Jim Bopp, Jr. (Indiana State Bar No. 2838-84)*
Joe La Rue (Ohio State Bar No. 80643)*
Noel Johnson (Wis. State Bar. No. 1068004)**
BOPP, COLESON & BOSTROM
1 South 6th Street
Terre Haute, Indiana 47807
Telephone: (812) 232-2434
Facsimile: (812) 235-3685
Lead Counsel for Plaintiffs

Charles H. Bell, Jr. (SBN 060553)
Brian T. Hildreth (SBN 214131)
BELL, McANDREWS, & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95814
Telephone: (916) 445-7757
Facsimile: (916) 442-7759
Local Counsel for Plaintiffs

Gary D. Leasure (SBN 211160)
Workman Leasure, LLP
12626 High Bluff Drive # 150
San Diego, California 92130
Telephone: (858) 720-1992, Ext. 202
Facsimile: (858) 720-1990
Local Counsel for Plaintiffs

** Admitted pro hac vice on June 16, 2009 by order of the Honorable Roger T. Benitez.*
*** Admitted pro hac vice on March 11, 2011.*

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CHULA VISTA CITIZENS FOR JOBS AND FAIR COMPETITION, et al., **Plaintiffs,** **vs.** **DONNA NORRIS, et al.,** **Defendants.**	**Case: 09CV0897-BEN-JMA** **The Honorable Roger T. Benitez** **Reply Memorandum Of Points and Authorities In Support Of Plaintiffs' Motion For Summary Judgment** Date: August 8, 2011 Time: 10:30 a.m. Courtroom: 3 **ORAL ARGUMENT REQUESTED**

Argument[1]

I. The Requirement That Proponents Must Be Natural Persons Is Unconstitutional.

A. Proposing An Initiative Is Indisputably Protected Expression.

The City makes the remarkable argument that banning associations of citizens from proposing initiatives does not create a First Amendment issue because proposing a ballot initiative is not speech. (City Opp. at 2.) The City's position is unfounded. "[W]here the people reserve the initiative or referendum power, the exercise of that power is protected by the First Amendment applied to the States through the Fourteenth Amendment." *Stone v. City of Prescott*, 173 F.3d 1172, 1175 (9th Cir. 1999) (*citing Meyer v. Grant*, 486 U.S. 414, 420 (1988)).[2] Other circuits agree. The First Circuit found there is not "any serious doubt" "whether citizens' use of the initiative process constitutes expressive conduct." *Wirzburger v. Galvin*, 412 F.3d 271, 276 (1st Cir. 2005); *see also Kendall v. Balcerzak*, __ F.3d __, 2011 WL 1108257, at *7 (4th Cir. 2011) (agreeing with the district court's view that "*Meyer* and *Buckley* held that the First Amendment protects political speech incident to an initiative campaign because it protects the *exercise* of the state-created right of referendum.") (emphasis in original)).[3]

The City does not disagree that advocating an initiative's passage once it has been created involves core political speech. (City Opp. at 4-5.) *See also Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006); *Meyer*, 486 U.S. at 421-22. However, the City would have this Court hold that proposing the

---

[1] Plaintiffs submit the memorandum in reply to *Intervenor State of California's Opposition to Plaintiffs' Motion for Summary Judgment* ("State Opp.") and *City Defendant' Partial Opposition to Plaintiffs' Motion for Summary Judgment* ("City Opp."). The facts upon which Plaintiffs rely are set forth in full in *Plaintiffs' Statement of Undisputed Facts in Support of Motion for Summary Judgment* (Dkt. 54-2) ("Facts").

[2] *Stone* explains further that "a State may not impermissibly burden the exercise of the right to petition the government by initiative or referendum. That holds true even if the burden is imposed by the State Constitution itself." *Stone*, 173 F.3d at 1175. Thus, it is of no consequence that the California Constitution forms the basis for the Natural Person Requirement.

[3] The Fourth Circuit also explained that "the district court also correctly recognized that where a state affords its citizens the privilege to pursue ballot initiatives or referenda, those privileges do enjoy some measure of constitutional protection." *Kendall*, at *7.

initiative itself is in no way expressive. (City Opp. at 2-3.) This position is untenable. Even the City does not seriously suggest this is the case and concedes that the "acts necessary to commence an initiative petition . . . [are] in some senses expressive." (*Id*. at 8.) Naturally, proposing an initiative is "the expression of a desire for political change," *Meyer*, 486 U.S. at 421, through a personally crafted and specific policy proposal that the proponent submits to the people for their approval.[4] This message is not conveyed for the first time when the petition is circulated as the City suggests, but rather it is conveyed at all stages of the initiative process, from the initial filing of the proposal to the filing of signed petitions.

The City attempts to strip an initiative proposal of its inherent expressive character by reducing it to the procedural steps necessary to create an initiative petition. (City Opp. at 4.) While proposing an initiative may require proponents to undertake certain legal acts, "adding such legal effect to an expressive activity" does nothing to "deprive[] that activity of its expressive component, taking it outside the scope of the First Amendment." *Doe v. Reed*, 130 S.Ct. 2811, 2818 (2010) (signing an initiative petition is protected expression). The City's attempt to distinguish *Doe* is based on its untenable position that proposing an initiative involves *no* expressive component. (City Opp. at 8.) As explained, the City's assertion is wrong.[5]

The City's reliance on non-binding Second Circuit authority, *Molinari v. Bloomberg*, 564

---

[4] In *Meyer v. Grant*, the appellees were the proponents of a Colorado ballot initiative. It was their speech, not the circulator's, that the Supreme Court ultimately viewed as being restricted by Colorado's prohibition on using paid circulators. *Meyer*, 486 U.S. at 422 ("refusal to permit appellees to pay petition circulators restricts political expression . . . [by] . . . limit[ing] the number of voices who [could] convey *appellees' message*.") (emphasis added); *see also id*. at 424 ("That appellees remain free to employ other means to disseminate their ideas does not take *their speech through petition circulators* outside the bounds of First Amendment protection.") (Emphasis added). The Supreme Court recognized that initiative proponents convey "a desire for political change" by serving as the proponents. *Id*. at 421.

[5] "Arguably, placing an initiative on a ballot is more expressive than contributing to a candidate's campaign is associative because the former expenditure advances a specific political viewpoint, while the latter is but a 'general expression of support' that 'does not communicate [its] underlying basis.' *Buckley v. Valeo*, 424 U.S. 1, 21 (1976)." John Gildersleeve, *Editing Direct Democracy: Does Limiting the Subject Matter of Ballot Initiatives Offend the First Amendment?*, 107 Colum. L. Rev. 1437, 1481 (2007).

F.3d 587 (2d Cir. 2009), is misplaced. Plaintiffs in *Molinari* claimed their First Amendment rights were chilled because City voters would be less likely to engage in the referendum process because a law enacted by that process could be amended or repealed through City Council legislation. *Molinari*, 564 F.3d at 599. The Court found the effect of this law was simply to place popularly enacted laws on equal footing with City Council legislation, which was also subject to amendment. *Id*. at 600-01. The law did not ban the plaintiffs' speech by prohibiting them from using the referendum process. Rather, it simply made their speech (their initiative) less likely to succeed. *Id*. Thus, no First Amendment right was implicated because successful speech is not something the First Amendment guarantees. *Id*. at 600. However, "[t]he First Amendment ensures that all points of view may be heard," *id*. at 600 (citation omitted), and "a law that has the inevitable effect of reducing speech because it restricts or regulates speech" does implicate the First Amendment. *Id*. (citations and quotations omitted). The State's and City's initiative schemes do not reduce speech because they make initiatives less likely to succeed. Rather, they reduce speech because they ban all non-natural persons from speaking by proposing an initiative. *Molinari* is inapposite and therefore not applicable authority for this Court.

The City's entire argument has merit *only* if proposing an initiative is void of any expressive character. However, proposing an initiative is speech and therefore the City's argument fails.

B. The Natural Person Requirement Bans Political Speech And Is Subject To Strict Scrutiny, Which It Fails.

Proposing an initiative petition is speech protected by the First Amendment. *See* Part I.A. The Natural Person Requirement prohibits the Associational Plaintiffs from proposing an initiative, thereby banning their speech. "Laws that burden political speech are subject to strict scrutiny." *Citizens United v. FEC*, 130 S.Ct. 876, 898 (2010). Under strict scrutiny review, the burden is on the State and City to prove the Natural Person Requirement "furthers a compelling interest and is narrowly tailored to achieve that interest." *Fed. Elections Comm'n v. Wisconsin Right to Life*, 551 U.S. 449, 464 (2007). Neither the City or the State has proven a compelling interest in the Natural Person Requirement. Indeed, one does not exist. The law is therefore unconstitutional.

The "ordinary litigation balancing" test does not apply here. (*See* City Opp. 11-13.) As

McIntyre v. Ohio Elections Commission, 514 U.S. 334 1995, clarified, ordinary litigation balancing applies only where a regulation "control[s] the mechanics of the electoral process." *Id*. at 345; *see also, e.g.*, *Anderson v. Celebrezze*, 460 U.S. 870 (1983) (applying ordinary litigation balancing to Ohio law requiring independent candidates for President of the United States to file campaign papers 229 days before general election). *McIntyre* rejected ordinary litigation balancing in favor of strict scrutiny because the law in question regulated speech, not the mechanics of the electoral process.[6] *McIntyre*, 514 U.S. at 345. The Natural Person Requirement also regulates speech. It bans all non-natural persons from speaking by prohibiting them from proposing initiatives.[7] It is a ban on speech notwithstanding the fact that a natural person could serve as an initiative's proponent on an association's behalf. Forcing associations to engage in speech-by-proxy is not a constitutionally permissible option because it does not allow the association itself to speak.[8] *Citizens*, 130 S.Ct. at 897. Thus, the Natural Person Requirement is an outright ban on speech. It is therefore subject to strict scrutiny. *Id*. at 898.

The Natural Person Requirement fails strict scrutiny because there is no interest to support it. *Citizens United* held that the only interest that can justify limits on political speech is the interest in preventing quid-pro-quo corruption. *Citizens*, 130 S.Ct. at 901, 909; *see also id*. at 903-13

---

[6] *McIntyre* used the term "exacting scrutiny" but required the government to prove the law in question was "narrowly tailored to serve an overriding state interest," which is the strict scrutiny test. *McIntyre*, 514 U.S. at 347; *see also Citizens*, 130 S. Ct. at 898; *McIntyre*, 514 U.S. at 346 n.10.

[7] The City and State contend the Natural Person Requirement does not the ban speech of the Associational Plaintiffs because they are eligible to financially sponsor initiatives and otherwise advocate for their passage. (City Opp. at 4-5, 9; State Opp. at 17.) The Supreme Court has repeatedly explained that speech-limiting laws are not cured of First Amendment defects simply because they leave available other, more burdensome avenues for speech. *See*, *e.g.*, *Citizens*, 130 S. Ct. at 897-98; *Meyer*, 486 U.S. at 424; *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 255 (1986) (plurality opinion).

[8] *Meyer* recognized that refusing to allow proponents to use paid circulators was severely burdensome because it "restrict[ed] access to the most effective, fundamental, and perhaps economical avenue of political discourse." 486 U.S. at 424. Prohibiting the Associational Plaintiffs from advocating their views through the initiative process is likewise severely burdensome. *See Wizenburg*, 412 F.3d at 277 ("A state initiative process provides a uniquely provocative and effective method of spurring public debate on an issue of importance to the proponents of the proposed initiative.").

(rejecting all other purported 'interests'). However, "[t]he risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue[,]" such as an initiative. *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978). Therefore, the City and the State have no constitutionally cognizable interest in limiting associational ballot measure speech.

The State contends that *Citizens United* does not undermine the Natural Person Requirement because *Citizens United* did not create a new rule for speech in a non-public forum and because the Ninth Circuit has declined to extend protection of corporate speech to campaign contributions. (State Opp. at 18.) The State is wrong. The decision in *Citizens United* in no way rested on the forum in which the speech occurred.[9] Rather, *Citizens United* rested on the First Amendment principle that the government cannot restrict speech based on the identity of the speaker. *Citizens*, 130 S.Ct. at 913. And further, government may not "distinguish[] among different speakers, allowing speech by some but not others," *id*. at 898, or "dictat[e] . . . the speakers who may address a public issue," *id*. at 902. The Natural Person Requirement stands in direct defiance of these principles and therefore it cannot stand.

Also, the State's reliance on *Thalheimer v. City of San Diego*, 2011 WL 2400779 (9th Cir. 2009) is misplaced. In *Thalheimer*, the Ninth Circuit held a ban on corporate *contributions* to candidates was not unconstitutional. It did so only because it found the ban on contributions to be adequately supported by anti-circumvention and anti-corruption interests. *Id*. at *13. The Natural Person Requirement cannot be supported by an anti-corruption interest because quid-pro-quo corruption is "not present" in the initiative process. *Bellotti*, 435 U.S. at 790.

Aside from there being no risk of corruption in ballot measure initiatives, *Citizens United* made clear that there is nothing inherently dangerous or corrupting about the corporate form. *Citizens*, 130 S.Ct. at 904-08. Thus, speech that is inherently non-corrupting and not dangerous when undertaken by a natural person (an initiative petition), cannot become corrupting or dangerous when

[9] The phrase "public forum" does not even appear in the majority opinion. It appears once in dissent, and only in passing. *Citizens United*, 130 S.Ct. at 976 (Stevens, J., dissenting).

the speaker has simply assumed the corporate form. In fact, *Citizen United* remarked that corporations are sometimes "best equipped" to speak on certain topics. *Id*. at 912.

The City believes that "[n]othing could be more essential to the grass roots democracy principles undergirding the initiative" than that incorporated and unincorporated associations not be allowed to be proponents of ballot initiatives. (City. Opp. at 15.) But the evidence belies this notion. California case law provides numerous examples of corporations and associations being considered a proponent of a ballot initiative. *See, e.g.*, *Citizens for Responsible Behavior v. Superior Court*, 1 Cal. App. 4th 1013, 1019 (1992) ("The proponent and circulator of the initiative, and petitioner here, is a nonprofit corporation known as Riverside Citizens for Responsible Behavior[.]"). (*See also Plaintiffs' Response to Intervenor State of California's Motion for Summary Judgment* ("MSJ Response") at 4-5.) And, evidence provided by the State shows two initiatives slated for the November 8 ballot, in the City and County of San Francisco alone, have been proposed by non-natural persons. (Dkt. 59-3, page 93.) There is simply no danger in allowing associations of California citizens to propose initiatives.

The City and State have not proven a compelling interest in the Natural Person Requirement. It therefore fails strict scrutiny and is unconstitutional.

II. The Requirement That Proponents Disclose Their Identity On the Circulated Version Of the Initiative Petition Is Unconstitutional.

A. The Reveal Yourself Requirement Imposes Severe Burdens On Speech.

The State argues that the Reveal Yourself Requirement is not unconstitutional because it is not identical to bans on anonymity struck by the Supreme Court and the Ninth Circuit. (State Opp. at 8.) This argument misunderstands both *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999) ("*ACLF*") and *Washington Initiatives v. Rippie*, 213 F.3d 1132 (9th Cir. 2000) ("*WIN*"), and it ignores the burdens imposed by bans on anonymous ballot measure speech articulated in *McIntyre*. *ACLF* and *WIN* teach that restrictions on petition circulation that significantly inhibit communication with voters about proposed political change impose severe burdens on core political speech. Forcing proponents to reveal themselves at the point of contact with voters significantly inhibits communications with voters about initiatives because it

"discourages participation in the petition circulation process," *ACLF*, 525 U.S. at 200, and reduces the pool of those willing to propose and circulate petitions, *id*. at 198. Initiative petitions tend to be controversial. At the very least, they advocate for a change in the status quo. Some people, like plaintiff Larry Breitfelder, are unwilling to circulate petitions when they must reveal their identities at the point of contact with voters. (Facts ¶ 64); *ACLF*, 525 U.S. at 198-99. When a regulation has the "effect of reducing the total quantum of speech on a public issue," it makes no difference whether the restriction burdens an initiative's proponent or circulator. "[I]t is precisely the risk that people will refrain from advocating controversial positions that makes a disclosure scheme of this kind especially pernicious." *WIN*, 213 F.3d at 1138.

Both *ACLF* and *WIN* relied heavily on *McIntyre*, which identified "two distinct reasons why forbidding anonymous political speech is a serious, direct intrusion on First Amendment values." *ACLU v. Heller*, 379 F.3d 979, 898 (9th Cir. 2004). First, "[t]he decision to engage in anonymous speech 'may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible.'" *Id*. (*quoting McIntyre*, 514 U.S. at 341-42). Plaintiffs wish to speak anonymously at the point of contact with voters for nearly all of these reasons. (Facts ¶¶ 60, 62, 65.) *McIntyre* provided a second reason why bans on anonymous speech intrude on First Amendment rights: "Anonymity may allow speakers to communicate their message when preconceived prejudices concerning the message-bearer, if identified, would alter the reader's receptiveness to the substance of the message." *Heller*, 378 F.3d at 990; s*ee also McIntyre*, 514 U.S. at 342. By banning anonymity at the point of contact with voters the City and State "interfere[] with [the voters'] evaluation by requiring potentially extraneous information at the very time the [voter] encounters the substance of the message." *Heller*, 378 F.3d at 994. This hinders proponents' ability to garner the required signatures because voters, may "prejudge [their] message simply because they do not like its proponent," *McIntyre*, 514 U.S. at 342, thereby "limiting their ability to make the matter the focus of [city-wide] discussion." *Meyer*, 486 U.S. at 423. These concerns are especially relevant to Larry Breitfelder, who has staked out well-known political positions in the City of Chula Vista and believes he is well-known as "anti-union." (Facts ¶ 61.) This creates a real risk that the presence of his name on initiative petitions

he circulates will "alter the reader's receptiveness to the substance of [his] message," *Heller*, 378 F.3d at 990, hindering his ability to acquire signatures.

Larry Breitfelder will never again be an initiative proponent if he must reveal his identity at the point of contact with the voters. (Facts ¶ 64.) And, although Lori Kneebone is unsure if she will offer initiatives in the future, she wishes her name had not been revealed at the point of contact with the voters. (*Id*. ¶ 65.) Just as in *ACLF* and *WIN*, the Reveal Yourself Requirement both burdens and chills petition-circulation speech and so must be subjected to constitutional scrutiny.

B. The Reveal Yourself Requirement Is Subject To Strict Scrutiny, Which It Fails.

For the first time, in response, the State argues the Reveal Yourself Requirement is subject only to reasonable regulation because an initiative petition is expression that occurs in a non-public forum. (State Opp. at 7.) The State cites two California state court opinions for this proposition. (*Id*.) However, the Ninth Circuit has not adopted the forum analysis when determining the appropriate level of scrutiny for First Amendment challenges to state election laws. *See Prete*, 438 F.3d at 961. This is true even when the challenged regulation concerns the content of an initiative petition. *See Pest Committee v. Miller*, 626 F.3d 1097 (9th Cir. 2010). In *Pest Committee*, the plaintiffs alleged, in part, that Nevada regulations, which limited the content of an initiative petition to a single subject and required the petition to contain a description of the initiative's effect, violated their First Amendment rights. *Id*. at 1100-02. Without reference to the forum analysis, the court explained that "[r]egulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest." *Id*. at 1106. The court also agreed with the Tenth Circuit that regulations that "reduce the quantum of speech" or "the available pool of circulators or other supporters of a[n] . . . initiative" are subject to strict scrutiny. *Id*. at 1108 (citation and quotation omitted). This approach is consistent with the Supreme Court's analysis in *ACLF*. *ACLF*, 525 U.S. at 192 n.12 (noting the "now-settled approach" that "state regulations imposing severe burdens on speech must be narrowly tailored to serve a compelling state interest") (internal citation and quotation omitted).

The Reveal Yourself Requirement, like those restrictions in *ACLF* and *Heller*, imposes severe burdens on petition-circulation speech and it also "reduce[s] the quantum of speech" and "the available pool of . . . other supporters of a[n] . . . initiative." *Pest Committee*, 626 F.3d at 1108. (*See*

also MSJ Response at 13-16.) It is therefore subject to strict scrutiny.[10]

The Reveal Yourself Requirement fails strict scrutiny because neither of the State's purported interests are compelling. (MSJ Response at 17-19.) The Reveal Yourself Requirement cannot be supported by an interest in providing information to the electorate because voters do not need to know the identity of proponents to predict the effects of ballot measures. *See Buckley*, 424 U.S. at 67. To predict the effects, a voter need only look to the text of the measure itself and the "true and impartial" title and summary of its purpose and effect that the City Attorney must prepare and include on the petition. Code §§ 9203, 9207. Nor is preserving the integrity of the electoral process sufficient to support the Reveal Yourself Requirement. Ferreting out fraudulent and invalid signatures has no application to compelled disclosure of proponents' identities. *WIN*, 213 F.3d at 1139. And, this requirement does not make the government more transparent and accountable. Rather, it makes private citizens more transparent by forcing them to reveal their identity at the same time they deliver their political message. The government has no interest in making the political views of private citizens more transparent.

Most significantly, the Reveal Yourself Requirement is not narrowly tailored to either of these interest even if they were compelling.[11] Proponents must publically identify themselves on two occasions prior to circulating petitions, in filings made with the City Clerk, Code § 9202, and in a local newspaper, Code § 9205. Those filings are available to the electorate and satisfy the State's purported interest in providing information to voters. They are therefore the "least restrictive means" for accomplishing the State's informational interest (assuming one exists). The State even concedes that "by the time proponents' names are printed on initiative petitions, their identities are already known." (State MSJ at 8.) Therefore, as the petition circulates, the government's interest is non-

---

[10] The Reveal Yourself Requirement is subject to strict scrutiny because it is also a content-based proscription of speech. *Heller*, 378 F.3d at 987; (MSJ Response at 16.)

[11] Even if exacting scrutiny were proper, the Reveal Yourself Requirement still fails. (MSJ Response at 20-21.) The State's informational interest is adequately served by a "panoply of . . . other requirements that have not been challenged here." *WIN*, 213 F.3d at 1139; s*ee* Code §§ 9202, 9205.

existent. But the burden on speech is severe. *ACLF*, 525 U.S. at 192 n. 12; (MSJ Response at 7-9.)

The State has not proven the Reveal Yourself Requirement is narrowly tailored to a compelling interest and it therefore fails constitutional scrutiny and is unconstitutional.

III. The Challenged Statutes Are Unconstitutionally Vague.

The State provides little in rebuttal to Plaintiffs' arguments that the challenged statutes are unconstitutionally vague. The State argues that Section 342's definition of proponent is not vague because, when read in context, it can only refer to the electors who sign and file the notice of intent because only electors can propose initiatives. (State Opp. at 20.) However, as Plaintiffs have explained, the statute provides one set of rules for municipalities incorporating Section 9205's newspaper publication requirement and another for municipalities that do not require publication. If the proponent is *always* the electors "who file petitions with the elections official or legislative body," Code Section 342, it would make providing two definitions of "proponent" unnecessary. By providing two definitions, the legislature contemplated that the proponent could be someone other than the persons "who file petitions with the elections official or legislative body." Code Section 342. *See also Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991) (Courts must "mak[e] every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous."). As the statute provides, that other person is the person or persons who "publish" the notice in the newspaper. And, "publish" is most naturally interpreted to mean the act of paying to have the notice published. The defendants' and Plaintiffs' differing, yet reasonable interpretations of "proponent" show that people of "common intelligence must necessarily guess at its meaning and differ as to its application." *In re Doser*, 412 F.3d 1056, 1062 (9th Cir. 2005). The definition of "proponent" is therefore unconstitutionally vague. *Id*.

For the reasons stated in Plaintiffs' Memorandum in Support of Motion for Summary Judgment, the phrases "bear a copy," Code Section 9207, and "in substantially the following form," Code Section 9202, are also unconstitutionally vague. The State has not proven otherwise.

Conclusion

For the foregoing reasons, this Court should grant Plaintiffs' motion for summary judgment.

Dated: August 1, 2011

Respectfully Submitted,

s/Noel Johnson

James Bopp, Jr. (Ind. No. 2838-84)*
Joe La Rue (Ohio No. 80643)*
Noel Johnson (Wis. No. 1068004)**
BOPP, COLESON & BOSTROM
1 South 6th Street
Terre Haute, Indiana 47807-3510
Telephone: (812) 232-2434
Facsimile: (812) 235-3685
Email: jboppjr@aol.com
Email: jlarue@bopplaw.com
Email: njohnson@bopplaw.com
Lead Counsel for Plaintiffs

Charles H. Bell, Jr. (SBN 060553)
Brian T. Hildreth (SBN 214131)
BELL, McANDREWS, & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, California 95814
Telephone: (916) 445-7757
Facsimile: (916) 442-7759
Email: cbell@bmhlaw.com
Email: bhildreth@bmhlaw.com
Local Counsel for Plaintiffs

Gary D. Leasure (SBN 211160)
Workman Leasure, LLP
12626 High Bluff Drive # 150
San Diego, California 92130
Telephone: (858) 720-1992, Ext. 202
Facsimile: (858) 720-1990
Email: gleasure@workmanleasure.com
Local Counsel for Plaintiffs

* *Pro hac vice application approved by the Court on June 16, 2009.*
** *Admitted pro hac vice on March 11, 2011*

PROOF OF SERVICE

I hereby certify that the foregoing document was served electronically on July 25, 2011 upon the following counsel via the Southern District of California's electronic filing system:

Bart C. Miesfeld – bmiesfeld@ci.chula-vista.ca.us

Brian T. Hildreth – bhildreth@bmhlaw.com

Charles A. Bird – cbird@luce.com

Charles H. Bell, Jr – cbell@bmhlaw.com

Edward P. Swan, Jr – pswan@luce.com, dcharles@luce.com

Gary D. Leasure – gleasure@garydleasure.com

George M. Waters – george.waters@doj.ca.gov

s/ Noel Johnson
Noel Johnson (Wis. Bar No. 1068004)
njohnson@bopplaw.com
Attorney for Plaintiffs