this new requirement. According to the Independent
7 Legislative Analyst, this provision alone would cost every single CDC “several hundred thousand
8 dollars annually, on average” which could add more than \$300 million to the clinics’ costs to
9 provide this life-sustaining treatment.

10 The Attorney General’s ballot label and title and summary is inaccurate and falsely
11 implies that California law does not presently require on-site medical professionals in dialysis
12 clinics—or worse, that such clinics operate entirely without licensed medical professionals. It
13 states (in bold and capitalized letters): **REQUIRES ON-SITE MEDICAL PROFESSIONAL.**

14 As indicated more fully below, state law already requires clinics to have numerous
15 “medical professionals” involved in the treatment of dialysis patients, including the specific
16 requirement that a registered nurse be on site at all times patients are being treated. What
17 Proposition 23 would add to California law is a requirement that a licensed physician be on-site at
18 all times patients are being treated. But the ballot label and title and summary do not say that
19 Proposition 23 imposes an additional requirement of an on-site physician, to the contrary, they
20 falsely suggest that state law currently does not require any medical professional to be on-site
21 during dialysis treatments. By suggesting such a significant deficiency in state law, the ballot
22 label and title and summary are prejudicial and an argument in favor of its approval by the voters.

23 To protect the interests of voters, Petitioners ask this Court to make a simple amendment
24 to truthfully and accurately state what Proposition 23 requires.

25 **II. THE ATTORNEY GENERAL’S PROPOSED BALLOT LABEL AND TITLE AND**
26 **SUMMARY THAT ARE THE SUBJECT OF THIS PETITION FOR WRIT OF**
27 **MANDATE**

28 ///

1 **A. Ballot Label**

2 The “ballot label” is a “condensed version” of the title and summary prepared by the
3 Attorney General. (Elec. Code, § 9051(b).) It is limited to 75 words and is subject to the same
4 legal requirements as the longer title and summary. (*Ibid.*) Most importantly, the ballot label is
5 the description of Proposition 23 printed on every voter’s ballot. In other words, it is the last
6 thing a voter will read when deciding whether to vote “Yes” or “No” on the Proposition. (Elec.
7 Code, § 13247.)
8

9 The Attorney General has proposed the following ballot label for Proposition 23 using
10 only 62 words:

11 **ESTABLISHES STATE REQUIREMENTS FOR KIDNEY**
12 **DIALYSIS CLINICS. REQUIRES ON-SITE MEDICAL**
13 **PROFESSIONAL. INITIATIVE STATUTE.** Requires physician or
14 other specified medical professional on site during dialysis treatment.
15 Prohibits clinics from reducing services without state approval. Prohibits
16 clinics from refusing to treat patients based on payment source. Fiscal
17 Impact: Increased state and local government costs likely in the low tens
18 of millions of dollars annually.

19 (Exhibit B, emphasis in original.)

20 **B. Title and Summary**

21 The “title and summary” contains two parts. The first part is a summary of the chief
22 purpose and point of the proposed initiative and is limited to 100 words. (Elec. Code, §
23 9051(a)(1).) The second part is a summary of the fiscal impact of the proposed initiative on state
24 and local government. (*Id.* § 9052(a).) The title and summary is printed in the State Voter
25 Information Guide by Respondent.

26 The Attorney General has proposed the following as the title and summary for Proposition
27 23 using only 96 words:

28 **ESTABLISHES STATE REQUIREMENTS FOR KIDNEY**
 DIALYSIS CLINICS. REQUIRES ON-SITE MEDICAL
 PROFESSIONAL. INITIATIVE STATUTE.

- Requires at least one licensed physician on site during treatment at outpatient kidney dialysis clinics; authorizes California Department of Public Health to exempt clinics from this requirement if there is a shortage of qualified licensed physicians and the clinic has at least one nurse practitioner or physician assistant on site.
- Requires clinics to report dialysis-related infection data to state and federal governments.
- Prohibits clinics from closing or reducing services without state approval.
- Prohibits clinics from refusing to treat patients based on the source of payment for care.

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

- Increased state and local government costs likely in the low tens of millions of dollars annually.

(Exhibit C, emphasis in original.)

III. FACTUAL BACKGROUND

A. Existing Law Regarding the Regulation and Staffing of Chronic Dialysis Clinics

Existing state and federal laws highly regulate the operation of CDCs. In addition to the licensing requirements imposed by state statutes, California has enacted 38 regulations affecting the operation of CDCs (See, Cal. Code of Regs., §§ 75172-75208) and the federal government has enacted hundreds more (See, Title 42 of the Code of Federal Regulations, §§ 494.1 – 494.180). With respect to personnel, state and federal law have long required licensed and specialty medical personnel to operate CDCs.

For example, pursuant to California Health and Safety Code section 1225(c)(1) in order for a CDC to obtain and maintain its license to operate, “a chronic dialysis clinic...shall comply with federal certification standards for an end-stage renal disease clinic, as specified in Sections 494.1 to 494.180, inclusive, of Title 42 of the Code of Federal Regulations.” (Exhibit E.) Federal Regulation section 494.140 describes the personnel required to operate a CDC, stating that “[a]ll dialysis staff must meet the applicable scope of practice, board, and licensure requirements in effect in the State in which they are employed” and include the following mandatory staffing

requirements:

1) The dialysis facility must have a medical director who meets the qualifications of § 494.140(a) to be responsible for the delivery of patient care and outcomes in the facility. The medical director is accountable to the governing body for the quality of medical care provided to patients.

2) The facility must have a nurse manager responsible for nursing services in the facility who must— (i) Be a full time employee of the facility; (ii) Be a registered nurse; and (iii) Have at least 12 months of experience in clinical nursing, and an additional 6 months of experience in providing nursing care to patients on maintenance dialysis.

3) The facility must have a dietitian who must— (1) Be a registered dietitian with the Commission on Dietetic Registration; and (2) Have a minimum of 1-year professional work experience in clinical nutrition as a registered dietitian.

4) The facility must have a social worker who— (1) Holds a master's degree in social work with a specialization in clinical practice from a school of social work accredited by the Council on Social Work Education; or (2) Has served at least 2 years as a social worker, 1 year of which was in a dialysis unit or transplantation program prior to September 1, 1976, and has established a consultative relationship with a social worker who qualifies under § 494.140 (d)(1).

(Exhibit F.) The same regulatory scheme specifies the minimum qualifications of other staff typically involved in the provision of care to dialysis patients in a clinic, including registered nurses, staff nurses, patient care dialysis technicians, and water system treatment technicians. (*Ibid.*)

Admittedly, under state and federal law, the medical director is not presently required to be “on-site” at all times. As indicated by the Independent Legislative Analyst, the medical director is generally on site about 25% of the time. (See, Exhibit D, p. 4.) There is good reason for this, each patient is under the care of his or her own nephrologist (kidney specialist), who determines the course of that patient's treatment. Nephrologists frequently see their individual patients in the clinic, but these doctors are not employees of the CDC. The CDC and its professional staff (primarily specialized dialysis nurses and patient care technicians) administer the treatment regimen prescribed by each patients' nephrologist. The medical director is

1 primarily responsible to the owner/operator of the CDC for overseeing the staff and the quality of
2 the medical care provided to patients by the clinic. (See, Exhibit F.)

3 In addition, state law incorporates Federal Regulation section 434.180(b) which generally
4 requires that “an adequate number of qualified personnel are present whenever patients are
5 undergoing dialysis” and more specifically states:

6
7 A registered nurse, who is responsible for the nursing care provided, is
8 present in the facility at all times that in-center dialysis patients are being
treated. (See, Exhibit F.)

9 **B. Proposition 23**

10 Proposition 23 would require that a licensed physician be on site at a CDC while patients
11 are being treated at the center. (Exhibit A.) Proposed Health and Safety Code section 1226.8(a)
12 states:

13 Every chronic dialysis clinic must maintain, at the chronic dialysis clinic’s
14 expense, at least one licensed physician present on site during all times
15 that in-center dialysis patients are being treated. This physician shall have
authority and responsibility over patient safety and to direct the provision
and quality of medical care.

16 Proposition 23 defines a “licensed physician” as a “nephrologist or other physician
17 licensed by the state pursuant to Chapter 5 of Division 2 of the Business and Professions Code.”
18 (*Id.* at § 1126.8(c)(4).) This provision is also specifically identified in the proposed initiative’s
19 statement of “findings and purposes:”

20 Dialysis clinics are currently not required to maintain a doctor on site to
21 oversee quality, ensure the patient plan of care is appropriately followed,
22 and monitor safety protocols. Patients should have access to a physician
on site whenever dialysis treatment is being provided.

23 (*Id.* at Sec. 2(A)(5).)

24 Proposition 23 allows a clinic to seek an exemption from this requirement upon proof of a
25 “a bona fide shortage of qualified physicians” in which case the state can allow the clinic to have
26 a nurse practitioner or physician assistant on-site during all treatment times, instead of a licensed
27 physician. (*Id.* at § 1126.8(a)(1).)

28 ///

1 IV. STANDARD OF REVIEW

2 Elections Code sections 9092 and 13314 authorize this Court to issue a writ of mandate
3 ordering that changes be made to the official ballot materials to ensure that the information
4 provided to voters meets the requirements of law. Section 13314 authorizes courts to issue a
5 peremptory writ of mandate “upon proof... that an error, omission, or neglect of duty is about to
6 occur with regard to the printing of the ballot materials in violation of [the Elections Code] or the
7 Constitution.” (Elec. Code, § 13314 (a)(2).)

8 The Elections Codes sets forth the requirements for the preparation of the ballot label and
9 title and summary. Section 9051 requires the Attorney General to prepare a “true and impartial
10 statement of the purpose of the proposed measure” to be included in the ballot pamphlet to be
11 circulated to voters. (Elec. Code, § 9051.) This summary is to be provided “**in such language**
12 **that the ballot title and summary shall neither be an argument, nor be likely to create**
13 **prejudice, for or against the proposed measure.**” (*Id.*, emphasis added.) The purpose of the
14 ballot label and title and summary is to give voters accurate information about a proposed
15 initiative and must contain “[A] statement of the major objective or ‘chief purpose and points’ of
16 the measure.” (*Brennan v. Board of Supervisors* (1981) 125 Cal.App.3d 87, 92.)

17 The statutory requirement that the ballot label and title and summary be fair and impartial
18 is founded upon constitutional principles. A “fundamental precept of this nation’s democratic
19 electoral process is that the government may not [use the public treasury to] ‘take sides’ in
20 election contests or bestow an unfair advantage on one of several competing interests.” (*Stanson*
21 *v. Mott* (1976) 17 Cal.3d 206, 217, and cases cited therein.) The law is well settled that the
22 government may not expend public funds or use public resources to influence the outcome of an
23 election. This is because “[g]overnment action which may tend to influence the outcome of an
24 election operates in an area protected by the guarantee of equal protection and freedom of
25 speech.” (*Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199,
26 1227.)

27 The appellate court has long stated that the Attorney General is to be afforded deference in
28 the preparation of the ballot materials. However, even the appellate court has established

1 guardrails on the Attorney General in furtherance of the voters’ interests, which are paramount.
2 These guardrails include requirements that the Attorney General:

- 3 • “[M]ust avoid misleading the public with inaccurate information.” (*Lungren v.*
4 *Superior Court* (1996) 48 Cal.App.4th 435, 440, citing *Amador Valley Joint Union*
5 *High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243.)
- 6 • Present a summary to the voters “in clear and understandable language.” (*Becerra v.*
7 *Superior Court* (2017) 19 Cal.App.5th 967, 975, quoting *Yes on 25, Citizens for an*
8 *On-Time Budget v. Superior Court* (2010) 189 Cal.App.4th 1445, 1452.)
- 9 • Reasonably inform the voter of the *character and real purpose* of the proposed
10 measure. (*Horneff v. City and County of San Francisco* (2003) 110 Cal.App.4th 814,
11 820, citing *Tinsley v. Superior Court* (1983) 150 Cal.App.3d 90, 108, emphasis
12 added.)
- 13 • Ensure that the summary is not worded or structured so as to favor a particular partisan
14 position. (*Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th
15 1417, 1433-34.)
- 16 • Present a summary that does not implicitly characterize the current law as defective.
17 (*McDonough v. Superior Court (City of San Jose)* (2012) 204 Cal.App.4th 1169,
18 1174-5.)

19 Finally, the statutory requirements for preparation of the materials that appear on voters’
20 ballots must serve first and foremost “to protect [the voters] from being misled or imposed upon”
21 (*Clark v. Jordan* (1936) 7 Cal.2d 248, 252) as well as “to foster a more informed electorate by
22 supplying correct information about the measures appearing on any given ballot” (*Horwath v.*
23 *City of East Palo Alto* (1989) 212 Cal.App.3d 766, 776).

24 In this matter, the Attorney General’s proposed ballot materials fail to comply with the
25 Elections Code because they (1) do not accurately describe the “character and real purpose” of
26 Proposition 23, (2) falsely imply that current law is deficient by not requiring a medical
27 professional in dialysis clinics when patients are being treated, and (3) are misleading because the
28 phrase “REQUIRES ON-SITE MEDICAL PROFESSIONAL” is far broader than the actual

1 requirement of the proposition.

2 **V. ARGUMENT**

3 **A. THE BALLOT LABEL FOR PROPOSITION 23 VIOLATES THE**
4 **ELECTIONS CODE BUT CAN BE EASILY REMEDIED**

5 **1. The Ballot Label Does Not Accurately Describe the Character and Real**
6 **Purpose of Proposition 23.**

7 The Attorney General describes the physician requirement in the bold and capitalized
8 “title” of the ballot label as follows: **REQUIRES ON-SITE MEDICAL PROFESSIONAL.**
9 (Exhibit B, emphasis in original.) That statement does not accurately describe the “character and
10 real purpose” of Proposition 23. Contrary to the language in the ballot label, the purpose of
11 Proposition 23 is **not** to ensure that there is a medical professional on site. The purpose of
12 Proposition 23 is stated directly in the text of the proposed initiative: to “provide patients with
13 *access to a physician on-site* whenever dialysis treatment is being provided.” (Exhibit A, Sec.
14 2(A)(5), emphasis added.) Notably, appellate courts have specifically upheld an Attorney
15 General’s ballot summary when it “closely track[s] the actual language of the measure and its
16 statement of purpose.” (*Yes on 25, supra*, 189 Cal.App.4th at 1453.) In this case, the Attorney
17 General’s ballot label improperly strays from the initiative’s text and its statement of purpose.

18 **2. The Ballot Label Creates a False Impression that the Current Law is**
19 **Deficient.**

20 Even worse, the ballot label gives voters the false impression that either clinics currently
21 operate without any licensed medical professionals or that existing law must not require any
22 medical professional to be on site while dialysis patients are being treated. This false impression
23 is therefore an unlawful argument in favor of Proposition 23 and creates prejudice for the
24 measure, in violation of Elections Code section 9051.

25 While it should be clear how the false statement leads to the false impression here, a
26 recent survey of voters confirms the misleading character and effect the ballot label has on actual
27 voters. Immediately after the ballot label was issued, an online survey of registered voters
(Declaration of McInturff) yielded the following disturbing results:

28 **Question:** Based on the ballot summary you just read [the ballot label authored by
Attorney General], do you think currently dialysis clinics in California are

required or are not required to have a medical professional on site while dialysis patients are being treated?

Answer: 16% Yes, dialysis clinics in California ARE currently required to have a medical professional on site while dialysis patients are being treated.

39% No, dialysis clinics in California are NOT currently required to have a medical professional on site while dialysis patients are being treated.

44% Not sure.

Question: Now, while you may not be totally sure one way or the other, based on what you read, which of the following do you lean towards believing is true?

Answer: 33% dialysis clinics in California ARE currently required to have a medical professional on site while dialysis patients are being treated.

67% dialysis clinics in California are NOT currently required to have a medical professional on site while dialysis patients are being treated.

Thus, when asked to make a choice about the meaning of the ballot label, two-thirds of all registered voters surveyed falsely concluded that California clinics are NOT currently required to have on-site medical professionals. (Declaration of McInturff.)

This is not the first time a court has been asked to amend ballot materials that create a false impression. Two cases are instructive to the issue presented here. In *Huntington Beach City Council, supra*, 94 Cal.App.4th 1417, the City proposed to amend its utility users tax to tax the wholesale purchase of natural gas by the City’s only electricity-generating plant. The plant paid the utility users tax for all utilities other than the purchase of natural gas that it turned into electricity (e.g. telephones, electricity, water). (*Id.* at 1425.) The ballot label drafted by the City stated that the ballot measure would amend the City’s utility tax “by removing electric power plant exemption.” (*Ibid.*) The appellate court took issue with the ballot label because, as the Court stated: “[i]t conveys the idea that AES [the electric generating plant] isn’t paying *any* utility tax at all—a proposition that, as we have seen is simply not true.” (*Id.* at 1434.) In summarizing the existing tax law, the Court stated: “[t]he tax extends to one thing, it just doesn’t extend to

1 another.” (*Ibid.*) The Court ordered the ballot label to be amended to be more accurate and
2 neutral. (*Ibid.*; See also, *Citizens for Responsible Government*, *supra* 56 Cal.App.4th at 1225
3 [striking non-neutral language in ballot question that would have placed measure in favorable
4 light].)

5 In *McDonough v. Superior Court* (*supra*) 204 Cal.App.4th 1169, the Court ordered
6 amendments to a ballot label for a proposed charter measure relating to retirement benefits for
7 city employees. The ballot label included the title “PENSION REFORM” and a summary stated
8 that the measure would amend the city charter “to reform retirement benefits of City employees
9 and retirees by: increasing employee’s contributions” among other elements of the measure. (*Id.*
10 at 1173.) The Court found that the use of the phrase “PENSION REFORM” in the title of the
11 ballot label was clearly prejudicial. (*Id.* at 1174-75.) Importantly, the Court held that the word
12 “reform” implied that there was something inherently flawed with the current pension system and
13 that the initiative would be the means of correcting that wrong. (*Id.* at 1175.)

14 Like the ballot labels at issue in *Huntington Beach* and *McDonough*, Proposition 23’s
15 ballot label implies a falsity: that there is currently no law or regulation requiring any medical
16 professionals on-site at CDCs while patients are being treated.

17 18 19 **3. The Ballot Label is Misleading Because it Inaccurately Describes the** 20 **Requirements of Proposition 23.**

21 The ballot label language “REQUIRES ON-SITE MEDICAL PROFESSIONAL” also is
22 improperly misleading because it is much broader than what the proposition actually requires. A
23 term that is over-inclusive can be false and misleading. (See, *Lungren v. Superior Court* (1996)
24 48 Cal.App.4th 435, 442 [“Accordingly, any statement...[that] would be overinclusive and hence
25 ‘false and misleading.’”].) That is the case here.

26 Proposition 23 specifically requires that a physician be on site at CDCs—and its stated
27 purpose is to provide patients with access to an on-site physician. It does not require that any
28 “medical professional” (which could include any number of different health care providers) be on

1 site.²

2 Respondent may argue that the term “medical professionals” is not overbroad and
3 misleading because Proposition 23 would allow CDCs to substitute a Nurse Practitioner or
4 Physician Assistant for the physician. However, that provision is extremely limited. It requires a
5 CDC to apply to the California Department of Public Health for an exception, and the only
6 permissible basis for an exception is a “bona fide shortage of qualified physicians prevents [the
7 CDC] from satisfying the requirement.” (Exhibit A.) If an exception is granted, the CDC can only
8 substitute a Nurse Practitioner or Physician Assistant for the physician. The plain language of
9 Proposition 23 (including its stated purpose) makes clear that its intention is to require a physician
10 on site except in certain very limited circumstances—and even then, only two types of medical
11 professionals are permissible. As a result, the ballot label’s characterization of the proposition as
12 requiring an on-site “medical professional” is inaccurate and misleading in violation of the
13 Elections Code.

14 **4. The Ballot Label Language Can Be Easily Fixed.**

15 Proposition 23’s ballot label flaw is easily remedied by making it truthful. Because the
16 Attorney General only used 62 of the 75 words available to him, the statement could be easily
17 fixed any number of ways, including:

18 “REQUIRES *ANOTHER* ON-SITE MEDICAL PROFESSIONAL”

19 “REQUIRES *ADDITIONAL* ON-SITE MEDICAL PROFESSIONAL”

20 “REQUIRES ON-SITE LICENSED PHYSICIAN” or

21 “REQUIRES ON-SITE LICENSED DOCTOR”

22
23
24
25
26 ² The term “medical professional” most commonly would include any person licensed by the state or who
27 has some level of specialty training and certification. As an example the Insurance Code defines the term
28 to mean “any person licensed or certified to provide health care services to natural persons, including but
not limited to, a *physician*, dentist, *nurse*, optometrist, physical or occupational therapist, psychiatric *social*
worker, *clinical dietitian*, clinical psychologist, chiropractor, pharmacist, or speech therapist.” (Ins. Code,
§ 791.02, emphasis added.)

Any of these simple changes would cure the false implication and would accurately state what Proposition 23 actually requires, within the permissible word limitation.

B. THE BALLOT TITLE AND SUMMARY FOR PROPOSITION 23 SUFFERS FROM THE SAME DEFECT AS THE BALLOT LABEL

The title and summary prepared by the Attorney General for Proposition 23 and which Respondent will order to be printed in the official ballot materials distributed to voters reads as follows:

ESTABLISHES STATE REQUIREMENTS FOR KIDNEY DIALYSIS CLINICS. REQUIRES ON-SITE MEDICAL PROFESSIONAL. INITIATIVE STATUTE.

- Requires at least one licensed physician on site during treatment at outpatient kidney dialysis clinics; authorizes California Department of Public Health to exempt clinics from this requirement if there is a shortage of qualified licensed physicians and the clinic has at least one nurse practitioner or physician assistant on site.
- Requires clinics to report dialysis-related infection data to state and federal governments.
- Prohibits clinics from closing or reducing services without state approval.
- Prohibits clinics from refusing to treat patients based on the source of payment for care.

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

- Increased state and local government costs likely in the low tens of millions of dollars annually.

(Exhibit C, emphasis in original.)

Like the ballot label, the phrase "REQUIRES ON-SITE MEDICAL PROFESSIONAL" in the proposed title and summary suffers the same legal defects and it should be remedied in the same way. The title and summary, as drafted by Attorney General consists of 96 words of the 100 words available. (Elec. Code, § 9051(a).) Thus, amending the "title" portion of the title and summary in the same way as the ballot label would comply with the Elections Code.

///

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1 **VI. CONCLUSION**

2 Words matter. They create impressions for the reader. In this case, the readers are voters
3 who are entitled to an accurate, non-argumentative, and non-prejudicial description of the ballot
4 measure they are being asked to consider. Giving voters the false impression that there are no
5 medical professionals on-site at dialysis clinics serves as a de facto argument in favor of
6 Proposition 23. For the foregoing reasons, Petitioner asks that this Court order the above-
7 requested revisions to the ballot label and title and summary for Proposition 23.

8 Dated: July 29, 2020

Respectfully Submitted,
BELL, McANDREWS, & HILTACHK, LLP

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10 By: 

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