Jim Bopp, Jr. (Indiana State Bar No. 2838-84)*
Joe 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

Charles H. Bell, Jr. (SBN 060553)
Brian T. Hildreth (SBN 214131)
BELL, McANDREWS, & HILTACHK, LLP
455 Capitol Mall, Suite 801
Sacramento, California 95814
Telephone: (916) 445-7757
Facsimile: (916) 442-7759
Local Counsel for Plaintiffs

* *Pro hac vice application submitted and pending.*

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.**	**Case: 09CV0897-BEN-JMA** **The Honorable Roger T. Benitez** **Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction** ORAL ARGUMENT REQUESTED Estimated Time Needed: One Hour

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Introduction

Over 23,000. That's how many of the citizens of the City of Chula Vista (**"City"**) signed a petition asking that the Fair and Open Competition Initiative in the City of Chula Vista (**"Initiative"**) be placed on the ballot before the voters of the City. If approved by the voters, the Initiative will add Chapter 2.59 to the Chula Vista Municipal Code, thereby allowing non-union shops to compete for public works projects in the City, instead of excluding them from bidding.

More than 23,000 of the City's citizens want the voters to get to decide this issue. If counted and processed, their signatures are more than enough to qualify the proposed initiative for a special election. Yet, the City Clerk refuses to process the signatures. Instead, she is disregarding the wishes of the 23,000 citizens who signed the petition, and trampling upon principles of fairness and justice. She, and the other defendants with her, are also trampling upon the First Amendment.

The plaintiffs in this case—Chula Vista Citizens for Jobs and Fair Competition (**"Chula Vista Citizens"**), Lori Kneebone, Larry Breitfelder, and Associated Builders and Contractors of San Diego, Inc. (**"ABC"**) (together, **"Plaintiffs"**)—have undertaken several initiative petitions in their attempt to place the Initiative before the City's voters. Each time, however, the Defendant City Clerk (**"Clerk"**) has refused to process the signatures they have submitted, insisting that they did not comply with the requirements of the Charter of the City of Chula Vista (**"Charter"**), which incorporates by reference the California Elections Code (**"Code"**). Believing that they had in fact complied with the law, and also believing that the requirements of the law are unconstitutional anyway, the Plaintiffs have brought this challenge.

Petition circulation is "core political speech," for which First Amendment protection is "at its zenith." *Meyer v. Grant*, 486 U.S. 414, 421–22, 425 (1988). The laws which the Clerk alleges the Plaintiffs did not comply with unconstitutionally burden the Plaintiffs' First Amendment speech and associational rights. The Plaintiffs have therefore moved for a preliminary injunction to protect their rights under the First Amendment.

Facts

As verified in the Verified Complaint, the facts are as follows. ABC is an association of construction related businesses. Its members do business in the City. ABC is the largest single donor to Chula Vista Citizens, and is the principal financial sponsor of the Initiative. Chula Vista Citizens and ABC have made two attempts relevant to this lawsuit to qualify the Initiative for the City's ballot (**"First Petition"** and **"Second Petition"**).

A. Proponents Must Be Natural Persons

The City's Charter states, "There are hereby reserved *to the electors* of the City the powers of the initiative and referendum and of the recall of municipal officers." Charter § 903 (emphasis added). This provision, along with Code §§ 9202, 9205, and 9207 (incorporated by the Charter), require that proponents of initiative petitions must be natural persons. This excludes organizations such as Chula Vista Citizens or ABC from serving as proponents. Thus, when they want to attempt to place an initiative on the ballot, they must compel one of their members to serve as the proponent. To comply with Code §§ 9202, 9205, and 9207, that member must then disclose his or her name on three versions of a notice of intent to circulate a petition. First, they must disclose their identity to the City Clerk (**"Clerk's Version"**). Then, they must disclose their identity to the general public, in both the newspaper (**"Newspaper Version"**) and on each page of the petition passed among the voters (**"Circulated Version"**). This explicitly identifies that member as a supporter of the proposed initiative (even though he or she is not the true proponent, but only a proxy for the organization), and also may implicitly identify him or her as a member of the true proponent-organization.

Chula Vista Citizens and ABC are the true proponents of the Initiative that is the subject of this litigation. They have done initiative petitions in the City in the past, and intend to do initiative petitions in the City in the future about issues which are of concern to them. They do not, however, want to have to identify their members on the Clerk's Version, the Newspaper Version, or the Circulated Version, as required by Code §§ 9202, 9205, and 9207 and incorporated by the Charter § 903. Rather, they want to serve as the proponent for their own initiatives, and thereby engage in

their own political speech. They would do so, but for the challenged law. The requirement that proponents be natural persons impermissibly chills the political speech of Chula Vista Citizens and ABC, as well as all organizations like them. It is therefore unconstitutional under the First Amendment, both facially and as applied to the Plaintiffs.

B. Compelled Disclosure

The Plaintiffs also challenge the requirement that the proponent of an initiative disclose his or her identity on the Circulated Version, which is passed among the voters when they are asked to sign the initiative-petition, as required by Code § 9207.

As already explained, both ABC and Chula Vista Citizens (**"Group Plaintiffs"**) wanted to serve as the proponent for the First Petition, but were barred by the City's law from doing so. Charter § 903. Chula Vista Citizens therefore asked two of its members, Plaintiffs Lori Kneebone and Larry Breitfelder (**"Member Plaintiffs"**) to serve as proponents in their stead. The Member Plaintiffs allowed their names to be listed as proponents and signed the Clerk's Version for the First Petition. They also allowed their names to be placed in the Newspaper Version for the First Petition. They refused, however, to list their names and signatures on the Circulated Version for the First Petition that was passed among the voters. It was one thing to give their names to the Clerk, and allow them to be published in the classified section of the newspaper. It was another thing entirely to allow their names to be printed on an initiative petition that is controversial in the City, and have their names seen by the voters at the moment they are asked to sign the petition. They did not want that type of exposure, especially when ABC and Chula Vista Citizens were the true proponents of the Initiative. The Member Plaintiffs were merely 'proxy' proponents—required by the City's insistence that a proponent be a natural person. They certainly agreed with the Initiative, and wanted to see it pass. They did not, however, want to be identified before the masses of the City's voters in such a fashion, but rather wanted to engage in anonymous political speech. Thus, their names and signatures were not placed upon the Circulated Version for the First Petition. The Plaintiffs did include, however, the names and addresses of Chula Vista Citizens and ABC on the Circulated Version. They also

identified them as the financial source behind the First Petition.

A professional signature gathering service collected 23,285 signatures of City voters for the First Petition. Only 15,000 were required to place the Initiative on an upcoming special election ballot. However, when the First Petition was submitted to the Clerk, she rejected the collected signatures because the Circulated Version did not contain the names and signatures of the proponents, as required by Code § 9207. She will not process the signatures from the First Petition or forward them to the San Diego County Registrar of Voters for verification.

ABC and Chula Vista Citizens therefore decided to undertake the Second Petition. As before, they would have served as the proponents, had the law allowed them to. Instead, they again asked the Member Plaintiffs to serve as the proponents in their stead. The Member Plaintiffs again allowed their names and signatures to be placed on the Clerk's Version and Newspaper Version. Once again, they did not want their names and signatures on the Circulated Version that was to be passed among the voters. They knew from experience, however, that the Clerk would not process the signatures gathered in support of the Initiative if their names and signatures were not on the Circulated Version. Because they believe in the Initiative and think it should be passed, they therefore agreed to allow their names and signatures to appear on the Circulated Version.

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

Ms. Kneebone is uncertain as to whether she would again serve as a proponent, if her name must appear on the Circulated Version. She does not like listing her name, but she cannot say at this time that she would not do so again, if that were the only way to pass an initiative that she believed

in. She might well endure the discomfort she feels in disclosing her identity in such a fashion.

Mr. Breitfelder, however, is adamant: He will *never again* be a proponent for any initiative if he must allow his name and signature to appear on the Circulated Version. Mr. Breitfelder regrets having allowed it to appear on the Second Petition's Circulated Version and says that if he had it to do over, he would not allow it. Although Mr. Breitfelder wants Chula Vista Citizens to be able to do initiative petitions in the future about issues which are of concern to them, he will never again serve as a proponent for an initiative if he is forced to place his name and signature on the Circulated Version—even if Chula Vista Citizens is unable to find anyone else to do so.

Chula Vista Citizens and ABC want to be able to serve as proponents for initiative petitions in the future, but they also want to be able to engage in *anonymous political speech* at the point of contact with the voters. That is, they do not want to have to disclose their names as a proponent on the Circulated Version, which must be placed on sections of initiative petitions when they are passed to the voters. Rather, they want to make sure that their *ideas*, rather than their *identity*, is what is evaluated by the voters when they are asked to consider its initiative petitions. Thus, they want the right to decide for each initiative petition they undertake whether it is most advantageous to them to identify themselves on the Circulated Version that is passed among the voters, rather than being required by the law to do so.

The Plaintiffs believe that requiring the disclosure of the proponent's identity and signature on the Circulated Version impermissibly burdens and chills political speech, and is unconstitutional under the First Amendment to the United States Constitution.

Argument

In the Ninth Circuit (as elsewhere), a plaintiff seeking a preliminary injunction must establish that he is (1) likely to succeed on the merits; (2) likely to suffer irreparable harm in the absence of preliminary injunctive relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, ___ U.S. ___, 129 S. Ct. 365, 374–75 (2008) (rejecting the Ninth Circuit's "possibility" standard for preliminary

injunctions in favor of the standard uniformly accepted elsewhere). A preliminary injunction is warranted in this case because the Plaintiffs have demonstrated that they readily meet the criteria.

I. The Plaintiffs Are Likely To Succeed on the Merits.

The plaintiffs have a high likelihood of success on the merits for their challenges to the requirement that proponents be natural born citizens, as well as their challenge to the Circulated Version's disclosure requirement, in light of controlling precedent from the Ninth Circuit and the U.S. Supreme Court. They also have a high likelihood of success on the merits for their allegations that certain provisions of the law are vague and constitutionally overbroad.

A. The Requirement that Proponents Must Be Natural Persons Is Unconstitutional.

The Supreme Court recognized, "[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). *See also Roth v. United States*, 354 U.S. 476, 484 (1957) (noting that the First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."). Initiative-petitions are just that. They are a discussion of governmental affairs with the electorate, in an attempt to bring about desired political and social changes. Yet, the City excludes all organizations from engaging in this type of political speech. Instead, it requires that proponents be natural born persons, capable of signing their name on the Clerk's Version, Newspaper Version, and Circulated Version. Yet, the only interest that can support the requirement that the proponent's identity be disclosed is the so-called 'informational interest;' that is, the interest in informing the citizens who is behind initiative-petitions. That interest is defeated by the exclusion of groups like ABC and Chula Vista Citizens from serving as proponents, because it forces them to put one of their members forward as the proponent for their initiative, instead of listing themselves as the proponent. This keeps the citizens uninformed as to who the true proponent of many initiatives is. It also tramples the First Amendment right of ABC and Chula Vista Citizen to engage in political speech.

1. Groups Like ABC and Chula Vista Citizens Have First Amendment Rights.

The Supreme Court is clear: Groups have First Amendment rights, too. In *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990) the Supreme Court noted, "The mere fact that the Chamber is a corporation does not remove its speech from the ambit of the First Amendment." *Id*. at 657. And in *FEC v. National Conservative Political Action Committee*, 470 U.S. 480 (1985) (*"NCPAC"*) the Court affirmed full First Amendment rights for associations of people who "pool their resources in order to amplify their voices." *Id*. at 495.

Perhaps the most definitive statement of the reach of First Amendment protections for the political speech of groups and associations in the ballot measure context is the Supreme Court's decision in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). In *Bellotti*, various banking and business associations challenged a Massachusetts law that prohibited them from making contributions or expenditures to influence the outcome of most questions[1] submitted to the voters on the ballot. *Id*. at 768. The banking and business associations wanted to make expenditures in order to announce their views on a proposed amendment to the state constitution, but could not because of the law. *Id*. at 769. After establishing that speech aimed at the voters "is at the heart of the First Amendment's protection," *Id*. at 776, the Court recognized that, "The question in this case, simply put, is whether the corporate identity of the speaker deprives the proposed speech of what otherwise would be its clear entitlement to protection." *Id*. at 778.

The Court's analysis noted that "the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *Id*. at 783. After reviewing cases bearing out that proposition, the Court concluded, "We thus find no support ... for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation" that did not fall within the narrow carve-out exception within

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[1]The organizations were only allowed to attempt to influence the vote on issues "materially affecting any of the property, business or assets of the corporation." *Bellotti*, 435 U.S. at 768.

which Massachusetts allowed corporations to engage in political speech. *Id*. at 784. Rather, "In the realm of protected speech, *the legislature is constitutionally disqualified from dictating* the subjects about which persons may speak and *the speakers who may address a public issue*." *Id*. at 784–85 (emphasis added) (citing *Police Dept. Of Chicago v. Mosley*, 408 U.S. 92, 96 (1972)).

ABC and Chula Vista Citizens find themselves in the same position as the banking and business associations in *Berlotti*. They want to engage in the type of core political speech that is "at the heart of the First Amendment:" They want to speak directly to the voters of the City through the medium of initiative-petitions, rather than asking one of their members to serve as their proxy. Yet, the City refuses to let them exercise their First Amendment rights. However, as *Berlotti* noted, "The inherent worth of the speech in terms of its capacity for informing the public *does not depend upon the identity of its source*, whether corporation, association, union, or individual." *Bellotti*, 435 U.S. at 777 (emphasis added). So here: The worth of an initiative petition in the City does not depend on whether its proponent is a natural person, an association, or a corporation. As Justice Holmes wrote in his *Abrams* dissent, "[T]he ultimate good desired is better reached by free trade in ideas ...." *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., joined by Brandeis, J., dissenting). Whether the proponent for an initiative is a natural person or an association should make no difference—it is the initiative itself that matters.

2. The Requirement that Proponents Be Natural Persons Impermissibly Forces ABC and Chula Vista Citizens To Choose Between Constitutional Rights.

The speech necessary to institute a ballot measure, such as that at issue in this action, "is at the heart" of the First Amendment's protection. *Bellotti*, 435 U.S. at 776. Indeed, "[T]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as 'core political speech.'" *Meyer*, 486 U.S. at 421–22 (1988). For such speech, First Amendment protection is "at its zenith." *Id*. at 425.

The First Amendment protects more than political speech, however. It also protects one's right to privacy in his associations. *Buckley v. Valeo*, 424 U.S. 1, 64 (1976). And, "[C]ompelled

disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Id*. (*citing Gibson v. Florida Legislative Comm.*, 372 U.S. 539 (1963); *NAACP v. Button*, 371 U.S. 415 (1963); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958)). In fact, "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP*, 357 U.S. at 462. And there is a "vital relationship between freedom to associate and privacy in one's associations." *Id*. When the right to privacy is abridged, the freedom to associate is threatened. *Id*.

So, ABC and Chula Vista Citizens and their members have a fundamental, First Amendment right to engage in political speech through the initiative petition process. And they also have a fundamental, First Amendment right to protect the privacy of their association. But, so long as the requirement that proponents be natural persons remains in force, Chula Vista Citizens and ABC must choose between these two protected rights. They may *either* engage in the protected political speech inherent in initiative petitions (with one of their members serving as a proponent in their stead), *or* they may allow their members to associate freely, without fear that they will be 'revealed' to the government. But they may not do both; for, if they are to engage in political speech, one of their members must identify himself to the government and the public at large and serve as a proponent.

Initiative petitions are by their very nature challenges to the direction that the government has taken. As such, they espouse "dissident beliefs," *Id*. at 462, that challenge the status quo. "The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change." *Meyer*, 486 U.S. at 421. No one proposes an initiative to maintain the status quo: Initiatives are proposed to alter it.

Like all proponents, then, ABC and Chula Vista Citizens seek to enact provisions through the initiative process which are directly at odds with the position advanced by the City's leadership. More than that, though, the Initiative has the potential to be very controversial in the City. If enacted, it would require the City to open bidding on public works projects to all bidders, not just union

shops. Such a position is potentially at odds not only with the self-interest of unions, but also with the self-interest of union members. Thus, the Initiative may not be well received by all citizens of the City. ABC and Chula Vista Citizens are advocating the type of "dissident beliefs" that concerned the Court in *NAACP v. Alabama*. They did not want to have to identify their members and thereby expose them to potential controversy. Nor do ABC and Chula Vista Citizens want to ever again have to identify their members in order to engage in an initiative petition. Rather, they want to exercise their First Amendment right to engage in political speech as the proponent for their initiatives, while also exercising their First Amendment right to privacy in their associations.

The government *may* require one to surrender a constitutional right in order to receive some benefit to which he is not otherwise entitled. *See*, *e.g.*, *Dolan v. City of Tigard*, 512 U.S. 374 (1994). In those situations, a balancing test determines whether the condition is constitutional. *Id* at 385. In other words, if one is receiving a benefit from the government, there are times when the government may condition the gifting of the benefit upon the donee's surrendering of constitutional rights.

The situation in the present case, though, is different. The City is not asking ABC and Chula Vista to choose between a gift (to which they have no right) and a constitutional right. Rather, the City is demanding that they choose between two distinct constitutional rights. That is the situation that was at issue in *Simmons v. U. S.*, 390 U.S. 377 (1968), where the petitioner was forced to choose between asserting what he believed to be a valid Fourth Amendment claim, or exercise his Fifth Amendment right against self-incrimination. When one is forced by the government to choose between constitutional rights, there is no balancing test necessary to determine whether the forced choice is constitutional. The requirement that one must choose is unconstitutional, period, because it is "intolerable that one constitutional right should have to be surrendered in order to assert another." *Simmons*, 390 U.S. at 394 (1968); *see also U.S. v. Midgett*, 342 F.3d 321, 325 (4th Cir. 2003) (unconstitutional to force defendant to choose between constitutional rights to testify on his own behalf, and to be represented by counsel); *U.S. v. Scott*, 909 F.2d 488, 493 (11th Cir. 1990) (same). While *Simmons*, *Midgett*, and *Scott* each involved the protection of constitutional rights in

the criminal context, the principle applies equally here. The City cannot constitutionally force ABC and Chula Vista Citizens to choose between their constitutional rights. It must allow them to exercise both.

3. The Requirement That Proponents Be Natural Persons Fails Strict Scrutiny.

Strict scrutiny applies to laws which burden such petition-initiative speech. *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 192 n.12 (1999) (*"Buckley II"*) (citing *id*. at 206–07, Thomas, J., concurring in judgment). Under strict scrutiny, the requirement that proponents be natural persons must be "narrowly tailored" to serve "a compelling state interest." *Id*. at 192 n.12. The City, however, has *no* compelling interest to which the prohibition on corporate and associational speech could be tailored.

The City cannot claim that corporate money could corrupt the initiative petition process, because the risk of corruption is "not present" in popular votes on public issues. *Bellotti*, 435 U.S. at 790; *Buckley II*, 525 U.S. at 648. Nor can it claim that corporate money should not influence initiative petitions. As the *Bellotti* Court said when considering whether corporate advocacy in the ballot measure context was acceptable, "[T]he fact that [corporate] advocacy may persuade the electorate is hardly a reason to suppress it[.]" *Bellotti*, 435 U.S. at 790. Nor can the City point to an informational interest which would require proponents to be natural persons. Proponents must disclose their identity on the Clerk's Version and Newspaper Version (and, currently, on the Circulated Version as well). Organizations would not be exempt from those requirements. In fact, the interest in having an informed electorate would favor allowing ABC and Chula Vista Citizens to serve as proponents for the initiatives they wish to enact. The name of one of their members, who is not known to the citizens of the City, adds nothing to their knowledge of who is behind initiatives sponsored by ABC and Chula Vista. *See McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 348–49 (1995) (noting that when a private citizen is not known to the recipient of a communication, adding his name to the communication does little to help the recipient evaluate it). There simply is no "compelling interest" to which this requirement may be tailored. It must of necessity, then, fail

scrutiny, and this Court should declare it unconstitutional.

However, even if there were a compelling interest, the requirement that proponents be natural persons would still fail strict scrutiny, because it is not narrowly tailored. Rather, it is overinclusive, because it would not allow ABC or Chula Vista Citizens to serve as proponents even if all of their shareholders or members voted to authorize them to do so. As the *Bellotti* Court noted, "Ultimately shareholders may decide, through the procedures of corporate democracy, whether their corporation should engage in debate on public issues. *Id*. at 794. The fact that a law does not allow for such shareholder decision-making "demonstrat[es]" the "overinclusiveness of the statute." *Id*.

4. The Requirement That Proponents Be Natural Persons Is Overbroad.

The requirement is also overbroad: It burdens not only the Plaintiffs' speech, but also the speech of others not before the Court. It ensnares substantially more associational and speech rights than are justified by any compelling interest. *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973); *Bd. Of Airport Commissioners v. Jews for Jesus*, 482 U.S. 569, 574–76 (1987). The City has banned *all* organizations from being proponents for petition initiatives. The regulation simply sweeps too broadly, and reaches substantially more speech than can be permitted.

5. Because the Requirement that Proponents Be Natural Persons Does Not Pass Scrutiny, And is Overbroad, It Is Unconstitutional both Facially and As Applied, and The Plaintiffs Will Succeed on the Merits.

Laws which burden First Amendment rights, but which do not pass the applicable level of scrutiny, are unconstitutional. *See, e.g.*, *Buckley*, 424 U.S. at 44–45 (noting that the constitutionality of the challenged statute depends on whether the proffered governmental interest satisfies the applicable scrutiny). Because the requirement that proponents be natural persons fails strict scrutiny, the requirement should be declared unconstitutional. This Court should therefore find that the Plaintiffs are likely to prevail on the merits for this challenge.

B. Requiring Disclosure on the Circulated Version is Unconstitutional.

Both individuals and organizations have the right to engage in anonymous political speech. *See, e.g.*, *ACLU v. Heller*, 379 F.3d 979 (9th Cir. 2004) (statute requiring that the name of the person

responsible for paying for political publications appear on the publication itself violated First Amendment); *Washington Initiatives Now v. Rippie*, 213 F.3d 1132 (9th Cir. 2000) (*"WIN"*) (statute requiring disclosure of names of those paid to collect signatures on initiative petitions violated First Amendment). These cases properly follow the Supreme Court's decision in *McIntyre*, which held that the First Amendment protects anonymous political speech. *McIntyre*, 514 U.S. at 342. Sadly, the City has chosen to require that proponents of initiative petitions give up their anonymity and be identified on the Circulated Version of the petition that is passed among the voters. This requirement impermissibly burdens the First Amendment rights of proponents.

It also chills their speech. Mr. Breitfelder is adamant: He will never again be a proponent of an initiative, if doing so means that he must identify himself on the Circulated Version placed before the voters. The requirement decreases the pool of potential proponents, and reduces the amount of initiative-related speech placed before the City's voters. Requirements such as this one, that chill speech and force speakers to give up their anonymity, must satisfy strict scrutiny. The Circulated Version's disclosure requirement does not do so. It should therefore be declared unconstitutional.

1. The First Amendment Protects The Right To Anonymous Political Speech.

The First Amendment protects a speaker's right to engage in anonymous speech, *McIntyre*, 514 U.S. at 342, including anonymous *political* speech. *Id*. at 345, 357 (holding unconstitutional a requirement that documents "designed to influence voters in an election" include the proponent's name). A prohibition on anonymous political speech is "a direct regulation of the content of speech[,]" *Id*. at 345, because it forces the speaker to conform his message to the content that the government desires. This is "a serious, direct intrusion on First Amendment values." *Heller*, 378 F.3d at 988. *See also WIN*, 213 F.3d at 1138 (calling prohibitions on anonymity a "broad intrusion").

The right to such anonymous speech is not tied to the reason the speaker desires anonymity. Rather, the decision to engage in anonymous speech "may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible."*McIntyre*, 514 U.S. at 341–42. It can even be motivated by the belief that

ideas will be more persuasive if the identity of the proponent is unknown. *Id*. at 342. Regardless of the reason, the right to anonymity remains. *Id*. at 343.

2. The Plaintiffs Want to Engage In Anonymous Political Speech.

The Plaintiffs want to engage in such anonymous political speech at the point of contact with the voters: They do not want their identity to appear on the Circulated Version that the voters are asked to sign. Mr. Breitfelder will never serve as a proponent again if he is forced to identify himself on the Circulated Version. He would not allow his name to appear on the Circulated Version for the First Petition, and only allowed it for the Second Petition when it became obvious that the Clerk would not otherwise process the signatures gathered. Still, he regrets allowing his name to appear on the Circulated Version for the Second Petition and has stated that he will never do so again, even if it means that Chula Vista Citizens—or even he, himself—is unable to pursue ballot initiatives.

Chula Vista Citizens and ABC, meanwhile, also want to be able to engage in anonymous political speech at the point of contact with the voters if they choose to—that is, they do not want to *have* to disclose their names as a proponent on the Circulated Version, which must be placed on sections of initiative petitions when they are passed to the voters. Rather, they want to make sure that their *ideas*, rather than their *identity*, is what is evaluated by the voters when they are asked to consider its initiative petitions. There may be times when they will choose to identify themselves on the Circulated Version of their future initiatives. However, they want the right to not identify themselves if they believe that disclosure of their identity to those asked to sign the petition would decrease their chances of getting a fair hearing for their initiative advocated by the petition.

The *Buckley II* Court recognized that the interest in anonymity is greatest when an initiative petition is being circulated. *Buckley II*, 525 U.S. at 199. And, the Ninth Circuit has said that it is not just that a speaker's identity is revealed, but *how and when* that identity is revealed, that matters in a First Amendment analysis of a regulation of political speech. *Heller*, 378 F.3d at 991. It is one thing for the Plaintiffs to identify themselves to the Clerk, and within the classified pages of the newspaper. It is another thing to be forced to identify themselves on the pages of an initiative petition

which may be controversial in the City, and have their names seen by the voters who are asked to sign the petition. They did not want to be forced to endure that type of exposure, and Mr. Breitfelder will not subject himself to it ever again. The requirement that proponents disclose their identities on the Circulated Version forces those who would seek to engage the electorate in "interactive communication concerning political change," *Meyer*, 486 U.S. at 422, to reveal themselves.

3. The Disclosure Requirement Is Subject to Strict Scrutiny.

Petition circulation is "core political speech," for which First Amendment protection is "at its zenith." *Id*. at 421–22. When such core political expression is burdened, courts apply "exacting scrutiny" to determine whether the challenged regulation can pass First Amendment scrutiny. *Id*. at 420 (citing *Buckley*, 424 U.S. at 45). Similarly, when the government requires those engaging in core political speech to give up their anonymity and disclose information about themselves, 'exacting' scrutiny applies. *Buckley*, 424 U.S. at 64; *McIntyre*, 514 U.S. at 346 and 346 n.10.

In the First Amendment context, "exacting scrutiny" is the same as "strict scrutiny."[2] Under

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[2]*See F.E.C. v. Wisconsin Right to Life*, ___ U.S. ___, 127 S.Ct. 2652, 2669 n.7 (2007) (saying that *Buckley* had applied "strict scrutiny," even though *Buckley* called it "exacting scrutiny"); *Buckley II*, 525 U.S. at 192 n.12, 204 (noting that the challenged law failed "exacting scrutiny," but also affirming that the test applied was the strict scrutiny one: "state regulations impos[ing] severe burdens on speech ... [must] be narrowly tailored to serve a compelling state interest.") (internal quotations and citations omitted); *McIntyre*, 514 U.S. at 346 and 346 n.10 (referring in the text of the opinion to "exacting scrutiny" used in *Meyer*, 486 U.S. 414, and then referring to the type of scrutiny employed in *Meyer* as "strict scrutiny" in footnote 10); *McIntyre*, 514 U.S. at 347 (noting that the strict scrutiny standard is the proper one when evaluating a law under exacting scrutiny).

That strict scrutiny is the proper standard of review when core political expression such as occurs during petition circulation is burdened is underscored by the fact that courts regularly affirm that "strict scrutiny" was applied in *Meyer*, even though the text of the opinion itself refers to "exacting scrutiny." *See Caruso v. Yamhill County ex rel. County Com'r*, 422 F.3d 848, 855 (9th Cir. 2005) (affirming that strict scrutiny was applied in *Meyer*); *Wirzburger v. Galvin*, 412 F.3d 271, 277 (1st Cir. 2005) (Same); *Save Palisade FruitLands v. Todd*, 279 F.3d 1204, 1212 (10th Cir. 2002) (finding that since *Meyer* was inapposite, a strict scrutiny analysis was not required—thus suggesting that such an analysis *was* utilized in *Meyer*); *Wellwood v. Johnson*, 172 F.3d 1007, 1009 (8th Cir. 1999) (stating that the *Meyer* Court "applied strict scrutiny"); *Biddulph v. Mortham*, 89 F.3d 1491, 1498 (11th Cir. 1996) (Same); *American Ass'n of People With Disabilities v. Herrera*, 580 F.Supp.2d 1195, 1218 (D.N.M. 2008) (Same); *League of Women Voters of Florida v. Browning*, 575

such scrutiny, "[T]he *Government* must prove that applying [the challenged provision] furthers a compelling interest and is narrowly tailored to achieve that interest." *F.E.C. v. Wisconsin Right to Life*, 127 S.Ct. 2652, 2664 (*"WRTL II"*) (italics in original). *See also Buckley II*, 525 U.S. at 206 (noting the "now-settled approach" that regulations "impos[ing] 'severe burdens' on speech or association" [must] be narrowly tailored to serve a compelling state interest") (Thomas, J., concurring in judgment)). Further, "The question under [the] strict scrutiny test, however, is not whether the [challenged provision] serves this interest *at all*, but whether it is *narrowly tailored* to serve this interest." *Republican Party of Minnesota v. White*, 536 U.S. 765, 777 n. 7 (2002) (emphasis in the original). When a regulation is subject to strict scrutiny, the regulation must use "the least restrictive means" to further the State's interest. *Heller*, 378 F.3d at 992–93.

4. The Disclosure Requirement Fails Strict Scrutiny.

The Circulated Version's disclosure requirement fails this strict scrutiny test. First, there simply is no compelling interest requiring the disclosure of the proponent's name on the Circulated Version. But, even if there were, the requirement is not narrowly tailored to it, but is both overinclusive and underinclusive, and also overbroad.

The requirement is overinclusive because it compels more speech than can possibly be necessary to meet the interest. Even if the City's informational interest[3] is "compelling" so as to meet the first requirement of strict scrutiny, the identity of the proponent is already available to the

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F.Supp.2d 1298, 1320–21 (S.D.Fla. 2008) (Same); *Las Vegas Convention and Visitors Authority v. Miller*, 191 P.3d 1138, 1153 (Nev. 2008) (stating that the scrutiny applied in *Meyer* was "strict scrutiny"); *Citizens For Honest & Responsible Government v. Secretary of State*, 11 P.3d 121, 125 (Nev. 2000) (Same); *Hart v. Secretary of State*, 715 A.2d 165, 168 (Me. 1998) (Same); *Initiative 172 (Fair Play for Washington) v. Western Washington Fair*, 945 P.2d 761, 585 (Wash. App. 1997) (Same).

[3]The Plaintiffs assume that the City's interest is informational, because no anti-corruption interest exists in the context of initiative petitions. *See Buckley II*, 525 U.S. at 648; *Meyer*, 486 U.S. at 427–28; *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 298 (1981); *Bellotti*, 435 U.S. at 790.

electorate: It must be disclosed on the Clerk's Version and the Newspaper Version. As noted by the Ninth Circuit, there is a "constitutionally determinative distinction between on-publication identity disclosure requirements and after-the-fact reporting requirements ...." *Id*. at 991. If *after-the-fact* reporting is sufficient to avoid on publication disclosure, as was true in *Heller*, how much more sufficient is the *before-the-fact* reporting required on the Clerk's Version and the Newspaper Version. Citizens interested in an initiative petition proponent's identity can readily find it. Thus, requiring the proponent to *again* disclose his personal information is overinclusive, and not narrowly tailored to the compelling interest—assuming such an interest even exists.

"The simple interest in providing voters with additional relevant information does not justify a ... requirement that a writer make statements or disclosures she would otherwise omit." *Id.* at 993 (*quoting McIntyre*, 514 U.S. at 348). Regulations subject to strict scrutiny must use "the least restrictive means" to further the State's interest. *Heller*, 378 F.3d at 992–93. This requirement does not do that. Disclosure through "the least restrictive means" is accomplished via the Clerk's Version, and perhaps the Newspaper Version. Disclosure on the Circulated Version cannot be said to be "the least restrictive means." Rather, it requires speakers to incorporate into their message words they may not want to say. Such a requirement is simply unneeded to achieve the informational interest, but forces far more disclosure than necessary. As such, it is overinclusive.

The requirement is also underinclusive because it does not compel those who oppose an initiative petition to identify themselves. If the goal is *really* an informed electorate, identifying those opposing initiative petitions is just as important as identifying those who support them. This principal was recognized by the Ninth Circuit when it noted, "Knowing which interested parties back *or oppose* a ballot measure is critical ...." *Cal. Pro-life Council v. Getman*, 328 F.3d 1088, 1106 (9th Cir. 2003) (emphasis added); *see also Canyon Ferry Road Baptist Church v. Unsworth*, 556 F.3d 1021, 1032 (9th Cir. 2009) ("[B]y knowing who backs or opposes a given initiative, voters will have a pretty good idea of who stands to benefit from the legislation.") (*quoting Getman*, 328 F.3d at 1106). Yet, the Defendants do not require those who oppose initiative petitions to identify

themselves to the masses, even when they—as sometimes happens—circulate literature urging the electorate to refuse to sign the initiative petition. Only proponents are forced to identify themselves. When a regulation is underinclusive in this way, it makes belief that it is designed to serve the proffered interest "a challenge to the credulous." *White*, 536 U.S. 765, 780 (2002). *See also City of LaDue v. Gilleo*, 512 U.S. 43, 52 (1994) (noting that such underinclusiveness diminishes "the credibility of the government's rationale for restricting speech in the first place.").

5. The Disclosure Requirement is Overbroad.

The requirement is also overbroad: It burdens substantially more associational and speech rights than are justified by any compelling interest. *Broadrick*, 413 U.S. at 615; *Jews for Jesus*, 482 U.S. at 574–76. Neither Ms. Kneebone nor Mr. Breitfelder are the true proponents of the initiative petition. Rather, Chula Vista Citizens is the true proponent, as they are the ones who paid for the publication of the Newspaper Version of the Notice. Code § 342 (providing that "'proponents of an initiative or referendum measure' means, for [municipal] initiative and referendum measures, the person or persons who publish a notice or intention to circulate petitions . . . ."). Only Chula Vista Citizens *published* the Notice, since only they paid for its publication. Yet, the Clerk requires that individual members of Chula Vista Citizens serve as the proponents, and refuses to allow Chula Vista Citizens to do so. And, the Clerk does the same thing to the members of organizations, not before this Court, who wish to pass ballot initiatives: Their members must serve as proxy-proponents for them. This means that they must disclose their names on the Circulated Version, even though they are not truly the proponent, but only a proxy.

Thus, the requirement that the "proponents" provide their name and signature on the Circulated Version burdens substantially more associational and speech rights than are justified by any compelling interest, since it requires those who are not the true proponents of the measure to submit to public disclosure of their personal information. The Supreme Court has "repeatedly held" that "a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the

area of protected freedoms." *NAACP*, 357 U.S. at 307 (citations omitted). Yet, that is precisely what this requirement does.

Because the requirement that the proponent's name be disclosed on the Circulated Version fails strict scrutiny, and is overbroad, the requirement should be declared unconstitutional. This Court should therefore find that the Plaintiffs are likely to prevail on the merits for this challenge.

C. The Definition of "Proponent" Is Unconstitutionally Vague and Overbroad.

A law is unconstitutionally vague when "men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926). *See also, accord*, *U.S. v. Lanier*, 520 U.S. 259, 266 (1997); *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). When First Amendment rights are at stake, a statute must have a great degree of specificity, even more than what is normal for due process protections. *Buckley*, 424 U.S. at 77; *see also Information Providers' Coalition for Defense of the First Amendment*, 928 F.2d 866, 874 (9th Cir. 1991) (noting, "The requirement of clarity is enhanced when criminal sanctions are at issue or when the statute 'abut[s] upon sensitive areas of basic First Amendment freedoms.'") (*quoting Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972)). Laws which regulate the First Amendment must therefore "provide people of ordinary intelligence a reasonable opportunity to understand" what, exactly, the law means. *Hill v. Colorado*, 530 U.S. 703, 732 (2000) (quoting *Chicago v. Morales*, 527 U.S. 41, 56–57 (1999)).

Code § 342, incorporated by the Charter § 903, defines the "proponent or proponents of an initiative or referendum measure" to mean, for non-statewide initiatives, "the person or persons who *publish* a notice or intention to circulate petitions, or, where publication is not required, who file petitions with the elections official or legislative body." It is not clear from the statute, however, what *publish* means—or, more to the point, what action, exactly, is the action of "publish[ing] a notice or intention to circulate petitions." Is it—as the Plaintiffs believe—the one who pays to have the Newspaper Version published? Or, is it—as the Clerk and other Defendants apparently believe—the natural person who signs the Clerk's Version? Or, is it the one who delivers the "notice

or intention to circulate petitions" to the newspaper for publication, regardless of who pays for publication? Or, is it someone else? The law simply is not clear. The definition of "proponent" does not provide "people of ordinary intelligence"—including, but not limited to, the Plaintiffs—"reasonable opportunity to understand" who a proponent is. As such, it cannot survive First Amendment scrutiny, but is vague.

The definition of "proponent" is also overbroad (that is, it fails the narrow-tailoring requirements of strict scrutiny). The Plaintiffs have done initiative petitions in the past, and intend to do initiative petitions in the future about issues which are of concern to them. Under the current, challenged law, a "proponent" must provide his name and signature on the Clerk's Version, the Newspaper Version, and the Circulated Version. However, they cannot know who, exactly, a proponent is, or what action makes one a proponent. Yet, unless a proponent's name and signature appears on the Clerk's Version, Newspaper Version, and Circulated Version, the Clerk will not process any signatures collected on the initiative petition, nor will she forward them to the San Diego County Registrar of Voters for verification. It is imperative, therefore, that the Plaintiffs and other citizens of the City as well be able to understand who, exactly, a proponent is. The law, however, does not provide them with the necessary clarity. The Plaintiffs' First Amendment rights are impermissible burdened by a law which is unconstitutionally vague and/or overbroad. The Plaintiffs are likely to succeed on the merits of their challenge to the Charter's definition of "proponent."

D. The Requirement that the Certified Version "Bear a Copy" of the Notice of Intention and the Title and Summary Prepared by the City Attorney Is Unconstitutionally Vague and Overbroad.

Code § 9207, incorporated by the Charter § 903, is controlling law in Chula Vista. It provides in pertinent part, "Each section of the petition shall *bear a copy* of the notice of intention and the title and summary prepared by the city attorney."[4] It is not clear from the statute, however, what "bear a copy" means. Is it to be a certified copy? A non-certified but 100% exact copy? A substantially the

[4] This "copy" is what is referred to in the Plaintiffs' pleadings as "the Circulated Version."

same copy? Or, something else? Neither the Plaintiffs, nor other citizens of the City, can reasonably tell from the wording of Section 9207.

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

If the State Legislature had intended that the Circulated Version required by Section 9207 should be a 100% exact copy of the Clerk's Version required by Section 9202, they would have likely used a phrase which clearly indicates that was their intention. And they would not have had to go outside of the vocabulary of the Elections Code to do so. For instance, the Code uses"certified copy" in Section 2100, "full and correct copy" in Section 9014, "complete copy" in Section 9084, "true duplicate copy" in Section 13266, "correct copy" in Section 9258, and "exact copy" in Section 19103. Had any of these phrases been used in Section 9207, the Clerk's interpretation that the Circulated Version must be a 100% exact copy of the Clerk's Version would be more reasonable. These phrases were *not* used, however. What the Legislature said was that the Circulated Version of the Notice "shall *bear a copy* of the notice of intention and the title and summary prepared by the city attorney" (Section 9207), which shall be "substantially" in the required form (Section 9202).

The fact that the City does not always enforce this requirement furthers the confusion surrounding what the requirement means. In fact, the City has not applied the 100% exact copy standard to prior Chula Vista initiatives. Yet, the Clerk applied it to the Plaintiffs with regard to the First Petition. This type of arbitrary enforcement is part of what the vagueness doctrine is designed to prevent: "Vague statutes are invalidated for three reasons: (1) to avoid punishing people for

behavior that they could not have known was illegal; (2) to avoid subjective enforcement of laws based on 'arbitrary and discriminatory enforcement' by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms." *Humanitarian Law Project v. Mukasey*, 552 F.3d 916, 928 (9th Cir. 2009) (internal citations omitted). Yet, either the Clerk is enforcing the 100% exact copy standard arbitrarily against the Plaintiffs, or else even she is not sure what, exactly, "bear a copy" means. Regardless, the law cannot stand. The phrases, "Bear a copy" which is "in substantially" the required form, coupled with the seemingly arbitrary way the Defendants have chosen to enforce the law, does not provide "people of ordinary intelligence" a "reasonable opportunity to understand" what the law requires, and it has been enforced in different ways with different proponents. It is therefore impermissibly vague.

E. The Requirement that the Clerk's Version, Newspaper Version, and Circulated Version Be "In Substantially the Following Form" As The Example Provided Is Unconstitutionally Vague and Overbroad.

Code § 9202, incorporated by the Charter § 903, requires that the Clerk's Version, Newspaper Version, and Circulated Version shall be "in substantially the following form," and then provides an example of a Notice of Intent. However, it does not explain what "in substantially the following form" means. This requirement is therefore unconstitutionally vague.

One would think that, if the law required all of the information from the example to be present in the Clerk's Version, Newspaper Version, and Circulated Version, the law would require an "exact copy" (or something synonymous). That the law rather requires only that the three versions be in a form "substantially" like the example suggests that an exact copy is not required. Still, it is not clear what (if anything) appearing in the example may be left out of the Clerk's Version, Newspaper Version, and Circulated Version. Must each of the three required notices contain all the same information, such that they are 100% exact copies of one another? Or, might they be something less than that? Might the Newspaper Version, or the Circulated Version, be allowed to omit the signature of the proponent? Might one or the other even be allowed to fail to disclose the name of the proponent? What information *must* be included? What information *may* be left out? Neither the

Plaintiffs, nor other citizens of the City, can reasonably tell from the wording of Section 9202. This law does not provide "people of ordinary intelligence" a "reasonable opportunity to understand" what the law requires. It is therefore impermissibly vague.

"In substantially the following form," is also overbroad (that is, it fails the narrow-tailoring requirements of strict scrutiny). The Plaintiffs intend to do initiative petitions in the future. However, the Clerk refuses to process the signatures on initiative petitions which she deems have not complied with the requirements of Sections 9207 and 9202. Nor will she forward those signatures to the San Diego County Registrar of Voters for verification. It is imperative, therefore, that the Plaintiffs and other citizens of Chula Vista as well be able to understand what, exactly, the phrase "in substantially the following form" in Section 9202 means. Their First Amendment rights are impermissible burdened by a law which is unconstitutionally vague and overbroad.

II. The Plaintiffs Will Suffer Irreparable Harm.

The irreparable harm standard for preliminary injunctions is satisfied where, as here, First Amendment freedoms are impermissibly burdened. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Yahoo!, Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1234 (9th Cir. 2006) (*quoting Elrod v. Burns*, 427 U.S. 347, 373 (1976)); s*ee also Brown v. Cal. Dept. of Transp.*, 32 F.3d 1217, 1226 (9th Cir. 2003) (noting that if plaintiffs state a colorable First Amendment claim, the risk of irreparable injury may be presumed).

The Plaintiffs have demonstrated that they are likely to succeed on the merits of their First Amendment claims. The Member Plaintiffs must surrender their right to engage in anonymous speech and instead must conform their message to the government's dictate by placing their names on the pages of the petition circulated among the City's voters if they are to have the signatures counted. The Second Petition is being circulated right now, and the Member Plaintiffs want to be able to remove their names from its Circulated Version, but cannot, unless Code § 9207 is enjoined. And Chula Vista Citizens and ABC are denied the right to engage in political speech as proponents

for initiative measures. They want to serve as the proponents for the Initiative, but cannot, unless Code § 9202's requirement that the proponent be a natural born person is enjoined.

The Plaintiffs thus are suffering, and will continue to suffer, irreparable harm if the Court does not grant injunctive relief.

III. The Balance of Harms Favors the Plaintiffs.

The Plaintiffs have demonstrated both the likelihood of success on the merits as well as a clear irreparable injury, so a preliminary injunction should issue. But the balance of harms tips decidedly in favor of the Plaintiffs as well. As demonstrated above, there is little (if any) interest in forcing a proponent to place his name and signature on the Circulated Version passed among the voters. Any interested voters are able to determine the proponents of initiatives from the easily accessible, but less intrusive, Clerk's Version and Newspaper Version, both of which are required to name the proponents.

Nor is there any interest in requiring that proponents be natural born people. In fact, as shown above, that requirement actually works *against* the City's informational interest, as it often keeps the true proponents of initiative petitions from serving as such, forcing them to substitute proxy-proponents in their place. The residents of the City are unlikely to recognize the names "Lori Kneebone" or "Larry Breitfelder." They are much more far more likely recognize the name "Associated Builders and Contractors." Yet, the City's requirement that proponents be natural born persons forced Ms. Kneebone and Mr. Breitfelder to serve as proponents in place of ABC. This unhappy result gave the citizens of Chula Vista *less* information about who was behind the Initiative than they would have received had ABC been allowed to serve as the proponent.

In the Ninth Circuit, "[T]he fact that a case raises serious First Amendment questions compels a finding that there exists the potential for irreparable injury, or that at the very least the balance of hardships tips sharply in [Appellants'] favor." *Sammartano v. First Judicial District Court, in and for County of Carson City*, 303 F.3d 959, 973 (9th Cir. 2002) (internal quotations and citations omitted). This is true even where "the merits of the constitutional claim were not clearly

established at this early stage in the litigation." *Id*. (internal quotations and citations omitted). In the case at bar, however, the Plaintiffs have firmly established the merits of their constitutional claims. Since the City has no constitutionally significant interest in requiring disclosure on the Circulated Version, or in requiring that proponents be natural born persons, the balance of harms should be found to favor the Plaintiffs.

IV. An Injunction is in The Public Interest.

The Ninth Circuit Court of Appeals has recognized that "it is always in the public interest to prevent the violation of a party's constitutional rights." *Sammartano*, 303 F.3d at 974 (quoting with approval *G & V Lounge, Inc. v. Mich. Liquor Control Com'n*, 23 F.3d 1071, 1079 (6th Cir.1994)). While the public interest in protecting First Amendment liberties has, on occasion, been overcome by "a strong showing of other competing public interests," *Sammartano*, 303 F.3d at 974, there must be *some showing* of an *actual*, strong competing interest in order for a court to find that it is in the public interest to deny injunctive relief. *Id*. (noting that the appellees had made no showing that their challenged regulation, which infringed on appellants' First Amendment rights, could "plausibly be justified," and so granting appellants' request for injunctive relief). In the case before this Court, there simply is no interest—strong or otherwise—which can justify the challenged laws. It is, however, in the public interest that First Amendment freedoms be preserved. The political will of over 23,000 citizens of citizens of the City is being thwarted. The political speech of the Plaintiffs—and others like them—is being burdened and chilled. Enjoining the offending laws is the only way to overcome that pernicious effect. Thus, an injunction is in the public interest and this Court should grant it.

Conclusion

For the foregoing reasons a preliminary injunction should issue, enjoining Code § 9202's requirement that proponents be natural born persons, and Code § 9207's requirement that the proponent's name and signature be on the Circulated Version, and granting any other appropriate relief. No security should be required because Defendants have no monetary stake.

Respectfully Submitted,

/s/ Brian T. Hildreth

Charles H. Bell, Jr. (SBN 060553)
Brian T. Hildreth (SBN 214131)
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)*
Joe 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

* *Pro hac vice application submitted and pending.*

PROOF OF SERVICE

I, Brian T. Hildreth, am over the age of 18 years and am one of the attorneys for the plaintiffs in this action. My business address is 455 Capitol Mall, Suite 801, Sacramento, California 95814.

On June 4, 2009, I electronically filed the foregoing document described as *Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction*, which will be served on all Defendants.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 4, 2009 at Sacramento, California.

/s/ Brian T. Hildreth
Brian T. Hildreth (SBN 214131)
Attorney for Plaintiffs