

CIVIL COVER SHEET

FILED

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1973, is required for the filing of a case in this Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CHULA VISTA CITIZENS FOR JOBS AND FAIR COMPETITION, et al.

(b) County of Residence of First Listed Plaintiff: San Diego

(EXCEPT IN FEDERAL CASES)

(c) Attorney's Firm Name, Address, and Telephone Number:

Bell, McAndrews & Hiltachk, LLP, 455 Capitol Mall, Suite 801, Sacramento, CA 95814 (916) 442-7757

DEFENDANTS

DONNA NORRIS, in her official capacity as City Clerk for the City of Chula Vista, et al.

County of Residence: San Diego

2009 APR 28 PM 4:21

(EXCEPT IN FEDERAL CASES ONLY)

NOE, INLAND AND INTERNATIONAL CASES, USE THIS DEPUTY CLERK BY

Attorney's Name:

09 JUL 08 97 BEN

JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1. Federal question (U.S. Government Not a Party)
2. Diversity (Individuals of different Parities)
3. Federal question (U.S. Government a Party)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1. Citizen of this State
2. Citizen of another State
3. Foreign citizen
4. Incorporated in this State
5. Incorporated in another State
6. Foreign nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAXES, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, SOCIAL SECURITY, FEDERAL TAXES, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1. Original Proceeding
2. Removed from State Court
3. Remanded from Appellate Court
4. Remanded or Reopened
5. Transferred from another district (specify)
6. Multidistrict Litigation
7. Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

42 USC §§ 1983, 1973; First and fourteenth amendments, U.S. Constitution
Challenge to Chula Vista Charter § 903 & Cal. Elec. Code §§ 9202 & 9207 (compelled disclosure)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMANDS
CHECK YES only if demanded in complaint
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions)
DOCKET NUMBER

DATE: 04/28/2009
SIGNATURE OF ATTORNEY OF RECORD: [Signature]

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY _____ DEPUTY

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

**CHULA VISTA CITIZENS FOR JOBS
AND FAIR COMPETITION, LORI
KNEEBONE, LARRY BREITFELDER,
and ASSOCIATED BUILDERS AND
CONTRACTORS OF SAN DIEGO, INC.,**

Plaintiffs,

v.

DONNA NORRIS, in her capacity as City
Clerk for the City of Chula Vista, **MAYOR
CHERYL COX**, in her official capacity as
Mayor and Member of the Chula Vista City
Council, and **PAMELA BENSOUSSAN,
STEVE CASTANEDA, JOHN McCANN,**
and **RUDY RAMIREZ**, in their official
capacity as Members of the Chula Vista City
Council,

Defendants.

'09 CV 0 897 BEN JMA

Case: _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs Chula Vista Citizens for Jobs and Fair Competition, Lori Kneebone, Larry
Breitfelder, and Associated Builders and Contractors of San Diego, Inc., (together, "Plaintiffs")
complain as follows:

VERIFIED COMPLAINT

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1 **Introduction**

2 1. The Plaintiffs bring this action to defend their federal First Amendment rights to
3 engage in core political speech through the circulation of two City of Chula Vista (“**the City**”)
4 initiative petitions. They ask this Court for both declarative and injunctive relief.

5 2. The Plaintiffs are trying to pass the Fair and Open Competition Initiative in the City
6 of Chula Vista (“**the Initiative**”) which, if approved by the voters, will add Chapter 2.59 to the
7 Chula Vista Municipal Code.

8 3. At issue in this lawsuit is the constitutionality of California Elections Code §§ 9202,
9 9205, and 9207 as incorporated into the Chula Vista Charter (“**the Charter**”) § 903, and enforced
10 by agents of the City. These provisions require that those who wish to undertake an initiative
11 petition must publically disclose their identity, as well as provide their signature. They also require
12 that they be a natural person, as opposed to a corporation or other association. The term that the law
13 uses to describe one who undertakes to pass an initiative by way of an initiative petition is “the
14 proponent.”

15 **A. Compelled Disclosure of the Proponent’s Identity**

16 4. Three separate disclosures of personal, identifying information are required by for
17 those who wish to propose an initiative petition.

18 5. The first disclosure is compelled by California Elections Code § 9202, which
19 requires that at least one proponent of all initiative petitions provide their name and signature on the
20 initial Notice of Intent to Circulate Petition that must be filed with the City Clerk (“**Clerk’s**
21 **Version**”).

22 6. The second disclosure is compelled by California Elections Code §§ 9202 and 9205,
23 which require that the proponent of an initiative petition must provide his or her name and signature
24 on the copy of the Notice of Intent to Circulate Petition that must be published in the local newspaper
25 (“**Newspaper Version**”).

26 7. The third disclosure is compelled by California Elections Code §§ 9202 and 9207,
27

1 which require that the proponent of an initiative petition must provide his or her name and signature
2 on each section of the actual initiative petition when it is circulated among the voters in an attempt
3 to gather the required number of signatures (“**Circulated Version**”).

4 8. In California, each page of the initiative petition is called a section. All of the
5 sections together (that is, all of the pages) are known as the petition. Thus, what is required is that
6 the Circulated Version appear on each section (page) of the petition.

7 9. In this lawsuit, the Plaintiffs challenge only this *third* disclosure requirement—the
8 one which requires them to disclose their identity on the Circulated Version. They aver that
9 requirement is unconstitutional under the First Amendment, both facially and as applied to the
10 Plaintiffs.

11 **Only Natural Persons May Be Proponents**

12 10. The Plaintiffs also challenge the City’s interpretation of the California Elections Code
13 and their Charter that a “proponent” must be a natural person. Plaintiffs Chula Vista Citizens and
14 ABC contend that this requirement impermissibly chills their political speech and so is
15 unconstitutional under the First Amendment, both facially and as applied to the Plaintiffs.

16 **The Past and Present Activities of the Plaintiffs**

17 11. The Plaintiffs have circulated two initiative petitions which are relevant to this
18 lawsuit, “**the First Petition**” and “**the Second Petition.**” In fact, the Second Petition is still being
19 circulated. Some of the plaintiffs have also circulated another petition prior to these two, but it is
20 not relevant for this lawsuit.

21 12. The Plaintiffs believe that they gathered sufficient valid signatures on the First
22 Petition to compel a special election for the Initiative. However, the Defendant Clerk refused to
23 process the signatures. She maintains that the Plaintiffs did not fully comply with the challenged
24 provision requiring the disclosure of the proponent’s identity and signature on every section of an
25 initiative petition. Indeed, the Plaintiffs did not disclose their identities on each section; however,
26 the Plaintiffs contend that such forced public disclosure is unconstitutional under the First
27

1 Amendment to the United States Constitution. Regardless, the Defendant Clerk has refused to
2 process the signatures the Plaintiffs submitted on the First Petition.

3 13. The Plaintiffs are currently circulating the Second Petition. They believe that they
4 have now complied with all of the challenged laws, even though they did not want to comply with
5 them and also believe them to be unconstitutional and thus unenforceable.

6 14. In this lawsuit, the Plaintiffs challenge the constitutionality of the compelled
7 disclosure of the proponents' identity on the initiative petition that is circulated among the electorate,
8 and the requirement that only natural persons may be proponents (thereby excluding corporations,
9 organizations, and other associations from engaging in this type of important political discourse).

10 **Jurisdiction and Venue**

11 15. This action arises under 42 U.S.C. § 1983, 42 U.S.C. § 1973 et. seq., and the First and
12 Fourteenth Amendments to the Constitution of the United States.

13 16. The jurisdiction of this Court over claims arising under 42 U.S.C. § 1983 and 42
14 U.S.C. § 1973 is founded upon 28 U.S.C. § 1343(a). The jurisdiction over claims arising under the
15 First and Fourteenth Amendments is founded upon 28 U.S.C. §§ 1331 and 1343(a).

16 17. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because the events and
17 occurrences giving rise to the claim occurred within the Southern District of California.

18 18. Venue is also proper in this district under 28 U.S.C. § 1391(b)(1) because the
19 Defendant resides in the Southern District of California.

20 **Parties**

21 **Plaintiff "Chula Vista Citizens"**

22 19. Plaintiff Chula Vista Citizens for Jobs and Fair Competition major funding by
23 Associated Builders & Contractors PAC and Associated General Contractors PAC to promote
24 fair competition ("**Chula Vista Citizens**") is an unincorporated association and a ballot measure
25 committee formed to pass the Fair and Open Competition Initiative in the City of Chula Vista ("**the**
26 **Initiative**") which, if approved by the voters, will add Chapter 2.59 to the Chula Vista Municipal
27

1 Code.

2 20. Chula Vista Citizens has circulated two initiative petitions in the City which are
3 relevant to this lawsuit, “**the First Petition**” and “**the Second Petition.**” In fact, the Second Petition
4 is still being circulated.

5 21. Chula Vista Citizens has also circulated another initiative petition in the City prior
6 to these two, but it is not relevant for this lawsuit.

7 22. Chula Vista Citizens wanted to be the proponent for both the First Petition and the
8 Second Petition. It wanted to engage in the core political speech that occurs with initiative petitions.
9 It wanted to do this organizationally, without having to ask its individual members to serve as the
10 proponent for initiatives that Chula Vista Citizens wishes to propose to the voters. However, Chula
11 Vista Citizens was barred by the City’s law from serving as the proponent of its initiative petitions,
12 because the law requires that proponents be natural persons.

13 23. Chula Vista Citizens also intends to do future initiative petitions in the City. And,
14 if allowed by law, Chula Vista Citizens intends to serve as the proponent for its future initiatives.
15 Indeed, it would have served as the proponent for the current Initiative, which is the subject of the
16 First and Second Petitions, had the law allowed it to do so.

17 24. Chula Vista Citizens intends to engage in the core political speech that occurs with
18 initiative petitions. It wants to do this organizationally, without having to ask its individual members
19 to serve as the proponent for initiatives that Chula Vista Citizens intends to propose to the voters.
20 And, it wants the right to be able to engage in anonymous political speech at the point of contact with
21 the voters—that is, it does not want to have to disclose its name as a proponent on the Circulated
22 Version, which must be placed on the sections of initiative petitions when they are passed to the
23 voters. Rather, it wants to make sure that its ideas, rather than its identity, is what is evaluated by
24 the voters when they are asked to consider its initiative petitions. However, Chula Vista Citizens
25 is barred by the City’s law from serving as the proponent of its initiative petitions, because the law
26 requires that proponents be natural persons. And, Chula Vista Citizens is barred by the City’s law

1 from engaging in anonymous political speech at the point of contact with the voters, because the
2 City's law requires that the proponent's identity be listed on the Circulated Version which must be
3 on each section of initiative petitions.

4 25. The First Petition involved an attempt to get the Initiative on the City's ballot. *See*
5 Exhibit 1.

6 26. Chula Vista Citizens wanted to serve as the proponent for the First Petition, but was
7 barred by the City's law from doing so. *See* Charter § 903 (stating, "There are hereby reserved *to*
8 *the electors* of the City the powers of the initiative and referendum and of the recall of municipal
9 officers.") (emphasis added). It therefore asked two of its members, Plaintiffs Lori Kneebone and
10 Larry Breitfelder, to serve as proponents in their stead.

11 27. Chula Vista Citizens paid all of the expenses associated with the First Petition,
12 including paying for the required Newspaper Version to be published, and also to employ The La
13 Jolla Group to circulate the First Petition. Neither Ms. Kneebone nor Mr. Breitfelder contributed
14 financially to these efforts.

15 28. Chula Vista Citizens intended to gather enough signatures on the First Petition to
16 qualify for a special election. Indeed, Chula Vista Citizens believes it gathered enough signatures
17 to qualify. However, the signatures from the First Petition were disqualified by the Defendant City
18 Clerk.

19 29. Chula Vista Citizens avers that the requirement cited by the City Clerk as the reason
20 for the disqualifications of the signatures on the First Petition is unconstitutional, both facially and
21 as applied to Chula Vista Citizens, and asks this Court to declare it such.

22 30. Chula Vista Citizens also avers that the requirement that a proponent be a natural
23 person, thereby excluding Chula Vista Citizens and other groups and organizations from engaging
24 in core political speech, is unconstitutional, both facially and as applied to Chula Vista Citizens, and
25 ask this Court to declare it such.

26 31. Chula Vista Citizens also avers that the Defendant City Clerk's refusal to process the
27

1 signatures gathered on the First Petition in support of Chula Vista Citizen's Initiative deprives Chula
2 Vista Citizens of the special election for its Initiative to which it should be entitled by law.

3 32. The City's law requiring that the proponent's name and signature appear on the
4 Circulated Version impermissibly burdens the First Amendment right of Chula Vista Citizens, the
5 other Plaintiffs, and all other citizens of the City to engage in anonymous political speech. It
6 impermissibly forces them to speak, rather than letting them remain quiet. Indeed, Chula Vista
7 Citizen's free speech rights under the First Amendment will continue to be impermissibly burdened
8 until such time that the Defendant City Clerk processes the signatures gathered on the First Petition.

9 33. Among other relief prayed for at the end of this verified complaint, Chula Vista
10 Citizens asks this Court to order the Clerk to process the signatures on the First Petition and, if the
11 required number was gathered, to diligently take all required actions to have the Defendant City
12 Council place the Initiative on a special election ballot or a consolidated ballot as soon as possible,
13 but in any event no later than December 7, 2009.

14 34. Chula Vista Citizens also asks this Court to order the Clerk to substitute its name as
15 the proponent on the Clerk's Version that was filed with the City Clerk for the First Petition; and,
16 with the other Plaintiffs, asks the Court to order the Clerk to expunge the names of the proponents
17 currently listed.

18 35. Chula Vista Citizens' Second Petition, which is still being circulated among the
19 voters, also involves an attempt to get the Initiative on the City's ballot.

20 36. Chula Vista Citizens undertook its Second Petition because the Clerk refused to
21 process the signatures from the First Petition.

22 37. Chula Vista Citizens wanted to serve as the proponent for the Second Petition, but
23 was barred by the City's law from doing so. Charter § 903. It therefore asked two of its members,
24 Plaintiffs Lori Kneebone and Larry Breitfelder, to serve as proponents in their stead.

25 38. Chula Vista Citizens intends to pay all of the expenses associated with the Second
26 Petition, including paying for the required Newspaper Version to be published, and also to employ
27

1 The La Jolla Group to circulate the First Petition. Neither Ms. Kneebone nor Mr. Breitfelder
2 contributed financially to these efforts.

3 39. Because the City Clerk declared the signatures gathered on the First Petition invalid,
4 since the First Petition did not include the names of the proponent on each section of the Circulated
5 Version, Chula Vista Citizens persuaded Ms. Kneebone and Mr. Breitfelder to allow their names to
6 be placed on Circulated Version printed on the Second Petition. However, Chula Vista Citizens did
7 not want to place the names of Ms. Kneebone and Mr. Breitfelder on the Circulated Version printed
8 on the Second Petition. They only did so in order that the City Clerk would process the signatures
9 gathered.

10 40. The Plaintiffs have 180 days from the date of the filing of their Clerk’s Version to
11 submit the sections of their initiative petition for processing by the Clerk. The Clerk’s Version for
12 the Second Petition was filed on March 13, 2009. Thus, the Plaintiffs have until September 9, 2009
13 to complete their Second Petition and submit the petition sections to the Clerk. They therefore need
14 to gather signatures *now*, and cannot afford to wait.

15 41. Among other relief prayed for at the end of this verified complaint, Chula Vista
16 Citizens asks this Court to order the Clerk to substitute its name as the proponent on the Clerk’s
17 Version that was filed with the City Clerk for the Second Petition; and, with the other Plaintiffs, asks
18 the Court to order the Clerk to expunge the names of the proponents currently listed.

19 42. Chula Vista Citizens also asks the Court to enjoin the Clerk from requiring that the
20 proponent’s name be listed on the Circulated Version printed on the Second Petition.

21 43. Chula Vista Citizens has suffered the loss of its right to engage in political speech
22 because of the City’s requirement that proponents be natural persons. And even if Chula Vista
23 Citizens were allowed to be a proponent, the law would still require it to identify itself at the point
24 of contact with the voters—that is, on the Circulated Version that must be printed on the sections
25 of initiative petitions when they are passed to voters. These laws impermissibly burden Chula Vista
26 Citizen’s First Amendment speech and associational rights.

1 **Plaintiff Lori Kneebone**

2 44. Plaintiff Lori Kneebone (“Ms. Kneebone”) is, and at all times pertinent to this
3 complaint was, a member of Chula Vista Citizens and a resident and registered voter of Chula Vista,
4 California.

5 45. Ms. Kneebone listed her name as a proponent and signed the Clerk’s Version for both
6 the First Petition and the Second Petition, even though she did not want to, and would have preferred
7 to keep her name out of the public’s eye. She did so, though, because the City’s law says that a
8 proponent must be listed on the Newspaper Version, and the City’s law will not allow Chula Vista
9 Citizens to serve as the proponent for its Initiative.

10 46. Ms. Kneebone allowed her name to be placed as a proponent on the Newspaper
11 Version for the First Petition, even though she did not want to, and would have preferred to keep her
12 name out of the public’s eye. For the Second Petition, Ms. Kneebone allowed her name and
13 signature to be placed on the Newspaper Version, even though she did not want to, and would have
14 preferred to keep her name out of the public’s eye. She did so, though, because the City’s law says
15 that a proponent must be listed on the Newspaper Version, and the City’s law will not allow Chula
16 Vista Citizens to serve as the proponent for its Initiative.

17 47. Ms. Kneebone did not contribute financially to the effort to have the Initiative placed
18 on the City’s ballot for either the First Petition or the Second Petition.

19 48. Although Ms. Kneebone agreed to allow her name and signature to be placed on the
20 Clerk’s Version, and also to be placed in small typeface in the Newspaper Version, she refused to
21 list her name and signature as a proponent on the Circulated Version which was printed on the First
22 Petition when it was passed among the voters. Ms. Kneebone did not want to be identified before
23 the masses of the City’s voters in such a fashion, but rather wanted to engage in anonymous political
24 speech.

25 49. As already stated, the City Clerk refused to process the signatures from the First
26 Petition because Ms. Kneebone’s name and signature did not appear on the Circulated Version.

1 50. Ms. Kneebone wants to have the signatures from the First Petition, for which she was
2 compelled by City law to serve as a proponent, counted by the City Clerk. The Clerk's refusal to do
3 so deprives Ms. Kneebone of the special election for the Initiative for which she served as a
4 proponent and to which she should be entitled by law. The City's law requiring that the proponent's
5 name and signature appear on the Circulated Version impermissibly burdens the First Amendment
6 right of Ms. Kneebone, the other Plaintiffs, and all other citizens of the City to engage in anonymous
7 political speech. It impermissibly forces them to speak, rather than letting them remain quiet.
8 Indeed, Ms. Kneebone's free speech rights under the First Amendment will continue to be
9 impermissibly burdened until such time that the Defendant City Clerk processes the signatures
10 gathered on the First Petition.

11 51. Among other relief prayed for at the end of this verified complaint, Ms. Kneebone
12 asks this Court to order the Clerk to process the signatures on the First Petition and, if the required
13 number was gathered, to diligently take all required actions to have the Defendant City Council place
14 the Initiative on a special election ballot or a consolidated ballot as soon as possible, but in any event
15 no later than December 7, 2009.

16 52. Ms. Kneebone also asks the Court to order the Clerk to expunge her name as a
17 proponent on the Clerk's Version for the First Petition; and, along with the other Plaintiffs, asks the
18 Court to order the Clerk to substitute Plaintiffs Chula Vista Citizens and ABC as the true proponents.

19 53. Because the Clerk refused to process the signatures gathered on the First Petition, Ms.
20 Kneebone agreed to again serve as the proponent for the Second Petition. She again allowed her
21 name and signature to be filed with the City Clerk on the Clerk's Version, even though she did not
22 want to. She also agreed to allow her name and signature to be placed on the Newspaper Version,
23 even though she did not want to.

24 54. And this time, in spite of her strong personal objection to doing so, she allowed her
25 name and signature to be placed on the Circulated Version printed on the Second Petition. Ms.
26 Kneebone recognized that the Clerk would not count the signatures gathered on the Second Petition
27

1 if she did not allow her name and signature to be on the Circulated Version.

2 55. The Plaintiffs have 180 days from the date of the filing of their Clerk’s Version to
3 submit the sections of their initiative petition for processing by the Clerk. The Clerk’s Version for
4 the Second Petition was filed on March 13, 2009. Thus, the Plaintiffs have until September 9, 2009
5 to complete their Second Petition and submit the petition sections to the Clerk. They therefore need
6 to gather signatures *now*, and cannot afford to wait.

7 56. Among other relief prayed for at the end of this verified complaint, Ms. Kneebone
8 asks the Court to order the Clerk to expunge her name as a proponent on the Clerk’s Version for the
9 Second Petition; and, along with the other Plaintiffs, asks the Court to order the Clerk to substitute
10 Plaintiffs Chula Vista Citizens and ABC as the true proponents.

11 57. Ms. Kneebone also asks the Court to enjoin the Clerk from requiring that the
12 proponent’s name be listed on the Circulated Version printed on the Second Petition.

13 58. Ms. Kneebone has suffered the loss of her right to engage in political speech because
14 of the City’s requirement that proponents identify themselves at the point of contact with the
15 voters—that is, on the Circulated Version that must be printed on the sections of initiative petitions
16 when they are passed to voters. Ms. Kneebone has also been compelled by the City to identify
17 herself as a supporter of the Initiative when she wants to remain anonymous. She has had to identify
18 herself, though, because the City’s law requires that a proponent be a natural person, rather than
19 allowing the group to which Ms. Kneebone belongs serve as the proponent. These laws
20 impermissibly burden Ms. Kneebone’s First Amendment speech and associational rights.

21 **Plaintiff Larry Breitfelder**

22 59. Plaintiff Larry Breitfelder (“Mr. Breitfelder”) is, and at all times pertinent to this
23 complaint was, a member of Chula Vista Citizens and a resident and registered voter of Chula Vista,
24 California.

25 60. Mr. Breitfelder listed his name as a proponent and signed the Clerk’s Version for both
26 the First Petition and the Second Petition, even though he did not want to, and would have preferred
27

1 to keep his name out of the public's eye. He did so, though, because the City's law says that a
2 proponent must be listed on the Newspaper Version, and the City's law will not allow Chula Vista
3 Citizens to serve as the proponent for its Initiative.

4 61. Mr. Breitfelder allowed his name to be placed as a proponent on the Newspaper
5 Version for the First Petition, even though he did not want to, and would have preferred to keep his
6 name out of the public's eye. For the Second Petition, Mr. Breitfelder allowed his name and
7 signature to be placed on the Newspaper Version, even though he did not want to, and would have
8 preferred to keep his name out of the public's eye. He did so, though, because the City's law says
9 that a proponent must be listed on the Newspaper Version, and the City's law will not allow Chula
10 Vista Citizens to serve as the proponent for its Initiative.

11 62. Mr. Breitfelder did not contribute financially to the effort to have the Initiative placed
12 on the City's ballot for either the First Petition or the Second Petition.

13 63. Although Mr. Breitfelder agreed to allow his name and signature to be placed on the
14 Clerk's Version, and also to have his name placed in small typeface in the Newspaper Version, he
15 refused to list his name and signature as a proponent on the Circulated Version which was printed
16 on the First Petition when it was passed among the voters. Mr. Breitfelder did not want to be
17 identified before the masses of the City's voters in such a fashion, but rather wanted to engage in
18 anonymous political speech.

19 64. As already stated, the City Clerk refused to process the signatures from the First
20 Petition because Mr. Breitfelder's name and signature did not appear on the Circulated Version.

21 65. Mr. Breitfelder wants to have the signatures from the First Petition, for which he was
22 compelled by City law to serve as a proponent, counted by the City Clerk. The Clerk's refusal to do
23 so deprives Mr. Breitfelder of the special election for the Initiative for which he served as a
24 proponent and to which he should be entitled by law. The City's law requiring that the proponent's
25 name and signature appear on the Circulated Version impermissibly burdens the First Amendment
26 right of Mr. Breitfelder, the other Plaintiffs, and all other citizens of the City to engage in anonymous
27

1 political speech. It impermissibly forces them to speak, rather than letting them remain quiet.
2 Indeed, Mr. Breitfelder's free speech rights under the First Amendment will continue to be
3 impermissibly burdened until such time that the Defendant City Clerk processes the signatures the
4 First Petition gathered.

5 66. Among other relief prayed for at the end of this verified complaint, Mr. Breitfelder
6 asks this Court to order the Clerk to process the signatures on the First Petition and, if the required
7 number was gathered, to diligently take all required actions to have the Defendant City Council place
8 the Initiative on a special election ballot or a consolidated ballot as soon as possible, but in any event
9 no later than December 7, 2009.

10 67. Mr. Breitfelder also asks the Court to order the Clerk to expunge his name as a
11 proponent on the Clerk's Version for the First Petition; and, along with the other Plaintiffs, asks the
12 Court to order the Clerk to substitute Plaintiffs Chula Vista Citizens and ABC as the true proponents.

13 68. Because the Clerk refused to process the signatures gathered on the First Petition, Mr.
14 Breitfelder agreed to again serve as the proponent for the Second Petition. He again allowed her
15 name and signature to be filed with the City Clerk on the Clerk's Version, even though he did not
16 want to. He also again agreed to allow his name and signature to be placed on the Newspaper
17 Version, even though he did not want to.

18 69. And this time, in spite of his strong personal objection to doing so, he allowed his
19 name and signature to be placed on the Circulated Version printed on the Second Petition. Mr.
20 Breitfelder recognized that the Clerk would not count the signatures gathered on the Second Petition
21 if he did not allow his name and signature to be on the Circulated Version.

22 70. As part of Chula Vista Citizens, Mr. Breitfelder intends for Chula Vista Citizens to
23 do future initiative petitions. However, Mr. Breitfelder has decided that he will not again allow his
24 name to be placed as the proponent of a Circulated Version. He regrets allowing it to be placed on
25 the Circulated Version for the Second Petition. If he is again forced to do so in order to be a
26 proponent of an initiative petition, Mr. Breitfelder will not serve as a proponent.

1 71. The Plaintiffs have 180 days from the date of the filing of their Clerk’s Version to
2 submit the sections of their initiative petition for processing by the Clerk. The Clerk’s Version for
3 the Second Petition was filed on March 13, 2009. Thus, the Plaintiffs have until September 9, 2009
4 to complete their Second Petition and submit the petition sections to the Clerk. They therefore need
5 to gather signatures *now*, and cannot afford to wait.

6 72. Among other relief prayed for at the end of this verified complaint, Mr. Breitfelder
7 asks the Court to order the Clerk to expunge his name as a proponent on the Clerk’s Version for the
8 Second Petition; and, along with the other Plaintiffs, asks the Court to order the Clerk to substitute
9 Plaintiffs Chula Vista Citizens and ABC as the true proponents.

10 73. Mr. Breitfelder also asks the Court to enjoin the Clerk from requiring that the
11 proponent’s name be listed on the Circulated Version printed on the Second Petition.

12 74. Mr. Breitfelder has suffered the loss of his right to engage in political speech because
13 of the City’s requirement that proponents identify themselves at the point of contact with the
14 voters—that is, on the Circulated Version that must be printed on the sections of initiative petitions
15 when they are passed to voters. Mr. Breitfelder has also been compelled by the City to identify
16 himself as a supporter of the Initiative when he wants to remain anonymous. He has had to identify
17 himself, though, because the City’s law requires that a proponent be a natural person, rather than
18 allowing the group to which Mr. Breitfelder belongs serve as the proponent. These laws
19 impermissibly burden Mr. Breitfelder’s First Amendment speech and associational rights.

20 **Plaintiff “ABC”**

21 75. Plaintiff Associated Builders & Contractors, Inc., San Diego Chapter (“ABC”) is an
22 association of construction related businesses. Its members do business in the City.

23 76. ABC is the largest single donor to Chula Vista Citizens, and is the principal financial
24 sponsor of the Initiative.

25 77. The Initiative is very important to ABC, because its members may not be able to
26 compete for public works projects in the City unless the Initiative becomes law.
27

1 78. ABC has been involved in ballot initiatives in the past. It also intends to be involved
2 in ballot initiatives in the future, including ballot initiatives in the City. And, if allowed by law,
3 ABC intends to serve as the proponent for its initiatives. Indeed, it wanted to serve as the proponent
4 for the current Initiative, which is the subject of the First and Second Petitions, and would have done
5 so, had the law allowed it. *See* Charter § 903 (stating, “There are hereby reserved *to the electors* of
6 the City the powers of the initiative and referendum and of the recall of municipal officers.”)
7 (emphasis added).

8 79. ABC intends to engage in the core political speech that occurs with initiative
9 petitions. It wants to do this organizationally, without having to ask others to serve as the proponent
10 for initiatives that ABC intends to propose to the voters. And, it wants the right to be able to engage
11 in anonymous political speech at the point of contact with the voters—that is, it does not want to
12 have to disclose its name as a proponent on the Circulated Version, which must be placed on the
13 sections of initiative petitions when they are passed to the voters. Rather, it wants to make sure that
14 its ideas, rather than its identity, is what is evaluated by the voters when they are asked to consider
15 its initiative petitions. However, ABC is barred by the City’s law from serving as the proponent of
16 its initiative petitions, because the law requires that proponents be natural persons. And, ABC is
17 barred by the City’s law from engaging in anonymous political speech at the point of contact with
18 the voters, because the City’s law requires that the proponent’s identity be listed on the Circulated
19 Version which must be on each section of initiative petitions.

20 80. Along with the other Plaintiffs, ABC avers that the requirement cited by the City
21 Clerk as the reason for the disqualifications of the signatures on the First Petition is unconstitutional,
22 both facially and as applied to ABC, and asks this Court to declare it such.

23 81. ABC also avers that the requirement that a proponent be a natural person, thereby
24 excluding ABC and other corporations, groups and organizations from engaging in core political
25 speech, is unconstitutional, both facially and as applied to ABC, and ask this Court to declare it such.

26 82. ABC also avers that the Defendant City Clerk’s refusal to process the signatures
27

1 gathered on the First Petition in support of the Initiative deprives ABC of the special election for the
2 Initiative for which it contributed financial support and to which it should be entitled by law.

3 83. The City's law requiring that the proponent's name and signature appear on the
4 Circulated Version impermissibly burdens the First Amendment right of ABC, the other Plaintiffs,
5 and all other citizens of the City to engage in anonymous political speech. It impermissibly forces
6 them to speak, rather than letting them remain quiet. Indeed, the ABC's and the other Plaintiffs' free
7 speech rights under the First Amendment will continue to be impermissibly burdened until such time
8 that the Defendant City Clerk processes the signatures gathered on the First Petition.

9 84. Among other relief prayed for at the end of this verified complaint, ABC asks this
10 Court to order the Clerk to process the signatures on the First Petition and, if the required number
11 was gathered, to diligently take all required actions to have the Defendant City Council place the
12 Initiative on a special election ballot or a consolidated ballot as soon as possible, but in any event
13 no later than December 7, 2009.

14 85. ABC also asks this Court to order the Clerk to substitute its name as the proponent
15 on the Clerk's Version that was filed with the City Clerk for the First Petition; and, with the other
16 Plaintiffs, asks the Court to order the Clerk to expunge the names of the proponents currently listed.

17 86. The Second Petition, which is still being circulated among the voters, also involves
18 an attempt to get the Initiative on the City's ballot.

19 87. ABC and the other Plaintiffs undertook the Second Petition because the Clerk refused
20 to process the signatures from the First Petition.

21 88. ABC wanted to serve as the proponent for the Second Petition, and would have done
22 so had it not been barred by the City's law.

23 89. The Plaintiffs have 180 days from the date of the filing of their Clerk's Version to
24 submit the sections of their initiative petition for processing by the Clerk. The Clerk's Version for
25 the Second Petition was filed on March 13, 2009. Thus, the Plaintiffs have until September 9, 2009
26 to complete their Second Petition and submit the petition sections to the Clerk. They therefore need
27

1 to gather signatures *now*, and cannot afford to wait.

2 90. Among other relief prayed for at the end of this verified complaint, ABC asks this
3 Court to order the Clerk to substitute its name as the proponent on the Clerk’s Version that was filed
4 with the City Clerk for the Second Petition; and, with the other Plaintiffs, asks the Court to order the
5 Clerk to expunge the names of the proponents currently listed.

6 91. ABC also asks the Court to enjoin the Clerk from requiring that the proponent’s name
7 be listed on the Circulated Version printed on the Second Petition.

8 92. ABC has suffered the loss of its right to engage in political speech because of the
9 City’s requirement that proponents be natural persons. And even if ABC were allowed to be a
10 proponent, the law would still require it to identify itself at the point of contact with the voters—that
11 is, on the Circulated Version that must be printed on each section of initiative petitions when they
12 are passed to voters. These laws impermissibly burden ABC’s First Amendment speech and
13 associational rights.

14
15 **Defendant Donna Norris, Sued In Her Official Capacity as
The City Clerk and Elections Officer for the City of Chula Vista**

16 93. Defendant Donna Norris (the “Clerk”) is the City Clerk and Elections Officer for the
17 city of Chula Vista. Charter, § 502(f). She has the responsibility to accept and process the Petition.
18 The Clerk assists and coordinates with the San Diego County Registrar of Voters to verify that
19 sufficient signatures exist on the Petition to place the proposed ordinance on an upcoming special
20 election ballot for the City of Chula Vista.

21
22 **Defendant Cheryl Cox,
Sued In Her Official Capacity As Mayor and Member of the City Council**

23 94. Defendant Cheryl Cox is the Mayor of Chula Vista. As such, she is a member of the
24 City Council of Chula Vista. Charter, § 300(A).

25 95. The Charter vests in the City “the power to make and enforce all laws and regulations
26 in respect to municipal affairs.” Charter, § 200.

1 96. The Charter then states: “All powers of the City, except as otherwise provided in this
2 Charter, shall be vested in the City Council.” Charter, § 201. This includes those laws and
3 regulations which are the subject of this lawsuit.

4 97. Defendant Mayor Cheryl Cox is therefore being sued in her official capacity as Mayor
5 and Member of the Chula Vista City Council.

6
7 **Defendant Pamela Bensoussan,
Sued In Her Official Capacity As A Member of the City Council**

8 98. Defendant Pamela Bensoussan is a Member of the Chula Vista City Council.

9 99. The Charter vests in the City “the power to make and enforce all laws and regulations
10 in respect to municipal affairs.” Charter, § 200.

11 100. The Charter then states: "All powers of the City, except as otherwise provided in this
12 Charter, shall be vested in the City Council." Charter, § 201. This includes those laws and
13 regulations which are the subject of this lawsuit.

14 101. Defendant Pamela Bensoussan is therefore being sued in her official capacity as
15 Member of the Chula Vista City Council.

16
17 **Defendant Steve Castaneda,
Sued In His Official Capacity As A Member of the City Council**

18 102. Defendant Steve Castaneda is a Member of the Chula Vista City Council.

19 103. The Charter vests in the City “the power to make and enforce all laws and regulations
20 in respect to municipal affairs.” Charter, § 200.

21 104. The Charter then states: “All powers of the City, except as otherwise provided in this
22 Charter, shall be vested in the City Council.” Charter, § 201. This includes those laws and
23 regulations which are the subject of this lawsuit.

24 105. Defendant Steve Castaneda is therefore being sued in his official capacity as Member
25 of the Chula Vista City Council.

26
27 **Defendant John McCann,**

1 **Sued In His Official Capacity As A Member of the City Council**

2 106. Defendant John McCann is a Member of the Chula Vista City Council.

3 107. The Charter vests in the City “the power to make and enforce all laws and regulations
4 in respect to municipal affairs.” Charter, § 200.

5 108. The Charter then states: “All powers of the City, except as otherwise provided in this
6 Charter, shall be vested in the City Council.” Charter, § 201. This includes those laws and
7 regulations which are the subject of this lawsuit.

8 109. Defendant John McCann is therefore being sued in his official capacity as Member
9 of the Chula Vista City Council.

10
11 **Defendant Rudy Ramirez,
Sued In His Official Capacity As A Member of the City Council**

12 110. Defendant Rudy Ramirez is a Member of the Chula Vista City Council.

13 111. The Charter vests in the City “the power to make and enforce all laws and regulations
14 in respect to municipal affairs.” Charter, § 200.

15 112. The Charter then states: “All powers of the City, except as otherwise provided in this
16 Charter, shall be vested in the City Council.” Charter, § 201. This includes those laws and
17 regulations which are the subject of this lawsuit.

18 113. Defendant Rudy Ramirez is therefore being sued in his official capacity as Member
19 of the Chula Vista City Council.

20 **Statement of Facts**

21 114. The City’s Charter incorporates by reference California Elections Code §§ 9202,
22 9203, 9205, 9207, and 342 as its own code. Charter § 903. The pertinent parts of these California
23 Elections Code sections are set forth below:

24 **California Elections Code § 9202 (a)**

25 *Before circulating an initiative petition in any city, the proponents of the matter shall*
26 *file with the elections official a notice of intention to do so, which shall be*
27 *accompanied by the written text of the initiative and may be accompanied by a*
 written statement not in excess of 500 words, setting forth the reasons for the
 proposed petition. The notice shall be signed by at least one, but not more than three,

1 *proponents and shall be in substantially the following form:*

2 *Notice of Intent to Circulate Petition*

3 *Notice is hereby given by the persons whose names appear hereon of their intention*
4 *to circulate the petition within the City of _____ for the purpose of _____. A statement*
5 *of the reasons of the proposed action as contemplated in the petition is as follows:*

6 **California Elections Code § 9203 (a)**

7 *Any person who is interested in any proposed measure shall file a copy of the*
8 *proposed measure with the elections official with a request that a ballot title and*
9 *summary be prepared. . . . The elections official shall immediately transmit a copy*
10 *of the proposed measure to the city attorney. Within 15 days after the proposed*
11 *measure is filed, the city attorney shall provide and return to the city elections*
12 *official a ballot title for and summary of the proposed measure.*

13 **California Elections Code Sec. 9205(a)**

14 *A notice of intention and the title and summary of the proposed measure shall be*
15 *published or posted or both as follows: (a) If there is a newspaper of general*
16 *circulation . . . the notice, title, and summary shall be published therein at least once.*

17 **California Elections Code Sec. 9207**

18 *The proponents may commence to circulate the petitions among the voters of the city*
19 *for signatures by any registered voter of the city after publication or posting, or both,*
20 *as required by Section 9205, of the title and summary prepared by the city attorney.*
21 *Each section of the petition shall bear a copy of the notice of intention and the title*
22 *and summary prepared by the city attorney.*

23 **California Elections Code 342**

24 *“Proponent or proponents of an initiative or referendum measure” means, for*
25 *[municipal] initiative and referendum measures, the person or persons who publish*
26 *a notice or intention to circulate petitions*

27 115. In order to circulate a Chula Vista initiative petition, a person must prepare three
28 different versions of a “Notice of Intent to Circulate Petition.” They must file one version with the
City Clerk (the “Clerk’s Version”), one version in a newspaper of general circulation (the
“Newspaper Version”), and one version must be printed on each section of the initiative petition that
is circulated among the voters in an attempt to gather their signatures (the “Circulated Version”).

116. California Elections Code § 9202, incorporated by the Charter § 903, requires each
version of the Notice to be substantially in this form:

Notice of Intent to Circulate Petition Notice is hereby given by the
persons whose names appear hereon of their intention to circulate the
petition within the City of _____ for the purpose of _____. A statement
of the reasons of the proposed action as contemplated in the petition
is as follows:

1
2 117. The Clerk’s Version proscribed by Section 9202 is filed with the Clerk at the start
3 of the process, along with a request, required by Section 9203, for the City Attorney’s Title and
4 Summary of the proposed measure. The Clerk’s Version must be signed by at least one but not more
5 than three proponents.

6 118. The Newspaper Version required by Section 9205 must be published at least once in
7 a newspaper of general circulation along with the Title and Summary. It appears that the City
8 requires that the Newspaper Version contain the names and signatures of the proponents.

9 119. The Circulated Version required by Section 9207 must be printed on each section of
10 the initiative petition that is circulated for signatures. In California, a “section” of a petition is the
11 individual piece of paper that contains all the relevant information and is signed by the voter. All
12 the sections are eventually submitted together as one united petition.

13 **A. The First Petition**

14 120. Plaintiff Associated Builders & Contractors, Inc., San Diego Chapter (“ABC”) is an
15 association of construction related businesses. Its members do business in the City.

16 121. ABC is the largest single donor to Chula Vista Citizens, and is the principal financial
17 sponsor of the Initiative.

18 122. ABC and Chula Vista Citizens decided to propose the Initiative, which would add
19 the “Fair and Open Competition Ordinance” to the City’s Charter, in order to allow non-union shops,
20 like the members of ABC, to compete for public works projects in the City.

21 123. ABC and Chula Vista Citizens would have liked to have served as the proponent for
22 the Initiative, and would have done so, had they not believed that the City’s law required that
23 proponents be natural persons. *See* Charter § 903 (stating, “There are hereby reserved *to the electors*
24 of the City the powers of the initiative and referendum and of the recall of municipal officers.”)
25 (emphasis added).

26 124. Chula Vista Citizens asked two of its members, Plaintiffs Ms. Kneebone and Mr.
27 Breitfelder, to serve as proponents in its stead. They agreed to do so.

1 125. On August 28, 2008, the Plaintiffs filed four pages with the City Clerk to initiate the
2 First Petition effort in an attempt to qualify for a special election. The first page was the Clerk's
3 Version with the printed names and signatures of Ms. Kneebone and Mr. Breitfelder as proponents.
4 This page also included a request, as required by Section 9203, for the City Attorney to prepare the
5 Title and Summary. The second page was a copy of the Plaintiffs' Statement of Reasons and the text
6 of the Circulated Version that the Plaintiffs planned to, and did, print on each section of the petition.
7 The Initiative's text was printed on the third and fourth pages. *See Exhibit 2, pages 1–4.*

8 126. When Chula Vista Citizens filed its required Clerk's Version, Ms. Kneebone and Mr.
9 Breitfelder allowed their names and addresses to be filed with the Clerk as proponents of the
10 Initiative. *See Exhibit 2, page 1.*

11 127. On September 19, 2008, Chula Vista Citizens published the Newspaper Version,
12 along with the City Attorney's Title and Summary, in the Chula Vista Start News, which is a
13 newspaper of general circulation as required by law. This Newspaper Version contained the text of
14 the Clerk's Version, as well as the printed names of Ms. Kneebone and Mr. Breitfelder, and the name
15 and address of ABC. It did not, however, contain signatures. *See Exhibit 3.*

16 128. Neither Ms. Kneebone nor Mr. Breitfelder paid any money toward the cost of the
17 publication of the Newspaper Version. Rather, Chula Vista Citizens paid \$302.38 to publish the
18 Newspaper Version and is therefore a proponent of the initiative pursuant to California Elections
19 Code § 342, even if City law does not currently recognize them as such.

20 129. On September 19, 2008, the Chula Vista Citizens hired The La Jolla Group to
21 circulate the Petition in the City with the goal of collecting the approximate 15,000 valid signatures
22 needed to place the Initiative on an upcoming special election ballot.

23 130. The La Jolla Group, on behalf of the Chula Vista Citizens, circulated sections that
24 contained the text of the proposed ordinance, the City Attorney's Title and Summary, the
25 Committee's Statement of Reasons, and the Circulated Version.

26 131. The Circulated Version was printed on each section of the Petition above the
27

1 Statement of Reasons. It corresponded word-for-word to the text printed on the Clerk’s Version filed
2 with the Clerk on August 28, 2008. It did not, however, include the printed names or signatures of
3 Ms. Kneebone or Mr. Breitfelder. *See* Exhibit 2, page 2. Ms. Kneebone and Mr. Breitfelder refused
4 to allow their names to be placed on the actual petition circulated among the City’s voters. They did
5 not want to place their personal identifying information before the ‘masses’ in such a fashion. They
6 believed it was one thing to give their names to the Clerk, and allow them to be published in the
7 classified section of the newspaper. It was another thing entirely to allow their names to be printed
8 on an initiative petition which may be controversial in the City, and have their names seen by the
9 voters who are asked to sign the petition. They did not want that type of exposure, especially when
10 ABC and Chula Vista Citizens were the true proponents of the Initiative, and they were merely
11 ‘proxy’ proponents—required by the City’s insistence that a proponent be a natural person.

12 132. Between September 20th and November 12th 2008, The La Jolla Group, on behalf
13 of Chula Vista Citizens, collected 23,285 signatures of City voters for the Petition. No signatures
14 were collected by Ms. Kneebone, Mr. Breitfelder, ABC, or anyone other than The La Jolla Group.

15 133. On November 12, 2008, Chula Vista Citizens submitted to the Clerk 2,585 sections
16 that contained a total of 23,285 signatures for the First Petition.

17 134. On November 13, the Clerk rejected all 23,285 signatures on the First Petition, stating
18 that:

19 *As the City's elections official, it is my ministerial duty to ensure*
20 *compliance with all procedural mandates of the California Elections*
21 *Code regarding all initiative measures seeking qualification for a*
22 *ballot. The Elections Code requires that the name of at least one*
23 *proponent of the initiative appears on the Notice of Intent. However,*
24 *the Notice of Intent included on the petition you submitted does not*
contain either [Ms. Kneebone’s or Mr. Breitfelder’s] names. As a
result, the petition does not comply with the Elections Code
requirements [Sec. 9202 and 9207], and I am unable to accept the
petition.

25 135. On December 12, 2008, the City Attorney’s office expanded on this decision and sent
26 a letter to Plaintiffs informing them that their signatures (not just their names) were required on each
27

1 petition section. The City Attorney’s office said the First Petition was flawed because the Circulated
2 Version did not contain “any signatures at all.”

3 136. The Clerk will not, however, process the signatures or forward them to the San Diego
4 County Registrar of Voters for verification. If the Clerk is permitted to maintain this position, the
5 signatures will not be verified, and the Initiative cannot be placed on the ballot, frustrating the efforts
6 and desire of the 23,285 citizens who signed the First Petition, as well as the efforts and desire of
7 the Plaintiffs.

8 **B. The Second Petition**

9 137. Because the Clerk will not process the signatures collected on the First Petition, ABC
10 and Chula Vista Citizens decided to undertake a second effort to pass the Initiative (“**the Second**
11 **Petition**”). They again wanted to serve as the proponent of the Initiative, and would have done so,
12 had the law allowed them to.

13 138. Because the City’s law requires that a proponent be a natural person, Charter § 903,
14 Chula Vista Citizens again asked Ms. Kneebone and Mr. Breitfelder to serve as the proponents for
15 the Initiative. They again agreed.

16 139. On March 13, 2009 the Plaintiffs filed their Clerk’s Version, as well as all of the other
17 required paperwork, with the City Clerk in an effort to qualify for a regular election. *See* Exhibit 4,
18 pages 1–6.

19 140. On April 3, 2009, Chula Vista Citizens published the Newspaper Version, along with
20 the City Attorney’s Title and Summary, in the Chula Vista Start News, which is a newspaper of
21 general circulation as required by law. This Newspaper Version contained the text of the Clerk’s
22 Version, as well as the printed names and signatures of Ms. Kneebone and Mr. Breitfelder. *See*
23 Exhibit 5.

24 141. Chula Vista Citizens told Ms. Kneebone and Mr. Breitfelder that the only way they
25 could pass the Initiative would be if they would agree to allow their names and signatures to be
26 placed on the Circulated Version that is printed on the sections of the initiative petition that is
27

1 circulated among the voters.

2 142. Neither Ms. Kneebone nor Mr. Breitfelder wanted to allow their names to be on the
3 Circulated Version. They objected to having their identities attached so closely to an initiative
4 petition that could be controversial in the City. And while they did not mind having their names on
5 file with the City Clerk, or printed in the classified section of the newspaper, they did not want the
6 exposure that having their names on the Circulated Version would bring.

7 143. However, because they wanted to pass this Initiative, they agreed to allow their names
8 to be placed on the Circulated Version.

9 144. Ms. Kneebone and Mr. Breitfelder felt that they were again being compelled by the
10 City's law to do something that they did not want to do, in order to try to pass the Initiative. First
11 they were compelled to serve as a proponent, when the group of which they are members—Chula
12 Vista Citizens—is the true proponent. Now they were forced to reveal their identity to unknown
13 voters and petition circulators, because the City's law required that the proponents' names and
14 signatures be on the Circulated Version. They agreed to do these things, however, because they
15 believe in the goal of the Initiative and want to help it get passed in the City.

16 145. Chula Vista Citizens again hired The La Jolla Group to circulate the Second Petition
17 in the City. The La Jolla Group is currently circulating sections that contain the text of the proposed
18 ordinance, the City Attorney's Title and Summary, the Committee's Statement of Reasons, and the
19 Circulated Version.

20 146. Ms. Kneebone is undecided as to whether she will ever again allow her name to be
21 used as a proponent if she must allow her name and signature to appear on the Circulated Version.

22 147. Mr. Breitfelder, however, is adamant that he will *never again* allow his name to be
23 used as a proponent if he must allow his name and signature to appear on the Circulated Version.
24 Mr. Breitfelder regrets having allowed it to appear on the Second Petition's Circulated Version and
25 says that if he had it to do over, he would not allow it. Although Mr. Breitfelder wants Chula Vista
26 Citizens to be able to do initiative petitions in the future about issues which are of concern to them,
27

1 he will never again serve as a proponent for an initiative if he is forced to place his name and
2 signature on the Circulated Version—even if Chula Vista Citizens is unable to find anyone else to
3 do so.

4 148. Chula Vista Citizens and ABC have done initiative petitions in the City in the past,
5 and they intend to do initiative petitions in the City in the future about issues which are of concern
6 to them.

7 149. Chula Vista Citizens and ABC do not, however, want to list the names of their
8 members as proponents on the various Notices required by California Elections Code §§ 9202(a),
9 9205(a), and 9207, as incorporated by the Charter § 903. Rather, they want to be allowed to engage
10 in the core political speech that occurs with initiative petitions. Chula Vista Citizens and ABC want
11 to do this organizationally, without having to ask others to serve as the proponent for initiatives that
12 they intend to propose to the voters. In other words, they want to serve as the proponents for their
13 own initiatives and engage in their own political speech about the issues which are important to
14 them.

15 150. Chula Vista Citizens and ABC also want to be able to engage in *anonymous political*
16 *speech* at the point of contact with the voters—that is, they do not want to have to disclose their
17 names as a proponent on the Circulated Version, which must be placed on sections of initiative
18 petitions when they are passed to the voters. Rather, they want to make sure that their *ideas*, rather
19 than their *identity*, is what is evaluated by the voters when they are asked to consider its initiative
20 petitions.

21 151. However, Chula Vista Citizens and ABC are barred by the City’s law from serving
22 as the proponent of their initiative petitions, because the law requires that proponents be natural
23 persons. *See* Charter § 903 (stating, “There are hereby reserved *to the electors* of the City the powers
24 of the initiative and referendum and of the recall of municipal officers.”) (emphasis added).

25 152. And, Chula Vista Citizens and ABC are barred by the City’s law from engaging in
26 anonymous political speech at the point of contact with the voters, because the City’s law requires
27

1 that the proponent’s identity be listed on the Circulated Version, which must be printed on each
2 section of initiative petitions.

3 153. Interestingly, the City interprets California law about proponents differently than
4 California does. Under California’s interpretation, the “proponent” of a local measure is the person
5 who publishes the Newspaper Version of the Notice. California Elections Code § 342. Neither Ms.
6 Kneebone nor Mr. Breitfelder payed for the newspaper publication, but rather Chula Vista Citizens
7 did. Chula Vista Citizens is therefore the true proponent of the initiative petition under California
8 law. And the California Elections Code (including Section 342) is incorporated by the Charter as
9 being the law of the City. Charter § 903.

10 154. The Plaintiffs have 180 days from the date of the filing of their Clerk’s Version to
11 submit the sections of their initiative petition for processing by the Clerk. The Clerk’s Version for
12 the Second Petition was filed on March 13, 2009. Thus, the Plaintiffs have until September 9, 2009
13 to complete their Second Petition and submit the petition sections to the Clerk. They therefore need
14 to gather signatures *now*, and cannot afford to wait.

15 155. For the reasons set forth in this verified complaint, the Plaintiffs believe that the
16 challenged provisions are unconstitutional, facially and as applied, and cannot be legally enforced.
17 There exists an actual, justiciable controversy among these parties as to the validity of the
18 aforementioned provisions.

19 156. The Plaintiffs have no adequate remedy at law, and as a result of these challenged
20 provisions, the Plaintiffs have suffered, and will continue to suffer, the irreparable loss of their
21 expressive and associational rights as guaranteed by the First Amendment to the Constitution of the
22 United States.

23 **Count 1—“Disclosure on the Circulated Version”**

24 157. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all
25 of the preceding paragraphs.

26 158. The Charter § 903 (incorporating California Elections Code §§ 9202 and 9207)

1 requires that the proponent’s name and signature appear on the Circulated Version, which is printed
2 on every section of the initiative petition when it is circulated among the electorate.

3 159. The First Amendment to the United States Constitution provides in pertinent part:

4 Congress shall make no law . . . abridging the freedom of speech, or of the
5 press, or the right of the people to peaceably assemble, and to petition the
6 Government for a redress of grievances.

7 U.S. CONST., Amend. I. The Fourteenth Amendment to the United States Constitution makes the
8 First Amendment applicable to state and thus local governments. *Thornhill v. Alabama*, 310 U.S.
9 88, 95 (1940).

10 160. Petition circulation is “core political speech,” for which First Amendment protection
11 is “at its zenith.” *Meyer v. Grant*, 486 U.S. 414, 421–22, 425 (1988). The First Amendment requires
12 courts “to be vigilant” when determining whether a law regulating ballot initiatives is constitutional,
13 in order to “guard against undue hindrances to political conversations and the exchange of ideas.”
14 *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 192 (1999) (“*Buckley II*”).

15 161. When core political expression—such as occurs during petition circulation—is
16 burdened, courts apply “exacting scrutiny” to determine whether the challenged regulation can pass
17 First Amendment scrutiny. *Meyer*, 486 U.S. at 420 (citing *Buckley v. Valeo*, 424 U.S. 1, 45 (1976)).
18 In the First Amendment context, “exacting scrutiny” is the same as “strict scrutiny.” See *F.E.C. v.*
19 *Wisconsin Right to Life*, 127 S.Ct. 2652, 2669 n.7 (2007) (“*WRTL II*”) (saying that *Buckley* had
20 applied “strict scrutiny,” even though *Buckley* had called it “exacting scrutiny”); *Buckley II*, 525 U.S.
21 at 192 n.12, 204 (noting that the challenged law failed “exacting scrutiny,” but also affirming that
22 the test applied was the strict scrutiny one: “state regulations impos[ing] severe burdens on speech
23 ... [must] be narrowly tailored to serve a compelling state interest.”) (internal quotations and citations
24 omitted); *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 346 and 346 n.10 (1995) (referring
25 in the text of the opinion to “exacting scrutiny” used in *Meyer v. Grant*, 486 U.S. 414 (1988), and
26 then referring to the scrutiny employed in *Meyer* as “strict scrutiny” in footnote 10); *McIntyre*, 514
27 U.S. at 347 (noting that the strict scrutiny standard is the proper one when evaluating a law under

1 exacting scrutiny).

2 162. Underscoring the fact that strict scrutiny is the proper standard of review when core
3 political expression—such as occurs during petition circulation—is burdened, is the fact that courts
4 regularly affirm that “strict scrutiny” was applied in *Meyer v. Grant*, even though the text of the
5 opinion itself refers to “exacting scrutiny.” See *Caruso v. Yamhill County ex rel. County Com'r*, 422
6 F.3d 848, 855 (9th Cir. 2005) (affirming that strict scrutiny was applied in *Meyer v. Grant*);
7 *Wirzburger v. Galvin*, 412 F.3d 271, 277 (1st Cir. 2005) (Same); *Save Palisade FruitLands v. Todd*,
8 279 F.3d 1204, 1212 (10th Cir. 2002) (finding that since *Meyer v. Grant* was inapposite, a strict
9 scrutiny analysis was not required—thus suggesting that such an analysis was utilized in *Meyer*);
10 *Wellwood v. Johnson*, 172 F.3d 1007, 1009 (8th Cir. 1999) (stating that the *Meyer v. Grant* Court
11 “applied strict scrutiny”); *Biddulph v. Mortham*, 89 F.3d 1491, 1498 (11th Cir. 1996) (Same);
12 *American Ass'n of People With Disabilities v. Herrera*, 580 F.Supp.2d 1195, 1218 (D.N.M. 2008)
13 (Same); *League of Women Voters of Florida v. Browning*, 575 F.Supp.2d 1298, 1320–21 (S.D.Fla.
14 2008) (Same); *Las Vegas Convention and Visitors Authority v. Miller*, 191 P.3d 1138, 1153 (Nev.
15 2008) (stating that the standard of scrutiny applied in *Meyer v. Grant* was “strict scrutiny”); *Citizens*
16 *For Honest & Responsible Government v. Secretary of State*, 11 P.3d 121, 125 (Nev. 2000) (Same);
17 *Hart v. Secretary of State*, 715 A.2d 165, 168 (Me. 1998) (Same); *Initiative 172 (Fair Play for*
18 *Washington) v. Western Washington Fair*, 945 P.2d 761, 585 (Wash. App. 1997) (Same).

19 163. Similarly, when the government requires those engaging in core political speech to
20 give up their anonymity and disclose information about themselves, as the Defendants in this case
21 requires, ‘exacting’ (that is, ‘strict’) scrutiny applies. *Buckley*, 424 U.S. at 64; *McIntyre*, 514 U.S.
22 at 346 and 346 n.10.

23 164. Strict scrutiny is therefore the proper standard of review for this Court to use to
24 evaluate the challenged provisions relating to the “Declare the Advocate” requirement—namely,
25 California Elections Code §§ 9202(a), 9205(a), and 9207, as incorporated by the Charter, § 903.

26 165. “Under strict scrutiny, the *Government* must prove that applying [the challenged
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1 provision] furthers a compelling interest and is narrowly tailored to achieve that interest.” *WRTL II*,
2 2664 (italics in original). *See also Buckley v. American Constitutional Law Foundation, Inc.*, 525
3 U.S. 182, 206 (1999) (“*Buckley II*”) (noting the “now-settled approach” that regulations “impos[ing]
4 ‘severe burdens’ on speech or association” [must] be narrowly tailored to serve a compelling state
5 interest”) (Thomas, J., concurring in judgment)); *Republican Party of Minnesota v. White*, 536 U.S.
6 765, 774-75 (2002) (stating that “[u]nder the strict-scrutiny test, respondents have the burden to
7 prove that the announce clause is (1) narrowly tailored, to serve (2) a compelling state interest.”).
8 Furthermore, “The question under [the] strict scrutiny test, however, is not whether the [challenged
9 provision] serves this interest *at all*, but whether it is *narrowly tailored* to serve this interest.”
10 *Republican Party of Minnesota*, 536 U.S. 777 n. 7 (emphasis in the original).

11 166. The Plaintiffs are currently having the Second Petition circulated in the City, and
12 intend to do future initiative petitions as well. With regard to all of these petitions—both current and
13 future—they want to be able to engage in anonymous political speech if they believe that their
14 interests are best served by such speech. They want to allow the voters of the City to decide on their
15 initiative petition based on their *speech*—that is, the strength of the ideas of the Initiative itself—and
16 not based on who are the ones who support it. They want to make sure that it is their *ideas*, rather
17 than their *identity*, that is evaluated by the voters when they are asked to consider their initiative
18 petitions.

19 167. The disclosure requirement on the Circulated Version forces those who would seek
20 to engage the electorate in “interactive communication concerning political change,” *Meyer*, 486
21 U.S. at 422, to reveal themselves. Yet, as recognized by the *McIntyre* Court, “an advocate may
22 believe her ideas will be more persuasive” when anonymity is preserved. *McIntyre*, 514 U.S. at 342.
23 Although the *McIntyre* Court was considering the constitutionality of a law prohibiting an
24 anonymous political handbill urging readers to vote against a tax levy, *Id.* at 337 n.2, the principle
25 applies equally well to the Plaintiffs in this case because, “Circulating a petition is akin to
26 distributing a handbill.” *Buckley II*, 525 U.S. at 199. However, compelled disclosure of the identity
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1 of the proponent causes even greater injury than compelled disclosure of the identity of the author
2 of a handbill, because the interest in anonymity is greatest when an initiative petition is being
3 circulated. *Id.* Indeed, as recognized by the Ninth Circuit Court of Appeals, it is not just that a
4 speaker’s identity is revealed, but how and when that identity is revealed, that matters in a First
5 Amendment analysis of a regulation of political speech. *ACLU of Nevada v. Heller*, 378 F.3d 979,
6 991 (9th Cir. 2004). *See also Talley v. California*, 362 U.S. 60 (1960) (holding unconstitutional a
7 law which required that the author of a handbill publish his personal identifying information on the
8 leaflet).

9 168. Additionally, because the Initiative can be construed as a critique of those in
10 power—namely, the Mayor and City Council—the Plaintiffs have added incentive to seek
11 anonymity. The First Amendment protects against the compelled disclosure of political associations
12 and beliefs, especially where a reasonable threat of retaliation exists. *Brown v. Socialist Workers*,
13 459 U.S. 87 (1992). Here, the Plaintiffs wish to speak against the policies of the Mayor and City
14 Council—policies which are very popular not only with the some or all of the Defendants, but also
15 with certain segments of the City’s citizens. Yet, the Defendants will not allow the Plaintiffs to
16 engage in anonymous speech when they seek to gather signatures on their initiative petitions, but
17 require them to identify themselves. This subjects the Plaintiffs to the reasonable threat of
18 retaliation, not only from the Mayor and City Council, but also from any hot-heads among the
19 citizens who support the criticized policies.

20 169. Requiring the name and signature of the proponent to be on the Circulated Version
21 printed on each section of the initiative petition when it is circulated among the voters
22 impermissibly burdens the speech and associational rights of the Plaintiffs. If there is a compelling
23 interest requiring this disclosure—a proposition which the Plaintiffs contest—the requirement that
24 such be disclosed on the Circulated Version is not narrowly tailored to it, but is both overinclusive
25 and underinclusive, and also overbroad.

26 170. The requirement is overinclusive because it compels more speech than can possibly
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1 be necessary to meet the interest. Assuming the proffered interest is an informational one, and
2 assuming such an interest is “compelling” so as to meet the first requirement of strict scrutiny, such
3 information is already disseminated in less intrusive ways than requiring proponents of initiative
4 petitions to disclose their names to the masses on the actual sections of their petition. The
5 proponents’ information is already on file with the Clerk, and has been published in the newspaper.
6 Any citizen interested in the identity of the proponent of an initiative petition can readily find it.
7 Thus, requiring the proponent to *again* disclose his personal information is overinclusive, and not
8 narrowly tailored to the compelling interest—assuming such an interest even exists. A “simple
9 interest” in providing the electorate with “additional relevant information” is insufficient to support
10 a disclosure provision. *McIntyre*, 514 U.S. at 348.

11 171. The requirement is also underinclusive because it does not compel those who oppose
12 an initiative petition to identify themselves. Assuming the proffered governmental interest is
13 informational, one would think that the Defendants would want to place before the electorate the
14 identities of those who oppose initiative petitions as well as those who support them. After all, if
15 the goal is *really* an informed electorate, identifying those opposing initiative petitions is just as
16 important as identifying those who support them. Yet, the Defendants do not require those who
17 oppose initiative petitions to identify themselves to the masses, even when they circulate literature
18 urging the electorate to refuse to sign the initiative petition. Only those who support them as
19 proponents are identified. When a regulation is underinclusive in this way, it makes belief that it is
20 designed to serve the proffered interest “a challenge to the credulous.” *Republican Party of*
21 *Minnesota v. White*, 536 U.S. 765, 780 (2002). *See also City of LaDue v. Gilleo*, 512 U.S. 43, 52
22 (1994) (noting that such underinclusiveness diminishes “the credibility of the government’s rationale
23 for restricting speech in the first place.”).

24 172. The requirement is also overbroad: It burdens substantially more associational and
25 speech rights than are justified by any compelling interest. *Broadrick v. Oklahoma*, 413 U.S. 601,
26 612 (1973). Neither Ms. Kneebone nor Mr. Breitfelder are the true proponents of the initiative
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1 petition. Rather, Chula Vista Citizens is the true proponent, as they are the ones who paid for the
2 publication of the Newspaper Version of the Notice. California Elections Code § 342 (providing that
3 “Proponent of proponents of an initiative or referendum measure’ means, for [municipal] initiative
4 and referendum measures, the person or persons who publish a notice or intention to circulate
5 petitions”). Only Chula Vista Citizens *published* the Notice, since only they paid for its
6 publication. Yet, the Clerk requires that individual members of Chula Vista Citizens serve as the
7 proponents, and refuses to allow Chula Vista Citizens to do so. Thus, the requirement that the
8 “proponents” provide their name and signature on the Circulated Version burdens substantially more
9 associational and speech rights than are justified by any compelling interest, since it requires those
10 who are not the true proponents of the measure to submit to public disclosure of their personal
11 information. The Supreme Court has “repeatedly held” that “a governmental purpose to control or
12 prevent activities constitutionally subject to state regulation may not be achieved by means which
13 sweep unnecessarily broadly and thereby invade the area of protected freedoms.” *National Ass'n for*
14 *Advancement of Colored People v. Alabama ex rel.*, 377 U.S. 288, 307 (1964) (citations omitted).

15 173. The requirement that the proponent be disclosed on the Circulated Version is
16 therefore unconstitutional, both facially and as applied to the Plaintiffs.

17 **Count 2—“Proponent Must Be A Natural Person”**

18 174. The Plaintiffs re-allege and incorporate by reference all of the allegations contained
19 in all of the preceding paragraphs.

20 175. The Charter states, “There are hereby reserved *to the electors* of the City the powers
21 of the initiative and referendum and of the recall of municipal officers.” Charter § 903 (emphasis
22 added). The Defendants understand this provision, along with California Elections Code §§ 9202,
23 9205, and 9207, to require that proponents of initiative petitions must be natural persons. This
24 excludes organizations such as Chula Vista Citizens or ABC from serving as proponents. Thus,
25 when they want to attempt to place an initiative on the ballot, they must compel one of their
26 members to serve as the proponent. That member must then disclose his or her name to the City
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1 Clerk, thereby explicitly identifying himself or herself as a supporter of the proposed initiative and
2 also implicitly identifying himself or herself as a member of the true proponent-organization. The
3 member must also publish his or her name and signature in the newspaper, further identifying
4 himself or herself as a supporter of the proposed initiative and possibly as a member of true
5 proponent-organization. Then, the member must also allow his or her name and signature to be
6 included on the Circulated Version, which is placed on every section of the initiative petition.

7 176. Chula Vista Citizens and ABC have done initiative petitions in the City in the past,
8 and intend to do initiative petitions in the City in the future about issues which are of concern to
9 them. They do not, however, want to provide the names and personal information of their members
10 on the Clerk’s Version of the Notice, the Newspaper Version of the Notice, or the Circulated Version
11 of the Notice, as required by California Elections Code, §§ 9202, 9205, and 9207 and as
12 incorporated by the Charter, § 903. Rather, they want to serve as the proponent for their own
13 initiatives, and thereby engage in their own political speech.

14 177. The First Amendment protects the right of persons—whether natural persons, or other
15 associations and organizations of natural persons—to engage in speech, to assemble (or, associate),
16 and to lobby government. U.S. CONST., amend. I.

17 178. The Supreme Court noted in *First National Bank of Boston v. Bellotti*, 435 U.S. 765
18 (1978), that the First Amendment provides its protections to corporations. *Bellotti*, 435 U.S. at 784.
19 This is because, “In the realm of protected speech, the legislature is constitutionally disqualified from
20 dictating the subjects about which persons may speak and the speakers who may address a public
21 issue.” *Id.* at 784–85 (citing *Police Dept. Of Chicago v. Mosley*, 408 U.S. 92, 96 (1972)). And it is
22 not only corporations’ speech which deserves First Amendment protection: “The inherent worth of
23 the speech in terms of its capacity for informing the public does not depend upon the identity of its
24 source, whether corporation, association, union, or individual.” *Bellotti*, 435 U.S. at 777.

25 179. Both the incorporated ABC and the unincorporated Chula Vista Citizens thus have
26 the First Amendment right to engage in political speech—speech which “is at the heart of the First
27

1 Amendment’s protection.” *Bellotti*, 435 U.S. at 776. Yet, the Defendants impermissibly burden the
2 free speech rights of ABC and Chula Vista Citizens by denying them the ability to serve as
3 proponents for initiative petitions, thereby denying them the ability to place ballot initiatives on the
4 City’s ballot. That this is in the context of a ballot initiative is especially grievous, for “the direct
5 participation fo the people in a referendum, if anything, increases the need for the widest possible
6 dissemination of information from diverse and antagonistic sources.” *Bellotti*, 435 U.S. at 792 n.29
7 (quotation marks and citations omitted).

8 180. In addition, the challenged provisions in effect force Chula Vista Citizens and ABC
9 to choose between two protected rights: They may *either* engage in protected political speech, *or*
10 they may allow their members to associate freely, without fear that they will be ‘revealed’ to the
11 government. But they may not do both; for, if they are to engage in political speech, one of their
12 members must identify himself and serve as a proponent.

13 181. The Supreme Court recognized in *NAACP v. Alabama* that, “Inviolability of privacy
14 in group association may in many circumstances be indispensable to preservation of freedom of
15 association, particularly where a group espouses dissident beliefs.” *NAACP v. Alabama*, 357 U.S.
16 449, 462 (1958). Because ABC and Chula Vista Citizens seek to enact provisions through the
17 initiative process which are directly at odds with both the status quo, as advanced by the Mayor and
18 City Council, and also with the desire of many of Chula Vista’s citizenry, it may fairly be said that
19 they “espouse[] dissident beliefs” such as concerned the Court in *NAACP v. Alabama*. There is, after
20 all, a “vital relationship between freedom to associate and privacy in one's associations.” *Id.* When
21 the right to privacy is abridged, the freedom to associate is threatened. *Id.*

22 182. The requirement that a proponent be a natural person therefore impermissibly burdens
23 the speech and associational rights of ABC and Chula Vista Citizens, and cannot withstand strict
24 scrutiny because it is not narrowly tailored to a compelling state interest.

25 183. The Plaintiffs contend that the Defendants have no compelling interest to which the
26 prohibition on corporate and associational speech could be tailored. However, even if there is such
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1 a compelling interest, this prohibition is overinclusive because it would not allow ABC or Chula
2 Vista Citizens to serve as proponents even if all of their shareholders or members voted to authorize
3 them to do so. As the *Bellotti* Court noted, “Ultimately shareholders may decide, through the
4 procedures of corporate democracy, whether their corporation should engage in debate on public
5 issues. *Id.* at 794. The fact that a law does not allow for such shareholder decision-making
6 “demonstrat[es]” the “overinclusiveness of the statute.” *Id.*

7 184. The requirement that the proponent be a natural person is therefore unconstitutional,
8 both facially and as applied to the Plaintiffs.

9 **Count 3—“The Definition of Proponent”**

10 185. The Plaintiffs re-allege and incorporate by reference all of the allegations contained
11 in all of the preceding paragraphs.

12 186. A law is unconstitutionally vague when “men of common intelligence must
13 necessarily guess at its meaning and differ as to its application.” *Connally v. General Const. Co.*,
14 269 U.S. 385, 391 (1926). *See also, accord, U.S. v. Lanier*, 520 U.S. 259, 266 (1997); *Kolender v.*
15 *Lawson*, 461 U.S. 352, 357 (1983).

16 187. When First Amendment rights are at stake, a statute must have a great degree of
17 specificity, even more than what is normal for due process protections. *Buckley*, 424 U.S. at 77.
18 Laws which regulate the First Amendment must “provide people of ordinary intelligence a
19 reasonable opportunity to understand” what, exactly, the law means. *Hill v. Colorado*, 530 U.S. 703,
20 732 (2000) (quoting *Chicago v. Morales*, 527 U.S. 41, 56–57 (1999)).

21 188. California Elections Code § 342, incorporated by the Charter § 903, defines the
22 “proponent or proponents of an initiative or referendum measure” to mean, for non-statewide
23 initiatives, “the person or persons who *publish* a notice or intention to circulate petitions, or, where
24 publication is not required, who file petitions with the elections official or legislative body.” It is
25 not clear from the statute, however, what *publish* means—or, more to the point, what action, exactly,
26 is the action of “publish[ing] a notice or intention to circulate petitions.” Is it—as the Plaintiffs
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1 believe—the one who pays to have the Newspaper Version published? Is that the publisher? Or,
2 is it—as the Clerk and other Defendants apparently believe—the natural person who signs the
3 Clerk’s Version? Or, is it the one who delivers the “notice or intention to circulate petitions” to the
4 newspaper for publication, regardless of who pays for publication? Or, is it someone else? The law
5 simply is not clear, but vague. As such, it cannot survive First Amendment scrutiny.

6 189. The definition of “proponent” does not provide “people of ordinary
7 intelligence”—including, but not limited to, the Plaintiffs—“reasonable opportunity to understand”
8 who a proponent is. It is therefore vague.

9 190. The definition of “proponent” is also overbroad (that is, it fails the narrow-tailoring
10 requirements of strict scrutiny).

11 191. The Plaintiffs have done initiative petitions in the past, and intend to do initiative
12 petitions in the future about issues which are of concern to them. Under the current, challenged law,
13 a “proponent” must provide his name and signature on the Clerk’s Version, the Newspaper Version,
14 and the Circulated Version. However, they cannot know who, exactly, a proponent is, or what action
15 makes one a proponent. Yet, unless a proponent’s name and signature appears on the Clerk’s
16 Version, Newspaper Version, and Circulated Version, the Clerk will not process any signatures
17 collected on the initiative petition, nor will she forward them to the San Diego County Registrar of
18 Voters for verification. It is imperative, therefore, that the Plaintiffs and other citizens of the City
19 as well be able to understand who, exactly, a proponent is. The law, however, does not provide them
20 with the necessary clarity. Their First Amendment rights are therefore impermissible burdened by
21 a law which is unconstitutionally vague and/or overbroad.

22 192. The definition of “proponent” is therefore unconstitutional, both facially and as
23 applied to the Plaintiffs.

24 **Count 4---“Bear A Copy”**

25 193. The Plaintiffs re-allege and incorporate by reference all of the allegations contained
26 in all of the preceding paragraphs.

1 194. California Elections Code § 9207, incorporated by the Charter § 903, is controlling
2 law in Chula Vista. It provides in pertinent part, “Each section of the petition shall *bear a copy* of
3 the notice of intention and the title and summary prepared by the city attorney.” (This “copy” is what
4 is called in this complaint “the Circulated Version”). It is not clear from the statute, however, what
5 “bear a copy” means. Is it to be a certified copy? A non-certified but 100% exact copy? A
6 substantially the same copy? Or, something else? Neither the Plaintiffs, nor other citizens of the
7 City, can reasonably tell from the wording of Section 9207.

8 195. The Clerk interprets the requirement of Section 9207 to be a 100% exact copy,
9 including the name and signature of the proponent. Yet, California Elections Code § 9202,
10 incorporated by the Charter § 903, only requires that each of the three required notices (i.e., the
11 Clerk’s Version, Newspaper Version, and Circulated Version) shall be “substantially” in the required
12 form. Is a copy which is “substantially” in the required form the same as a 100% exact copy? Or,
13 might it be something less than that? Might it not be required to contain the signature of the
14 proponent? Might it even be allowed to fail to disclose the name of the proponent? Might the
15 wording be allowed to be slightly different? Neither the Plaintiffs, nor other citizens of the City, can
16 reasonably tell from the wording of Section 9202.

17 196. If the State Legislature had intended that the Circulated Version required by Section
18 9207 should be a 100% exact copy of the Clerk’s Version required by § 9202, they would have likely
19 used a phrase which clearly indicates that was their intention. And they would not have had to go
20 outside of the vocabulary of the Elections Code to do so. For instance, the Code uses the phrase
21 “certified copy” in Section 2100, “full and correct copy” in Section 9014, “complete copy” in
22 Section 9084, “true duplicate copy” in Section 13266, “correct copy” in Section 9258, and “exact
23 copy” in Section 19103.

24 197. Had any of these phrases been used in Section 9207, the Clerk’s interpretation that
25 the Circulated Version must be a 100% exact copy of the Clerk’s Version would be more reasonable.
26 These phrases were *not* used, however. What the Legislature said was that the Circulated Version
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1 of the Notice “shall *bear a copy* of the notice of intention and the title and summary prepared by the
2 city attorney” (Section 9207), which shall be “substantially” in the required form (Section 9202).

3 198. Nor does the City always enforce this requirement. In fact, the City has not applied
4 the 100% exact copy standard to prior Chula Vista initiatives. Yet, the Clerk applied it to the
5 Plaintiffs with regard to the First Petition. This seems to indicate that either the Clerk is enforcing
6 the 100% exact copy standard arbitrarily against the Plaintiffs, or else even she is not sure what,
7 exactly, “bear a copy” means.

8 199. Regardless, the law cannot stand. The phrases, “Bear a copy” which is “in
9 substantially” the required form, coupled with the seemingly arbitrary way the Defendants have
10 chosen to enforce the law, does not provide “people of ordinary intelligence” a “reasonable
11 opportunity to understand” what the law requires. It is therefore impermissibly vague.

12 200. “Bear a copy” is also overbroad (that is, it fails the narrow-tailoring requirements of
13 strict scrutiny).

14 201. The Plaintiffs intend to do initiative petitions in the future about issues which are of
15 concern to them. However, the Clerk refuses to process the signatures on initiative petitions which
16 she deems have not complied with the requirements of Sections 9207 and 9202. Nor will she
17 forward those signatures to the San Diego County Registrar of Voters for verification. It is
18 imperative, therefore, that the Plaintiffs and other citizens of the City be able to understand what,
19 exactly, the phrase “bear a copy” in Section 9207 means, and how it relates to the requirement in
20 Section 9202 that the Notices should be “substantially” in the required form. Their First Amendment
21 rights are impermissible burdened by a law which is unconstitutionally vague and overbroad.

22 202. The “bear a copy” requirement is therefore unconstitutional, both facially and as
23 applied to the Plaintiffs.

24 **Count 5---“In Substantially the Following Form”**

25 203. The Plaintiffs re-allege and incorporate by reference all of the allegations contained
26 in all of the preceding paragraphs.

1 WHEREFORE, the Plaintiffs respectfully ask this Court for the following relief:

2 1. A declaratory judgment declaring unconstitutional, both facially and as applied, the
3 requirement that the proponent’s name and signature appear on the Circulated Version. California
4 Elections Code § 9207, as incorporated by the Charter § 903;

5 2. A declaratory judgment declaring unconstitutional, both facially and as applied, the
6 requirement that a proponent of an initiative petition be a natural person, such that associations,
7 corporations, and organizations are excluded from serving as proponents. California Elections Code
8 § 9202, as incorporated by the Charter § 903.

9 3. A declaratory judgment declaring unconstitutional, both facially and as applied, the
10 definition of “proponent” in California Elections Code § 342, as incorporated by the Charter § 903.

11 4. A declaratory judgment declaring unconstitutional, both facially and as applied, the
12 requirement that “each section of the petition shall bear a copy of the notice of intention of intention
13 and the title and summary prepared by the city attorney.” California Elections Code § 9207, as
14 incorporated by the Charter § 903;

15 5. A declaratory judgment declaring unconstitutional, both facially and as applied, the
16 requirement that the Clerk’s Version, Newspaper Version, and Circulated Version be “in
17 substantially the following form.” California Elections Code § 9202, as incorporated by the Charter
18 § 903;

19 6. Enjoin any further enforcement of California Elections Code §§ 342, 9202 and 9207,
20 as incorporated by the Charter § 903;

21 7. Enjoin the Clerk from requiring that the proponent’s name and signature appear on
22 the Circulated Version that is printed on each section of the Second Petition’ initiative petition (or
23 any future initiative petitions);

24 8. Enjoin the Clerk from requiring that proponents of initiative petitions be natural
25 persons;

26 9. Order the Clerk to expunge the names and signatures of Ms. Kneebone and Mr.
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1 Breitfelder on the Clerk's Version for both the First Petition and the Second Petition, and substitute
2 in their place the names of Chula Vista Citizens and ABC as the proponents of the Initiative;

3 10. Order requiring the Clerk to process the signatures on the initiative petition submitted
4 by the Plaintiffs on November 12, 2008 and to forward the same to the San Diego County Registrar
5 of Voters for verification, as required by law, and compelling the Clerk, if the San Diego County
6 Registrar of Voters determines the Petition has received the required number of valid signatures, to
7 diligently take all required actions to have the City Council place the Initiative on a special election
8 ballot or a consolidated ballot as soon as possible, but in any event no later than December 7, 2009;

9 11. Costs and attorneys fees pursuant to any applicable statute or authority and especially
10 42 U.S.C. § 1988; and

11 12. Any other relief this Court in its discretion deems just and appropriate.

Verification

I, William Baber, declare as follows:

1. I am the treasurer of Chula Vista Citizens for Jobs and Fair Competition ("Chula Vista Citizens").

2. I have personal knowledge of Chula Vista Citizens and its activities, including those set out in the foregoing *Verified Complaint*, and if called upon to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Verified Complaint* concerning Chula Vista and its past and intended activities are true and correct to the best of my knowledge and understanding.

Executed on April 28, 2009.



William Baber, Treasurer
*Chula Vista Citizens for Jobs
and Fair Competition*
13825 Kirkham Way
Poway CA 92064

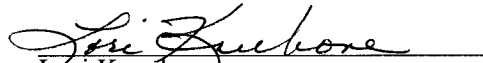
Verification

I, Lori Kneebone, declare as follows:

1. I have personal knowledge of the events and activities attributed to me in the foregoing *Verified Complaint*, and if called upon to testify I would competently testify as to the matters stated herein.

2. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Verified Complaint* concerning me and my past and intended activities are true and correct to the best of my knowledge and understanding.

Executed on April 28, 2009.


Lori Kneebone
806 Halecrest Drive
Chula Vista CA 91910

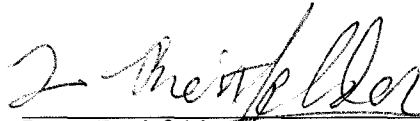
Verification

I, Larry Breitfelder, declare as follows:

1. I have personal knowledge of the events and activities attributed to me in the foregoing *Verified Complaint*, and if called upon to testify I would competently testify as to the matters stated herein.

2. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Verified Complaint* concerning me and my past and intended activities are true and correct to the best of my knowledge and understanding.

Executed on April 28, 2009.



Larry Breitfelder
1595-57 Mendocino Drive
Chula Vista CA 91911

Verification

I, William Baber, declare as follows:

1. I am the Government Affairs Director of Associated Builders and Contractors Inc. San Diego Chapter ("ABC").

2. I have personal knowledge of ABC and its activities, including those set out in the foregoing *Verified Complaint*, and if called upon to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Verified Complaint* concerning ABC and its past and intended activities are true and correct to the best of my knowledge and understanding.

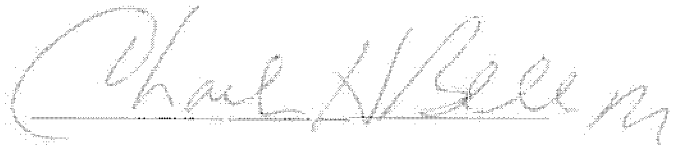
Executed on April 28, 2009.



William Baber, Government Affairs Director
Associated Builders and Contractors Inc.
San Diego Chapter
13825 Kirkham Way
Poway CA 92064

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Respectfully Submitted,



Charles H. Bell, Jr. (SBN 060553)*
BELL, McANDREWS, & HILTACHK, LLP
455 Capitol Mall, Suite 801
Sacramento, California 95814
Telephone: (916) 445-7757
Facsimile: (916) 442-7759
Local Counsel for Plaintiffs

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

** Attorney of Record.*

*** Pro hac vice application to be filed when docket number is available.*

Exhibits

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Exhibit 1 Fair and Open Competition Initiative Petition (“the Initiative”) from the First Petition (Reduced Version)

Exhibit 2 Plaintiffs’ August 28, 2008 Filing with the City Clerk Making Their Requisite Notice of Intent And Other Related Filings (“the First Petition”)

Exhibit 3 Plaintiffs’ Newspaper Version for the First Petition

Exhibit 4 Plaintiffs’ March 13 Filing with the City Clerk Making Their Requisite Notice of Intent And Other Related Filings (“the Second Petition”)

Exhibit 5 Plaintiffs Newspaper Version for the Second Petition

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Title: An initiative to amend the Chula Vista Municipal Code adding Chapter 2.59, entitled "Fair and Open Competition in Contracting," mandating that the City or Redevelopment Agency not fund or contract for public works projects where there is a requirement to use only union employees.

Summary: This measure proposes to amend by ordinance the Chula Vista Municipal Code to add a chapter regarding contracting on public works projects. The stated purpose and intent of the measure is to establish criteria that will ensure that there is fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects. The measure involves contracts for construction, maintenance, repair, improvement or replacement of public works projects, defined as all construction projects paid for, in whole or in part, by funds of the City or Redevelopment Agency, including, but not limited to, any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, reclamation project, redevelopment project, or other public facility. "Contracting party" is defined as an owner, developer, contractor, subcontractor, or material supplier, involved in a public works project. The measure would prohibit the City or Redevelopment Agency from mandating that a contracting party enter into an agreement with a labor organization as a condition of award of the contract, or from funding such a contract. The proposal would add language to the Municipal Code, stating that the City shall not fund, in whole or in part, or enter into, any contract, or impose a bid specification, contract prerequisite, or contract term, that would require a contracting party involved in a public works project to (1) execute, comply with or become a party to an agreement with a labor organization, (2) become a signatory to a collective bargaining agreement, (3) be required to make payments on behalf of employees to union benefit plans or other trust funds, (4) require its employees to be represented by a labor organization, or (5) encourage or discourage employees of a contracting party to have representation by a labor organization. The measure would not prohibit parties from entering into individual collective bargaining relationships or engaging in lawful union activities. Violations of the ordinance could be remedied through an application for injunctive relief in Superior Court filed by a citizen resident or taxpaying corporation. The measure provides that if approved by voters, it may be amended or repealed only by a majority vote of the voters of the City. The City Attorney has prepared the above pursuant to Elections Code section 9203; the summary does not reflect any legal analysis or opinion of the City Attorney concerning the proposed measure.

NOTICE OF INTENT TO CIRCULATE PETITION AND REQUEST FOR IMMEDIATE SPECIAL ELECTION

Notice is hereby given by the persons whose names appear hereon of their intention to circulate this petition within the City of Chula Vista. Furthermore, notice is hereby given by the persons whose names appear hereon of their request that the ordinance be submitted immediately to a vote of the people at a special election pursuant to California Elections Code Section 9214.

Statement of Reasons

The **Fair and Open Competition** Ordinance will reform the contracting process for public works projects in the City of Chula Vista. We want fair and open competition in Chula Vista because it will bring these benefits:

- more job opportunities for local workers
- lower costs for taxpayers through increased efficiency
- equality in contracting.

The **Fair and Open Competition** Ordinance will encourage the maximum number of responsible and capable bidders for taxpayer-funded construction, thus ensuring fiscal responsibility for the city. The City of Chula Vista (and recipients of city funds) will not be permitted to require contractors to sign union agreements. Contractors and workers will have freedom of choice.

Every contractor should have the right to bid competitively on a publicly-funded project, just as all citizens should have the right to vote on issues affecting their community. To defend the right of all Chula Vista voters to vote on the issue, **Fair & Open Competition** supporters gathered 15,222 signatures to place this issue on the November 2008 ballot. Unfortunately, San Francisco-based union leaders and their lawyers challenged these signatures on a technicality, blocking the fundamental right of Chula Vista residents to vote on this initiative.

Fair and Open Competition supporters then urged the Mayor and City Council to place the initiative on the November 2008 ballot, but the Mayor and City Council declined. This unresponsiveness showed supporters that they could not count on "City Hall" to reform the City's contracting policies. A special election is the only path left to the citizens of Chula Vista. A special election will guarantee the right of Chula Vista voters to decide this issue and ensure fairness and equality within their community. This petition is crucial to bringing a timely resolution to this issue.

Fair and Open Competition will bring greater job opportunities for local workers, lower costs to taxpayers, and equality in contracting.

Please join us in support of the Fair and Open Competition Ordinance.

**PROPOSITION FOR
FAIR AND OPEN COMPETITION ORDINANCE**

The people of the City of Chula Vista hereby declare and ordain as follows:

SECTION 1. Statement of the People's Intent

- (a) The People of the City of Chula Vista ("the People") desire fair and open competition for public works projects that are paid for, in whole or in part, with the funds of the City of Chula Vista or its Redevelopment Agency.
- (b) The People believe fair and open competition enables government to expand the pool of qualified candidates to perform work and, in turn, to save public funds by lowering the cost of public works projects. The people likewise seek to remove limits or impediments to the consideration of qualified parties to work on public projects.
- (c) The People believe fair and open competition creates more local jobs and improves Chula Vista's economy, and provides equal opportunity for all workers, both union and non-union.
- (d) The People believe public money should be spent only on public works projects that allow fair and open competition.
- (e) The People intend the following Proposition to amend the Municipal Code of the City of Chula Vista, as follows:

SECTION 2. Chula Vista Municipal Code, Title 2, "Administration and Personnel" is amended by adding Chapter 2.59, to read as follows:

Chapter 2.59

Fair and Open Competition in Contracting

2.59.010 Purpose and Intent. The purpose and intent of this chapter is to establish criteria that will ensure fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects.

2.59.020 Definitions For purposes of this Chapter, the following definitions shall apply:

"Act" shall mean the National Labor Relations Act, Title 29 USC §§ 151 – 169.

"City" shall mean and include both the City of Chula Vista and the Redevelopment Agency of the City of Chula Vista.

"Contracting party" shall mean and include an owner, developer, contractor, subcontractor or material supplier, involved in a public works project.

"Labor organization" shall have the same meaning ascribed to it in Section 2 of the Act (29 USC §152)

"Public works project" shall mean and include all construction projects paid for, in whole or in part, by the funds of the City or the Redevelopment Agency, including but not limited to any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, reclamation project, redevelopment project, or other public facility.

2.59.030 Requirements for Fair and Open Competition in Contracting

In contracting for the construction, maintenance, repair, improvement or replacement of public works projects:

- (a) The City shall not fund, in whole or in part, or enter into, any contract which contains a requirement that a contracting party:
 - (1) execute, comply with, or become a party to an agreement between a Labor organization, on the one hand, and the City, the Contracting Party, or any third party on the other;
 - (2) become a signatory to a collective bargaining agreement;
 - (3) be required to make payments on behalf of employees to union benefit plans or other trust funds;
 - (4) require its employees to be represented by a Labor organization; or
 - (5) encourage or discourage employees of a contracting party to have representation by a Labor organization.
- (b) The City shall not impose, as a bid specification, contract prerequisite, contract term or otherwise, any requirement prohibited by subsection (a) of this Section.
- (c) Nothing in this Section shall be construed as prohibiting private parties covered by this provision from entering into individual collective bargaining relationships, or otherwise as regulating or interfering with activity protected by applicable law, including but not limited to the Act.
- (d) Any person aggrieved or injured in any way by a violation of this Section shall be entitled to injunctive relief in the Superior Court of the State of California, County of San Diego, including by way of an action filed pursuant to California Code of Civil Procedure section 526a.

SECTION 3. Effective Date

To the extent permitted by law, the provisions of this Chapter 2.59 shall become effective 10 days after the vote is declared by the Chula Vista City Council, as provided by California Elections Code § 9217. Contracts awarded before this effective date and subcontracts awarded pursuant to such contracts, whenever awarded, shall not be governed by this ordinance.

SECTION 4. Amendment; Repeal

This ordinance may be amended or repealed only by a majority vote of the voters of the City of Chula Vista.

SECTION 5. Severability

If any Section of this Proposition, or any provision contained in this Proposition, is held by a court of law to be invalid, or is superseded by a numerically superior vote as provided in Section 6 of this measure, the remaining Sections and provisions of this Proposition shall not be affected but shall remain in full force and effect, and to that end the provisions of this Proposition are severable.

SECTION 6. Conflicting Measures

If any other measure, appearing on the same ballot as this measure, addresses the same subject matter in a way that conflicts with the treatment of the subject matter in this Proposition, and if each measure is approved by a majority vote of those voting on each measure, then as to the conflicting subject matter the measure with the highest affirmative vote shall prevail, and the measure with the lowest affirmative vote shall be deemed disapproved as to the conflicting subject matter.

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Title: An initiative to amend the Chula Vista Municipal Code adding Chapter 2.59, entitled "Fair and Open Competition in Contracting," mandating that the City or Redevelopment Agency not fund or contract for public works projects where there is a requirement to use only union employees.

Summary: This measure proposes to amend by ordinance the Chula Vista Municipal Code to add a chapter regarding contracting on public works projects. The stated purpose and intent of the measure is to establish criteria that will ensure that there is fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects. The measure involves contracts for construction, maintenance, repair, improvement or replacement of public works projects, defined as all construction projects paid for, in whole or in part, by funds of the City or Redevelopment Agency, including, but not limited to, any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, reclamation project, redevelopment project, or other public facility. "Contracting party" is defined as an owner, developer, contractor, subcontractor, or material supplier, involved in a public works project. The measure would prohibit the City or Redevelopment Agency from mandating that a contracting party enter into an agreement with a labor organization as a condition of award of the contract, or from funding such a contract. The proposal would add language to the Municipal Code, stating that the City shall not fund, in whole or in part, or enter into, any contract, or impose a bid specification, contract prerequisite, or contract term, that would require a contracting party involved in a public works project to (1) execute, comply with or become a party to an agreement with a labor organization, (2) become a signatory to a collective bargaining agreement, (3) be required to make payments on behalf of employees to union benefit plans or other trust funds, (4) require its employees to be represented by a labor organization, or (5) encourage or discourage employees of a contracting party to have representation by a labor organization. The measure would not prohibit parties from entering into individual collective bargaining relationships or engaging in lawful union activities. Violations of the ordinance could be remedied through an application for injunctive relief in Superior Court filed by a citizen resident or taxpaying corporation. The measure provides that if approved by voters, it may be amended or repealed only by a majority vote of the voters of the City. The City Attorney has prepared the above pursuant to Elections Code section 9203; the summary does not reflect any legal analysis or opinion of the City Attorney concerning the proposed measure.

VOTER: Please sign petition 1 time ONLY.	NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.							
	All signers of this petition <u>must</u> be registered to vote in the City of Chula Vista.	This column for Clerk's Use Only						
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<p>VOTER: Please sign petition 1 time ONLY.</p>	<p>NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.</p>	
<p>All signers of this petition must be registered to vote in the City of Chula Vista.</p>		<p>This column for Clerk's Use Only</p>
<p>New Registration 7</p>	<p>SIGNATURE as Registered To Vote</p> <p>PRINT Your Name</p>	<p>Residence Address ONLY</p> <p>City/Zip: _____ Date: _____</p> <p>NO PO Boxes, NO routes, NO abbreviations, NO ditto marks</p>
<p>New Registration 8</p>	<p>SIGNATURE as Registered To Vote</p> <p>PRINT Your Name</p>	<p>Residence Address ONLY</p> <p>City/Zip: _____ Date: _____</p> <p>NO PO Boxes, NO routes, NO abbreviations, NO ditto marks</p>
<p>New Registration 9</p>	<p>SIGNATURE as Registered To Vote</p> <p>PRINT Your Name</p>	<p>Residence Address ONLY</p> <p>City/Zip: _____ Date: _____</p> <p>NO PO Boxes, NO routes, NO abbreviations, NO ditto marks</p>
<p>New Registration 10</p>	<p>SIGNATURE as Registered To Vote</p> <p>PRINT Your Name</p>	<p>Residence Address ONLY</p> <p>City/Zip: _____ Date: _____</p> <p>NO PO Boxes, NO routes, NO abbreviations, NO ditto marks</p>

DECLARATION OF CIRCULATOR

(To be handwritten by the circulator after above signatures have been obtained)

I, _____, am registered to vote or I am eligible to register to vote in the State of California.

(Print Name)

I reside at the following address: _____

(Address, City, State, Zip)

I circulated this section of the petition and witnessed each of the appended signatures being written. Each signature on this petition section is, to the best of my information and belief, the genuine signature of the person whose name it purports to be. All signatures on this document were obtained between the dates of _____ and _____

(Month, Day, Year)

(Month, Day, Year)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed this _____ day of _____, at _____, California. **SIGNATURE:** _____

(Sign Full Name)

RECEIVED

August 28, 2008

'08 AUG 28 P1:12

City Clerk
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910

CITY OF CHULA VISTA
CITY CLERK'S OFFICE

Re: Notice of Intent to Circulate
Request for Title and Summary

Dear City Clerk:

We hereby give notice of our intention to circulate a petition within the City of Chula Vista for the purpose of amending the Municipal Code of the City of Chula Vista to reform the contracting process for public works projects in the City of Chula Vista.

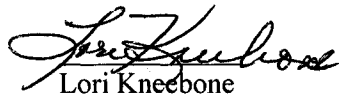
The **FAIR AND OPEN COMPETITION ORDINANCE** will encourage the maximum number of responsible and capable bidders for taxpayer-funded construction, thus ensuring fiscal responsibility for the city. We want fair and open competition in Chula Vista because it will bring these benefits:
more job opportunities for local workers
lower costs for taxpayers through increased efficiency
equality in contracting.


The **FAIR AND OPEN COMPETITION ORDINANCE** petition is attached. We hereby request that the City Attorney prepare a "Title and Summary" for the petition pursuant to California Election Code, so that we may complete publication and begin circulation.

Additionally we request notice from the City Clerk of the official signature total that will be required for qualification of this petition; and the official deadline for the submission of the petition so that this petition question may be submitted immediately to a vote of the people at a special election pursuant to California Elections Code Section 9214.

Please send all correspondence regarding this matter to us at the addresses listed below:
Please send a copy of all correspondence to Mr. Hawkins at the address listed below. Thank you.

Sincerely,


Lori Kneebone
806 Halecrest Drive
Chula Vista, CA 91910


Larry Breitfelder
1595-57 Mendocino Dr.
Chula Vista, CA 91911

cc: George Hawkins
Associated Builders & Contractors Inc. of San Diego
13825 Kirkham Way
Poway, CA 92064

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS OF THE CITY OF CHULA VISTA

The City Attorney of the City of Chula Vista has prepared the following Title and Summary of the chief purpose and points of the proposed measure:

{Insert Title and Summary}

NOTICE OF INTENT TO CIRCULATE PETITION AND REQUEST FOR IMMEDIATE SPECIAL ELECTION

Notice is hereby given by the persons whose names appear hereon of their intention to circulate this petition within the City of Chula Vista. Furthermore, notice is hereby given by the persons whose names appear hereon of their request that the ordinance be submitted immediately to a vote of the people at a special election pursuant to California Elections Code Section 9214.

STATEMENT OF REASONS

The **Fair and Open Competition** Ordinance will reform the contracting process for public works projects in the City of Chula Vista. We want fair and open competition in Chula Vista because it will bring these benefits:

- more job opportunities for local workers
- lower costs for taxpayers through increased efficiency
- equality in contracting.

The **Fair and Open Competition** Ordinance will encourage the maximum number of responsible and capable bidders for taxpayer-funded construction, thus ensuring fiscal responsibility for the city. The City of Chula Vista (and recipients of city funds) will not be permitted to require contractors to sign union agreements. Contractors and workers will have freedom of choice.

Every contractor should have the right to bid competitively on a publicly-funded project, just as all citizens should have the right to vote on issues affecting their community. To defend the right of all Chula Vista voters to vote on the issue, **Fair & Open Competition** supporters gathered 15,222 signatures to place this issue on the November 2008 ballot. Unfortunately, San Francisco-based union leaders and their lawyers challenged these signatures on a technicality, blocking the fundamental right of Chula Vista residents to vote on this initiative.

Fair and Open Competition supporters then urged the Mayor and City Council to place the initiative on the November 2008 ballot, but the Mayor and City Council declined. This unresponsiveness showed supporters that they could not count on "City Hall" to reform the City's contracting policies. A special election is the only path left to the citizens of Chula Vista. A special election will guarantee the right of Chula Vista voters to decide this issue and ensure fairness and equality within their community. This petition is crucial to bringing a timely resolution to this issue.

Fair and Open Competition will bring greater job opportunities for local workers, lower costs to taxpayers, and equality in contracting.

Please join us in support of the Fair and Open Competition Ordinance.

**PROPOSITION FOR
FAIR AND OPEN COMPETITION ORDINANCE**

The people of the City of Chula Vista hereby declare and ordain as follows:

SECTION 1. Statement of the People's Intent

- (a) The People of the City of Chula Vista ("the People") desire fair and open competition for public works projects that are paid for, in whole or in part, with the funds of the City of Chula Vista or its Redevelopment Agency.
- (b) The People believe fair and open competition enables government to expand the pool of qualified candidates to perform work and, in turn, to save public funds by lowering the cost of public works projects. The people likewise seek to remove limits or impediments to the consideration of qualified parties to work on public projects.
- (c) The People believe fair and open competition creates more local jobs and improves Chula Vista's economy, and provides equal opportunity for all workers, both union and non-union.
- (d) The People believe public money should be spent only on public works projects that allow fair and open competition.
- (e) The People intend the following Proposition to amend the Municipal Code of the City of Chula Vista, as follows:

SECTION 2. Chula Vista Municipal Code, Title 2, "Administration and Personnel" is amended by adding Chapter 2.59, to read as follows:

**Chapter 2.59
Fair and Open Competition in Contracting**

2.59.010 Purpose and Intent.

The purpose and intent of this chapter is to establish criteria that will ensure fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects.

2.59.020 Definitions

For purposes of this Chapter, the following definitions shall apply:

"Act" shall mean the National Labor Relations Act, Title 29 USC §§ 151 – 169.

"City" shall mean and include both the City of Chula Vista and the Redevelopment Agency of the City of Chula Vista.

"Contracting party" shall mean and include an owner, developer, contractor, subcontractor or material supplier, involved in a public works project.

"Labor organization" shall have the same meaning ascribed to it in Section 2 of the Act (29 USC §152)

"Public works project" shall mean and include all construction projects paid for, in whole or in part, by the funds of the City or the Redevelopment Agency, including but not limited to any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, reclamation project, redevelopment project, or other public facility.

2.59.030 Requirements for Fair and Open Competition in Contracting

In contracting for the construction, maintenance, repair, improvement or replacement of public works projects:

(a) The City shall not fund, in whole or in part, or enter into, any contract which contains a requirement that a contracting party:

- (1) execute, comply with, or become a party to an agreement between a Labor organization, on the one hand, and the City, the Contracting Party, or any third party on the other;
- (2) become a signatory to a collective bargaining agreement;
- (3) be required to make payments on behalf of employees to union benefit plans or other trust funds;
- (4) require its employees to be represented by a Labor organization; or
- (5) encourage or discourage employees of a contracting party to have representation by a Labor organization.

(b) The City shall not impose, as a bid specification, contract prerequisite, contract term or otherwise, any requirement prohibited by subsection (a) of this Section.

(c) Nothing in this Section shall be construed as prohibiting private parties covered by this provision from entering into individual collective bargaining relationships, or otherwise as regulating or interfering with activity protected by applicable law, including but not limited to the Act.

(d) Any person aggrieved or injured in any way by a violation of this Section shall be entitled to injunctive relief in the Superior Court of the State of California, County of San Diego, including by way of an action filed pursuant to California Code of Civil Procedure section 526a.

SECTION 3. Effective Date

To the extent permitted by law, the provisions of this Chapter 2.59 shall become effective 10 days after the vote is declared by the Chula Vista City Council, as provided by California Elections Code § 9217. Contracts awarded before this effective date and subcontracts awarded pursuant to such contracts, whenever awarded, shall not be governed by this ordinance.

SECTION 4. Amendment; Repeal

This ordinance may be amended or repealed only by a majority vote of the voters of the City of Chula Vista.

SECTION 5. Severability

If any Section of this Proposition, or any provision contained in this Proposition, is held by a court of law to be invalid, or is superseded by a numerically superior vote as provided in Section 6 of this measure, the remaining Sections and provisions of this Proposition shall not be affected but shall remain in full force and effect, and to that end the provisions of this Proposition are severable.

SECTION 6. Conflicting Measures

If any other measure, appearing on the same ballot as this measure, addresses the same subject matter in a way that conflicts with the treatment of the subject matter in this Proposition, and if each measure is approved by a majority vote of those voting on each measure, then as to the conflicting subject matter the measure with the highest affirmative vote shall prevail, and the measure with the lowest affirmative vote shall be deemed disapproved as to the conflicting subject matter.

(1) NOTICE OF INTENTION TO CIRCULATE PETITION

The FAIR AND OPEN COMPETITION ORDINANCE petition is attached. We hereby request that the City Attorney prepare a "Title and Summary" for the petition pursuant to California Election Code, so that we may complete publication and begin circulation.

Additionally we request notice from the City Clerk of the official signature total that will be required for qualification of this petition; and the official deadline for the submission of the petition so that this petition question may be submitted immediately to a vote of the people at a special election pursuant to California Elections Code Section 9214.

Please send all correspondence regarding this matter to us at the addresses listed below: Please send a copy of all correspondence to Mr. Hawkins at the address listed below. Thank you.

Sincerely,

Lori Kneebone
806 Halecrest Drive
Chula Vista, CA 91910

Larry Breitfelder
1595-57 Mendocino Dr.
Chula Vista, CA 91911

cc: George Hawkins
Associated Builders & Contractors Inc. of San Diego
13825 Kirkham Way
Poway, CA 92064

(2) TITLE AND SUMMARY OF PROPOSED MEASURE

Initiative Measure to be Submitted Directly to the Voters

The city attorney has prepared the following

title and summary of the chief purpose and points of the proposed measure:

Title: An initiative to amend the Chula Vista Municipal Code adding Chapter 2.59, entitled "Fair and Open Competition in Contracting," mandating that the City or Redevelopment Agency not fund or contract for public works projects where there is a requirement to use only union employees.

Summary: This measure proposes to amend by ordinance the Chula Vista Municipal Code to add a chapter regarding contracting on public works projects. The stated purpose and intent of the measure is to establish criteria that will ensure that there is fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects.

The measure involves contracts for construction, maintenance, repair, improvement or replacement of public works projects, defined as all construction projects paid for, in whole or in part, by funds of the City or Redevelopment Agency, including, but not limited to, any building, road, street, park, playground, water system, irrigation system, sewer, storm water convey-

ance system, reclamation project, redevelopment project, or other public facility. "Contracting party" is defined as an owner, developer, contractor, subcontractor, or material supplier, involved in a public works project.

The measure would prohibit the City or Redevelopment Agency from mandating that a contracting party enter into an agreement with a labor organization as a condition of award of the contract, or from funding such a contract. The proposal would add language to the Municipal Code, stating that the City shall not fund, in whole or in part, or enter into, any contract, or impose a bid specification, contract prerequisite, or contract term, that would require a contracting party involved in a public works project to (1) execute, comply with or become a party to an agreement with a labor organization, (2) become a signatory to a collective bargaining agreement, (3) be required to make payments on behalf of employees to union benefit plans or other trust funds, (4) require its employees to be represented by a labor organization, or (5) encourage or discourage employees of a contracting party to have representation by a labor organization.

The measure would not prohibit parties from entering into individual collective bargaining relationships or engaging in lawful union activities. Violations of the ordinance could be remedied through an application for injunctive relief in Superior

Court filed by a citizen resident or taxpaying corporation. The measure provides that if approved by voters, it may be amended or repealed only by a majority vote of the voters of the City.

The City Attorney has prepared the above pursuant to Elections Code section 9203; the summary does not reflect any legal analysis or opinion of the City Attorney concerning the proposed measure.

CV34485 9/19/08

STATE OF CALIFORNIA,

County of San Diego:

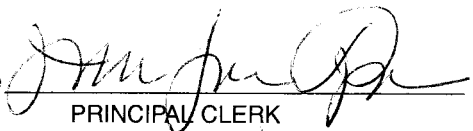
I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principle clerk of the printer of THE STAR-NEWS, a newspaper of general circulation, published ONCE WEEKLY in the city of CHULA VISTA and the South Bay Judicial District, County of San Diego, which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 18, 1973, Case Number 71752; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

9/19
all in the year 2008.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Chula Vista, California 91910

this 19th day of September 2008.

Signature 
PRINCIPAL CLERK

(1) NOTICE OF INTENTION TO CIRCULATE PETITION

August 28, 2008

Re: Notice of Intent to Circulate Request for Title and Summary

Dear City Clerk:

We hereby give notice of our intention to circulate a petition within the City of Chula Vista for the purpose of amending the Municipal Code of the City of Chula Vista to reform the contracting process for public works projects in the City of Chula Vista.

The FAIR AND OPEN COMPETITION ORDINANCE will encourage the maximum number of responsible and capable bidders for taxpayer-funded construction, thus ensuring fiscal responsibility for the city. We want fair and open competition in Chula Vista because it will bring these benefits:

more job opportunities for local workers
lower costs for taxpayers through increased efficiency
equality in contracting.

The FAIR AND OPEN COMPETITION ORDINANCE petition is at

Proof of Publication of

CV34485

Intention to Circulate Petition

title and summary of the chief purpose and points of the proposed measure:

Title: An initiative to amend the Chula Vista Municipal Code adding Chapter 2.59, entitled "Fair and Open Competition in Contracting," mandating that the City or Redevelopment Agency not fund or contract for public works projects where there is a requirement to use only union employees.

Summary: This measure proposes to amend by ordinance the Chula Vista Municipal Code to add a chapter regarding contracting on public works projects. The stated purpose and intent of the measure is to establish criteria that will ensure that there is fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects.

The measure involves contracts for construction, maintenance, repair, improvement or replacement of public works projects, defined as all construction projects paid for, in whole or in part, by funds of the City or Redevelopment Agency, including, but not limited to, any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, drainage

Court filed by a citizen resident or taxpaying corporation. The measure provides that if approved by voters, it may be amended or repealed only by a majority vote of the voters of the City.

The City Attorney has prepared the above pursuant to Elections Code section 9203; the summary does not reflect any legal analysis or opinion of the City Attorney concerning the proposed measure.

CV34485 9/19/08

March 13, 2009

Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Chula Vista for the purpose of amending the Chula Vista Municipal Code to add the Fair and Open Competition Ordinance. A statement of the reasons of the proposed action as contemplated in the petition is as follows: In our opinion, the Fair and Open Competition Ordinance will encourage the maximum number of responsible and capable bidders for taxpayer-funded construction, thus ensuring fiscal responsibility for the city. In our opinion, fair and open competition in Chula Vista will create more job opportunities for local workers, decrease costs for taxpayers through increased efficiency, and establish equality in contracting.



Lori Kneebone Larry Breitfelder

CITY OF CHULA VISTA
CITY CLERK'S OFFICE

09 MAR 13 P2:12

RECEIVED

**PROPOSITION FOR
FAIR AND OPEN COMPETITION ORDINANCE**

The people of the City of Chula Vista hereby declare and ordain as follows:

SECTION 1. Statement of the People's Intent

- (a) The People of the City of Chula Vista ("the People") desire fair and open competition for public works projects that are paid for, in whole or in part, with the funds of the City of Chula Vista or its Redevelopment Agency.
- (b) The People believe fair and open competition enables government to expand the pool of qualified candidates to perform work and, in turn, to save public funds by lowering the cost of public works projects. The people likewise seek to remove limits or impediments to the consideration of qualified parties to work on public projects.
- (c) The People believe fair and open competition creates more local jobs and improves Chula Vista's economy, and provides equal opportunity for all workers, both union and non-union.
- (d) The People believe public money should be spent only on public works projects that allow fair and open competition.
- (e) The People intend the following Proposition to amend the Municipal Code of the City of Chula Vista, as follows:

SECTION 2. Chula Vista Municipal Code, Title 2, "Administration and Personnel" is amended by adding Chapter 2.59, to read as follows:

Chapter 2.59

Fair and Open Competition in Contracting

2.59.010 Purpose and Intent. The purpose and intent of this chapter is to establish criteria that will ensure fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects.

2.59.020 Definitions For purposes of this Chapter, the following definitions shall apply:

"Act" shall mean the National Labor Relations Act, Title 29 USC §§ 151 - 169.

"City" shall mean and include both the City of Chula Vista and the Redevelopment Agency of the City of Chula Vista.

"Contracting party" shall mean and include an owner, developer, contractor, subcontractor or material supplier, involved in a public works project.

"Labor organization" shall have the same meaning ascribed to it in Section 2 of the Act (29 USC § 152)

"Public works project" shall mean and include all construction projects paid for, in whole or in part, by the funds of the City or the Redevelopment Agency, including but not limited to any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, reclamation project, redevelopment project, or other public facility.

2.59.030 Requirements for Fair and Open Competition in Contracting

In contracting for the construction, maintenance, repair, improvement or replacement of public works projects:

(a) The City shall not fund, in whole or in part, or enter into, any contract which contains a requirement that a contracting party:

- (1) execute, comply with, or become a party to an agreement between a Labor organization, on the one hand, and the City, the Contracting Party, or any third party on the other;
- (2) become a signatory to a collective bargaining agreement;
- (3) be required to make payments on behalf of employees to union benefit plans or other trust funds;
- (4) require its employees to be represented by a Labor organization; or
- (5) encourage or discourage employees of a contracting party to have representation by a Labor organization.

(b) The City shall not impose, as a bid specification, contract prerequisite, contract term or otherwise, any requirement prohibited by subsection (a) of this Section.

(c) Nothing in this Section shall be construed as prohibiting private parties covered by this provision from entering into individual collective bargaining relationships, or otherwise as regulating or interfering with activity protected by applicable law, including but not limited to the Act.

(d) Any person aggrieved or injured in any way by a violation of this Section shall be entitled to injunctive relief in the Superior Court of the State of California, County of San Diego, including by way of an action filed pursuant to California Code of Civil Procedure section 526a.

SECTION 3. Effective Date

To the extent permitted by law, the provisions of this Chapter 2.59 shall become effective 10 days after the vote is declared by the Chula Vista City Council, as provided by California Elections Code § 9217. Contracts awarded before this effective date and subcontracts awarded pursuant to such contracts, whenever awarded, shall not be governed by this ordinance.

SECTION 4. Amendment; Repeal

This ordinance may be amended or repealed only by a majority vote of the voters of the City of Chula Vista.

SECTION 5. Severability

If any Section of this Proposition, or any provision contained in this Proposition, is held by a court of law to be invalid, or is superseded by a numerically superior vote as provided in Section 6 of this measure, the remaining Sections and provisions of this Proposition shall not be affected but shall remain in full force and effect, and to that end the provisions of this Proposition are severable.

SECTION 6. Conflicting Measures

If any other measure, appearing on the same ballot as this measure, addresses the same subject matter in a way that conflicts with the treatment of the subject matter in this Proposition, and if each measure is approved by a majority vote of those voting on each measure, then as to the conflicting subject matter the measure with the highest affirmative vote shall prevail, and the measure with the lowest affirmative vote shall be deemed disapproved as to the conflicting subject matter.

CITY OF CHULA VISTA
CITY CLERK'S OFFICE

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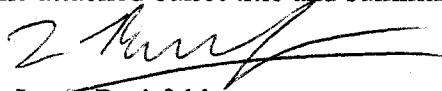
March 13, 2009

Request for a Ballot Title and Summary

We the undersigned interested persons and/or proponents of the attached Fair and Open Competition Ordinance proposed measure request that a ballot title and summary be prepared. We propose the attached ballot title and summary.



Lori Kneebone
806 Halecrest Drive
Chula Vista, CA 91910



Larry Breitfelder
1595-57 Mendocino Dr.
Chula Vista, CA 91911

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CITY OF CHULA VISTA
CITY CLERK'S OFFICE

**PROPOSITION FOR
FAIR AND OPEN COMPETITION ORDINANCE**

The people of the City of Chula Vista hereby declare and ordain as follows:

SECTION 1. Statement of the People's Intent

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- (d) The People believe public money should be spent only on public works projects that allow fair and open competition.
- (e) The People intend the following Proposition to amend the Municipal Code of the City of Chula Vista, as follows:

SECTION 2. Chula Vista Municipal Code, Title 2, "Administration and Personnel" is amended by adding Chapter 2.59, to read as follows:

Chapter 2.59

Fair and Open Competition in Contracting

2.59.010 Purpose and Intent. The purpose and intent of this chapter is to establish criteria that will ensure fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects.

2.59.020 Definitions For purposes of this Chapter, the following definitions shall apply:

"Act" shall mean the National Labor Relations Act, Title 29 USC §§ 151 - 169.

"City" shall mean and include both the City of Chula Vista and the Redevelopment Agency of the City of Chula Vista.

"Contracting party" shall mean and include an owner, developer, contractor, subcontractor or material supplier, involved in a public works project.

"Labor organization" shall have the same meaning ascribed to it in Section 2 of the Act (29 USC § 152)

"Public works project" shall mean and include all construction projects paid for, in whole or in part, by the funds of the City or the Redevelopment Agency, including but not limited to any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, reclamation project, redevelopment project, or other public facility.

2.59.030 Requirements for Fair and Open Competition in Contracting

In contracting for the construction, maintenance, repair, improvement or replacement of public works projects:

(a) The City shall not fund, in whole or in part, or enter into, any contract which contains a requirement that a contracting party:

- (1) execute, comply with, or become a party to an agreement between a Labor organization, on the one hand, and the City, the Contracting Party, or any third party on the other;
- (2) become a signatory to a collective bargaining agreement;
- (3) be required to make payments on behalf of employees to union benefit plans or other trust funds;
- (4) require its employees to be represented by a Labor organization; or
- (5) encourage or discourage employees of a contracting party to have representation by a Labor organization.

(b) The City shall not impose, as a bid specification, contract prerequisite, contract term or otherwise, any requirement prohibited by subsection (a) of this Section.

(c) Nothing in this Section shall be construed as prohibiting private parties covered by this provision from entering into individual collective bargaining relationships, or otherwise as regulating or interfering with activity protected by applicable law, including but not limited to the Act.

(d) Any person aggrieved or injured in any way by a violation of this Section shall be entitled to injunctive relief in the Superior Court of the State of California, County of San Diego, including by way of an action filed pursuant to California Code of Civil Procedure section 526a.

SECTION 3. Effective Date

To the extent permitted by law, the provisions of this Chapter 2.59 shall become effective 10 days after the vote is declared by the Chula Vista City Council, as provided by California Elections Code § 9217. Contracts awarded before this effective date and subcontracts awarded pursuant to such contracts, whenever awarded, shall not be governed by this ordinance.

SECTION 4. Amendment; Repeal

This ordinance may be amended or repealed only by a majority vote of the voters of the City of Chula Vista.

SECTION 5. Severability

If any Section of this Proposition, or any provision contained in this Proposition, is held by a court of law to be invalid, or is superseded by a numerically superior vote as provided in Section 6 of this measure, the remaining Sections and provisions of this Proposition shall not be affected but shall remain in full force and effect, and to that end the provisions of this Proposition are severable.

SECTION 6. Conflicting Measures

If any other measure, appearing on the same ballot as this measure, addresses the same subject matter in a way that conflicts with the treatment of the subject matter in this Proposition, and if each measure is approved by a majority vote of those voting on each measure, then as to the conflicting subject matter the measure with the highest affirmative vote shall prevail, and the measure with the lowest affirmative vote shall be deemed disapproved as to the conflicting subject matter.

CITY OF CHULA VISTA
CITY CLERK'S OFFICE

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RECEIVED

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CITY OF CHULA VISTA
CITY CLERK'S OFFICE

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Title: An initiative to amend the Chula Vista Municipal Code adding Chapter 2.59, entitled "Fair and Open Competition in Contracting," mandating that the City or Redevelopment Agency not fund or contract for public works projects where there is a requirement to use only union employees.

Summary: This measure proposes to amend by ordinance the Chula Vista Municipal Code to add a chapter regarding contracting on public works projects. The stated purpose and intent of the measure is to establish criteria that will ensure that there is fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects. The measure involves contracts for construction, maintenance, repair, improvement or replacement of public works projects, defined as all construction projects paid for, in whole or in part, by funds of the City or Redevelopment Agency, including, but not limited to, any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, reclamation project, redevelopment project, or other public facility. "Contracting party" is defined as an owner, developer, contractor, subcontractor, or material supplier, involved in a public works project. The measure would prohibit the City or Redevelopment Agency from mandating that a contracting party enter into an agreement with a labor organization as a condition of award of the contract, or from funding such a contract. The proposal would add language to the Municipal Code, stating that the City shall not fund, in whole or in part, or enter into, any contract, or impose a bid specification, contract prerequisite, or contract term, that would require a contracting party involved in a public works project to (1) execute, comply with or become a party to an agreement with a labor organization, (2) become a signatory to a collective bargaining agreement, (3) be required to make payments on behalf of employees to union benefit plans or other trust funds, (4) require its employees to be represented by a labor organization, or (5) encourage or discourage employees of a contracting party to have representation by a labor organization. The measure would not prohibit parties from entering into individual collective bargaining relationships or engaging in lawful union activities. Violations of the ordinance could be remedied through an application for injunctive relief in Superior Court filed by a citizen resident or taxpaying corporation. The measure provides that if approved by voters, it may be amended or repealed only by a majority vote of the voters of the City. The City Attorney has prepared the above pursuant to Elections Code section 9203; the summary does not reflect any legal analysis or opinion of the City Attorney concerning the proposed measure.

RECEIVED

March 13, 2009

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Dear Chula Vista City Clerk:

CITY OF CHULA VISTA
CITY CLERK'S OFFICE

We the undersigned are members of the ballot measure committee currently known as *Chula Vista Citizens for Jobs and Fair Competition*, major funding by *Associated Builders & Contractors PAC* and *Associated General Contractors PAC* to promote fair competition.

For all documents related to this initiative that you send to Ms. Kneebone and Mr. Breitfelder, please send a copy to the treasurer of our Committee, William Baber, at the following address:

William Baber
Associated Builders & Contractors, Inc. - San Diego
13825 Kirkham Way
Poway, CA 92064

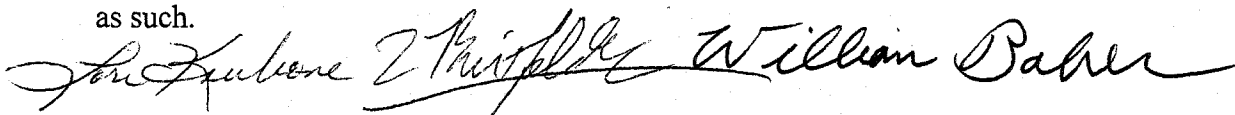
For all matters related to this initiative, Mr. Baber is our designated agent as individuals and the designated agent for this Committee and the designated agent for the Associated Builders & Contractors, Inc. - San Diego.

By filing any document in any particular format with your office we are not waiving our right to challenge the legality of such format or any other procedure of your office for this initiative or any past initiative.

The language of Election Code Section 9207 and 9209 is unconstitutional and void to the extent it attempts to prohibit petition circulation by anyone other than a person who "is a voter or is qualified to register as a voter" of Chula Vista. See Buckley v. Am. Constitutional Law Found. 525 U.S. 182 (1999) and Preserve Shorecliff 158 Cal.App.4th, 1427 (2008). If you disagree and plan to object to the use of circulators from outside of Chula Vista, please notify us immediately. Your silence will be interpreted to mean you do not plan to enforce these unconstitutional provisions.

If you have any other concerns regarding whether or not any document we file with your office regarding the Fair and Open Competition Ordinance initiative petition complies with the California Elections Code, the Chula Vista Municipal Code, or the Chula Vista Charter, please notify Mr. Baber immediately. We will assume your silence indicates you have no objection to the format of these documents or the time or place at which they were filed.

This present document is not a Notice of Intent to Circulate and should not be interpreted as such.



Lori Kneebone Larry Breitfelder William Baber

March 13, 2009

Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Chula Vista for the purpose of amending the Chula Vista Municipal Code to add the Fair and Open Competition Ordinance. A statement of the reasons of the proposed action as contemplated in the petition is as follows: In our opinion, the Fair and Open Competition Ordinance will encourage the maximum number of responsible and capable bidders for taxpayer-funded construction, thus ensuring fiscal responsibility for the city. In our opinion, fair and open competition in Chula Vista will create more job opportunities for local workers, decrease costs for taxpayers through increased efficiency, and establish equality in contracting.



Lori Kneebone Larry Breitfelder

Initiative Measure to be Submitted Directly to the Voters

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Summary: This measure proposes to amend by ordinance the Chula Vista Municipal Code to add a chapter regarding contracting on pub-

lic works projects. The stated purpose and intent of the measure is to establish criteria that will ensure that there is fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects.

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fund, in whole or in part, or enter into, any contract, or impose a bid specification, contract prerequisite, or contract term, that would require a contracting party involved in a public works project to (1) execute, comply with or become a party to an agreement with a labor organization, (2) become a signatory to a collective bargaining agreement, (3) be required to make payments on behalf of employees to union benefit plans or other trust funds, (4) require its employees to be represented by a labor organization, or (5) encourage or discourage employees of a contracting party to have representation by a labor organization.

The measure would not

prohibit private parties from entering into individual collective bargaining relationships or engaging in lawful union activities. Violations of the ordinance could be remedied through an application for injunctive relief in Superior Court filed by a citizen resident or taxpaying corporation. The measure provides that if approved by voters, it may be amended or repealed only by a majority vote of the voters of the City.

The City Attorney has prepared the above pursuant to Elections Code section 9203; the summary does not reflect any legal analysis or opinion of the City Attorney concerning the proposed measure.

CV37170 4/3/09

PROOF OF PUBLICATION
(2015.5 C.C.P)

STATE OF CALIFORNIA,

County of San Diego:

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principle clerk of the printer of THE STAR-NEWS, a newspaper of general circulation, published ONCE WEEKLY in the city of **CHULA VISTA** and the South Bay Judicial District, County of San Diego, which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 18, 1973, Case Number 71752; that the notice, of which the annexed is a printed copy (set in type not smaller than non-pareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

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all in the year 2009.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Chula Vista, California 91910

this 3rd day of April 2009.


Signature 
PRINCIPAL CLERK

Exhibit 5 - Page 2

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CITY OF CHULA VISTA
CITY CLERK'S OFFICE

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CV37170

Initiative

<p>FICTITIOUS BUSINESS NAME STATEMENT NO. 2009-007484 Business Name: LGA S Filed with the County Clerk of San Diego County on MAR 2 2009 20,27,4/3,10/09</p> <p>Signature: Genia Romero Statement filed with the Recorder/County Clerk of San Diego County on MAR 16 2009 CV37009 3/20,27,4/3,10/09</p>	<p>FICTITIOUS BUSINESS NAME STATEMENT NO. 2009-007451 Business Name: Carlsbad Tackle Filed with the County Clerk of San Diego County on MAR 16 2009 CV37009 3/20,27,4/3,10/09</p> <p>Signature: Kimberly Schanz Statement filed with the Recorder/County Clerk of San Diego County on MAR 16 2009 CV37009 3/20,27,4/3,10/09</p>	<p>FICTITIOUS BUSINESS NAME STATEMENT NO. 2009-005976 Business Name: Casa Latino S.D. Realty Filed with the County Clerk of San Diego County on MAR 11 2009 CV37010 3/20,27,4/3,10/09</p> <p>Signature: David D. Miller Statement filed with the Recorder/County Clerk of San Diego County on MAR 11 2009 CV37010 3/20,27,4/3,10/09</p>	<p>FICTITIOUS BUSINESS NAME STATEMENT NO. 2009-005976 Business Name: Casa Latino S.D. Realty Filed with the County Clerk of San Diego County on MAR 11 2009 CV37010 3/20,27,4/3,10/09</p> <p>Signature: Jose Antonio Lopez Statement filed with the Recorder/County Clerk of San Diego County on MAR 11 2009 CV37010 3/20,27,4/3,10/09</p>	<p>PERSONS INTERESTED Petitioner: filed a petition with this court for a decree changing names as follows: Sherissa Nicole Pascoquen Martinez to Sherissa-Nicole Martinez Pascoquen Sebastian. THE COURT ORDERS that all persons interested in this matter shall appear before this court at the hearing indicated below to show cause, if any, why the petition for change of name should not be granted. NOTICE OF HEARING May 4, 2009, 8:30 AM Dept. 4 500 3rd Avenue Chula Vista, CA 91910 A copy of this Order to Show Cause shall be published at least once each week for four successive weeks prior to the date set for hearing on the petition in the following newspaper of general circulation, printed in this county: The Star-News Date: MAR 30 2009 WILLIAM S. CANNON JUDGE OF THE SUPERIOR COURT CV37174 4/310,17,24/09</p> <p>NOTICE OF PETITION TO ADMINISTER ESTATE OF Laura Leone Andrade CASE NO. 37-2009-00151048-PR-LA-CTL To all heirs, beneficiaries, creditors, contingent creditors and persons who may otherwise be interested in the will or estate, or both, of Laura Leone Andrade A Petition for Probate has been filed by Carol L. Rondot in the Superior Court of California, County of San Diego The Petition for Probate requests that Carol L. Rondot be appointed as personal representative to administer the estate of the decedent.</p>
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(2015.5 C.C.P.)

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CITY CLERK'S OFFICE

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Dated at C

this 3rd da

March 13, 2009

Notice of Intent to Circulate Petition

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Chula Vista for the purpose of amending the Chula Vista Municipal Code to add the Fair and Open Competition Ordinance. A statement of the reasons of the proposed action as contemplated in the petition is as follows: In our opinion, the Fair and Open Competition Ordinance will encourage the maximum number of responsible and capable bidders for taxpayer-funded construction, thus ensuring fiscal responsibility for the city. In our opinion, fair and open competition in Chula Vista will create more job opportunities for local workers, decrease costs for taxpayers through increased efficiency, and establish equality in contracting.

Lori Kneebone *Larry Breitfelder*
Lori Kneebone Larry Breitfelder

Initiative Measure to be Submitted Directly to the Voters

Signature The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Title: An initiative to amend the Chula Vista Municipal Code adding Chapter 2.59, entitled "Fair and Open Competition in Contracting," mandating that the City or Redevelopment Agency not fund or contract for public works projects where there is a requirement to use only union employees.

Summary: This measure proposes to amend by ordinance the Chula Vista Municipal Code to add a chapter regarding contracting on pub-

lic works projects. The stated purpose and intent of the measure is to establish criteria that will ensure that there is fair and open competition for public works projects funded in whole or in part with public funds; to aid in lowering the cost of public works projects; and to ensure that all workers, both union and non-union, have a fair and equal opportunity to work on public works projects.

The measure involves contracts for construction, maintenance, repair, improvement or replacement of public works projects, defined as all construction projects paid for, in whole or in part, by funds of the City or Redevelopment Agency, including, but not limit-

ed to, any building, road, street, park, playground, water system, irrigation system, sewer, storm water conveyance system, reclamation project, redevelopment project, or other public facility. "Contracting party" is defined as an owner, developer, contractor, subcontractor, or material supplier, involved in a public works project.

The measure would prohibit the City or Redevelopment Agency from mandating that a contracting party enter into an agreement with a labor organization as a condition of award of the contract, or from funding such a contract. The proposal would add language to the Municipal Code, stating that the City shall not

fund, in whole or in part, or enter into, any contract, or impose a bid specification, contract prerequisite, or contract term, that would require a contracting party involved in a public works project to (1) execute, comply with or become a party to an agreement with a labor organization; (2) become a signatory to a collective bargaining agreement; (3) be required to make payments on behalf of employees to union benefit plans or other trust funds; (4) require its employees to be represented by a labor organization; or (5) encourage or discourage employees of a contracting party to have representation by a labor organization.

The measure would not

prohibit private parties from entering into individual collective bargaining relationships or engaging in lawful union activities. Violations of the ordinance could be remedied through an application for injunctive relief in Superior Court filed by a citizen resident or taxpaying corporation. The measure provides that if approved by voters, it may be amended or repealed only by a majority vote of the voters of the City.

The City Attorney has prepared the above pursuant to Elections Code section 9203; the summary does not reflect any legal analysis or opinion of the City Attorney concerning the proposed measure.

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