ENDORSED
ENT'D
AUG - 9 2010
By S. Lee, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CHRISTOPHER K. MCKENZIE, an official proponent of Proposition 22, Petitioner, v. **DEBRA BOWEN, Secretary of State of California,** Respondent, **KEVIN D. HANNAH, State Printer, MAC TAYLOR, State of California Legislative Analyst, and DOES 1-X, inclusive,** Real Parties in Interest.	Case No. 34-2010-80000621 **[~~PROPOSED~~] ORDER AND JUDGMENT AFTER HEARING ON PETITION FOR PEREMPTORY WRIT OF MANDATE** **ELECTION MATTER: PROPOSITION 22**

The petition for peremptory writ of mandate by Petitioner Christopher K. McKenzie came on for hearing in Department 31 of this Court on August 6, 2010. Seth Goldstein, Deputy Attorney General, appeared on behalf of Respondent Debra Bowen, the Secretary of State, and Real Party in Interest Kevin Hannah, the Acting State Printer. Richard D. Martland and Kurt R. Oneto of Nielsen, Mersksamer, Parrinello, Mueller & Naylor, LLP appeared on behalf of

Petitioner Christopher K. McKenzie. Michael P. Beaver and Daniel A. Weitzman of the Office of Legislative Counsel appeared on behalf of Real Party in Interest Legislative Analyst Mac Taylor.

Having read and considered the memoranda of points and authorities filed by the parties, and having heard argument,

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

The Petition for Peremptory Writ of Mandate is granted for the reasons set forth in the Court's Ruling on Submitted Matter. This Ruling is attached and incorporated by reference as Exhibit 1. As reflected in the attached exhibit, the Secretary of State shall implement changes to the ballot title and summary and ballot label as contained in the ballot pamphlet and furnish this information to the Acting State Printer.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT:

Each party is to bear his or her own costs and attorney fees.

Dated: 8/9/10

MICHAEL KENNY

Honorable Michael P. Kenny

Superior Court of California, County of Sacramento

Approved as to form:

Richard D. Martland
Attorney for Petitioner Christopher K. McKenzie

Michael P. Beaver
Attorney for Real Party Legislative Analyst Mac Taylor

Seth E. Goldstein
Attorney for Respondent Secretary of State Debra Bowen
and Real Party State Printer Kevin Hannah

Approved as to form:

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Michael P. Beaver
Attorney for Real Party Legislative Analyst Mac Taylor

Seth E. Goldstein
Attorney for Respondent Secretary of State Debra Bowen
and Real Party State Printer Kevin Hannah

Approved as to form:

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Richard D. Martland
Attorney for Petitioner Christopher K. McKenzie

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Michael P. Beaver
Attorney for Real Party Legislative Analyst Mac Taylor

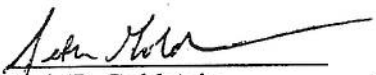
Seth E. Goldstein
Attorney for Respondent Secretary of State Debra Bowen
and Real Party State Printer Kevin Hannah

EXHIBIT "1"

ENDORSED

AUG - 6 2010

By S. Lee, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CHRISTOPHER MCKENZIE, an official proponent of Proposition 22,

Petitioner,

v.

DEBRA BOWEN, Secretary of State of California,

Respondent,

KEVIN D. HANNAH, State Printer, MAC TAYLOR, Legislative Analyst, and DOES 1-X, inclusive,

Real Parties in Interest.

Case No. 34-2010-80000621-CU-WM-GDS

RULING ON SUBMITTED MATTER: PETITION FOR PEREMPTORY WRIT OF MANDATE

[Election Matter, Elections Code § 9092; Government Code § 88006]

Petitioner Christopher McKenzie seeks a peremptory writ of mandate compelling Respondent Debra Bowen and Real Parties in Interest Kevin D. Hannah and Mac Taylor ("Legislative Analyst") to revise the Legislative Analyst's Summary of Estimate of Net State and Local Government Fiscal Impact contained in the Ballot Title and Summary and the condensed Fiscal Impact portion of the Ballot Label for Proposition 22 – the "Local Taxpayer, Public Safety, and Transportation Act of 2010."

The Court, having heard oral argument, read and considered the written argument of all parties, and read and considered the documents and pleadings in the above-entitled action, now rules on the Petition as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

Proposition 22 – the "Local Taxpayer, Public Safety, and Transportation Act of 2010" – is a statewide initiative scheduled to be included on the November 2, 2010 ballot. (*See, e.g.*, Petition, Exhibit ("Exh.") "A.") Proposition 22 is intended to "maintain local control over local taxpayer funds and protect vital services like local fire protection and 9-1-1 emergency response, law enforcement, emergency room care, public transit, and transportation improvements, California voters have repeatedly and overwhelmingly voted to restrict state politicians in Sacramento from taking revenues dedicated to funding local government services and dedicated to funding transportation improvement projects and services." (Petition at Exh. "A" at 1 (Section Two. Findings and Declarations).) The stated purpose of Proposition 22 "is to conclusively and completely prohibit state politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending or otherwise taking or interfering with revenues that are dedicated to funding services provided by local government or funds dedicated to transportation improvement projects and services." (*Id.* at Exh. "A" at 2 (Section Two and One-Half. Statement of Purpose).)

Pursuant to Elections Code § 9087 and Government Code § 88003, the Legislative Analyst prepared "an impartial analysis of [Proposition 22] describing the measure and including a fiscal analysis of the measure showing the amount of any increase or decrease in revenue or cost to the state or local government." (Petition at Exh. "D"; Elec. Code § 9087(a); Gov't Code § 88003.) With respect to the fiscal impact of Proposition 22 on state and local transportation programs and local government, the Legislative Analyst concluded:

> The fiscal effect of the measure on transportation programs and local governments largely would be the *opposite* of its effect on the state's General Fund. Under the measure, the state would use General Fund revenues – instead of fuel tax revenues – to pay for transportation bonds. This would leave more fuel tax revenues available for state and local transportation programs.
>
> In addition, limiting the state's authority to redirect revenues likely would result in increased resources being available for redevelopment and state and local transportation programs. Limiting the state's authority to borrow these revenues likely would also result in more stable revenues being available for local governments and transportation. The magnitude of this fiscal effect is not possible to determine, but could be in the range from about $1 billion (in most years) to several billions of dollars (in some years).

(Petition at Exh. "D" at 12.)

Petitioner takes no issue with the full fiscal impact analysis prepared by the Legislative Analyst pursuant to Elections Code § 9087 and Government Code § 88003. (*See, e.g.*, Petition at 4 n.1, ¶ 13; Memorandum at Section 3.a.) Instead, as discussed further below, Petitioner challenges the Legislative Analyst's Summary of Estimate of Net State and Local Government Fiscal Impact contained in the Ballot Title and Summary and the condensed Fiscal Impact portion of the Ballot Label.

Elections Code § 9051 requires that "the ballot title and summary shall be amended to include a summary of the Legislative Analyst's estimate of the net state and local fiscal impact prepared pursuant to [Elections Code §] 9087 and [Government Code § 88003]." (*See also* Elec. Code § 9087(b).) Both Elections Code § 9087 and Government Code § 88003 require that "[t]he title of the measure which appears on the ballot shall be amended to contain a summary of the Legislative Analyst's estimate of the net state and local government financial impact." (Elec. Code § 9087(e); Gov't Code § 88003.)

Pursuant to this statutory directive, the Legislative Analyst prepared the following Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact for the Ballot Title and Summary:

> Due to restrictions on state authority over fuel and property taxes, the state would have to take alternative actions—probably in the range of $1 billion to several billion dollars annually. This would result in both:
>
> - Reductions in General Fund program spending and/or increases in state revenues of those amounts.
> - Comparable increases in transportation and redevelopment resources.

(Petition at Exh. "B.")

The Legislative Analyst also prepared the following summary of fiscal impacts for the Ballot Label:

> Fiscal Impact: Decreased state General Fund spending and/or increased state revenues, probably in the range of $1 billion to several billions of dollars annually. Comparable amounts of increased funding for transportation and redevelopment.

(Petition at Exh. "C.")

On August 2, 2010, Petitioner filed a Petition for Peremptory Writ of Mandate pursuant to Elections Code § 9092 and Government Code § 88006 challenging the Legislative Analyst's summaries of the fiscal impacts of Proposition 22 included in the Ballot Title and Summary and the Ballot Label on the grounds that the summaries are false, misleading, and/or inconsistent with the provisions of Government Code § 88006 and Elections Code § 9092. (Petition at ¶¶ 9, 26.) More specifically, Petitioner contends that the language used by the Legislative Analyst in the Ballot Title and Summary and the Ballot Label fails to sufficiently address the fiscal impact of Proposition 22 on local governments because the existing language fails to expressly reference "local governments." Accordingly, Petitioner seeks to replace the existing fiscal impact language in the Ballot Title and Summary and the Ballot Label with the language used by the Legislative Analyst in the Summary of Estimate of Economic Impact on State and Local Government included in the Circulating Title and Summary for Proposition 22. (*See* Petition at ¶ 23.)

The Legislative Analyst opposes the Petition on the grounds that Petitioner failed to establish by clear and convincing proof that the existing summaries of fiscal impacts included in the Ballot Title and Summary and the Ballot Label are false or misleading and that Petitioner's own preferred ballot language is false and misleading.[1]

II. DISCUSSION

A. Standard of Review

"Prior to the circulation of an initiative measure, the Attorney General is required to prepare a title and summary of its 'chief purposes and points' – not exceeding 100 words." (*Amador Valley Jt. Union High School v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 243 (citing, among other authorities, Cal. Const., art. II, § 10, subd. (d).) The Attorney General must include in its title and summary "a summary of the Legislative Analyst's estimate of the net state and local fiscal impact prepared pursuant to [Elections Code §] 9087 and [Government Code § 88003]," such as those at issue here. (Elec. Code § 9051; Elec. Code § 9087(b).)

[1] Respondent Debra Bowen, Secretary of State of California, and Real Party in Interest Kevin D. Hannah, State Printer, do not oppose the Petition. (*See* Answer of Respondent Debra Bowen and Real Party Kevin Hannah and accompanying Memorandum of Points and Authorities, filed on August 4, 2010.)

"The Attorney General's statement must be true and impartial, and not argumentative or likely to create prejudice for or against the measure. [Citation.] The main purpose of these requirements is to avoid misleading the public with inaccurate information." (*Amador Valley, supra*, 22 Cal.3d at 243 (citations omitted).) "It must reasonably inform the voter of the character and real purpose of the proposed measure." (*Tinsley v. Super. Ct.* (1983) 150 Cal.App.3d 90, 108 (citation omitted).)

"It has been consistently held that a ballot summary need not contain a reference to 'auxiliary or subsidiary' matters; a statement of the major objectives or 'chief points' of the measure is satisfactory." (*Tinsley, supra*, 150 Cal.App.3d at 108 (citation omitted); *Amador Valley, supra*, 22 Cal.3d at 243 ("We have said, however, that the title and summary need not contain a complete catalogue or index all of the measure's provisions . . .") (citation omitted); *Hornoff v. City and County of San Francisco* (2003) 110 Cal.App.4th 814, 820 (citation omitted).)

"As a general rule, the title and summary prepared by the Attorney General are presumed accurate, and substantial compliance with the 'chief purpose and points' provision is sufficient." (*Amador Valley, supra*, 22 Cal.3d at 243 (citation omitted).) """"Within certain limits what is or what is not an important provision is a question of opinion. Within those limits the opinion of the Attorney General should be accepted by this court."""" (*Tinsley, supra*, 150 Cal.App.3d at 108 (citation omitted); *see also Amador Valley, supra*, ("[I]f reasonable minds may differ as to the sufficiency of the title, the title should be held sufficient") (citation omitted).)

The Court's discretion to grant the relief requested by Petitioner is accordingly limited by Elections Code § 9092 and Government Code § 88006, which provide that a peremptory writ of mandate may issue only "upon clear and convincing proof that the copy in question is false, misleading, or inconsistent with the requirements of this code of Chapter 8 (commencing with Section 88000) of Title 9 of the Government Code . . . ." (*See also Tinsley, supra*, 150 Cal.App.3d at 108 ("Moreover, '[only] in a clear case should a title . . . [or summary] be held insufficient") (citation omitted).)

///

B. The Legislative Analyst's Summary of Estimate of Net State and Local Government Fiscal Impact contained in the Ballot Title and Summary and the condensed Fiscal Impact portion of the Ballot Label are misleading and inconsistent with the requirements of the Election Code.

The Court finds that Petitioner raises a meritorious argument, supported by clear and convincing proof, regarding the Legislative Analyst's Summary of Estimate of Net State and Local Government Fiscal Impact contained in the Ballot Title and Summary and the condensed Fiscal Impact portion of the Ballot Label.

The Legislative Analyst recognized the impact of Proposition 22 on "state and local transportation programs and local government in his complete fiscal analysis of Proposition 22. However, there is no express mention of "local" governments in the Legislative Analyst's Summary of Estimate of Net State and Local Government Fiscal Impact contained in the Ballot Title and Summary and the condensed Fiscal Impact portion of the Ballot Label. The Court disagrees with the Legislative Analyst's proposition during oral argument that the fiscal impact to local government may be inferred from the fact that redevelopment programs fall within the jurisdiction of local governments. Requiring such an inference on behalf of the general public violates the Legislative Analyst's duty to craft its analysis in "clear and concise terms, so as to be easily understood by the average voter, and [to] avoid the use of technical terms wherever possible." (Elec. Code § 9087(b); Gov't Code § 88003.) The Court agrees with Petitioner that the Summary of Estimate of Net State and Local Government Fiscal Impact contained in the Ballot Title and Summary and the condensed Fiscal Impact portion of the Ballot Label should contain some express reference to "local" governments.

The Court, however, cannot go the length to which Petitioner suggests. Petitioner proposes that the Legislative Analyst's existing language should be replaced by the following:

> Significant constraints on state authority over city, county, special district, and redevelopment agency funds. As a result, higher and more stable local resources, potentially affecting billions of dollars in some years. Commensurate reductions in state resources, resulting in major decreases in state spending and/or increases in state revenues.

(Petition at ¶ 23.) The Court finds Petitioner's proposed language violates the requirement that the Attorney General's statement be "true and impartial, and not argumentative or likely to create

prejudice for or against the measure." (*Amador Valley*, *supra*, 22 Cal.3d at 243 (citation omitted).) In particular, the use of the phrases "significant constraints on state authority" and "more stable local resources" weigh heavily in favor of local governments to the prejudice of the state.

Instead, the Court agrees with the language proposed by the Legislative Analyst during oral argument. The second bullet-point of the Legislative Analyst's Summary of Estimate of Net State and Local Government Fiscal Impact contained in the Ballot Title and Summary should be revised as follows:

- Comparable increases in funding for state and local transportation programs and local redevelopment.

The Legislative Analyst's condensed Fiscal Impact summary contained in the Ballot Label should be similarly revised as follows:

> Fiscal Impact: Decreased state General Fund spending and/or increased state revenues, probably in the range of $1 billion to several billions of dollars annually. Comparable increases in funding for state and local transportation programs and local redevelopment.

During oral argument, Petitioner disapproved of the Legislative Analyst's proposed language, arguing that the proposed language fails to address the impact of Proposition 22 on aspects of local government other than transportation programs and redevelopment. Petitioner thus proposed referencing the fiscal impact of Proposition 22 on "certain local government resources." The Legislative Analyst objected on the ground that the phrase "certain local government resources" was uncertain, vague, and ambiguous. The Court agrees. The phrase "certain local government resources" fails to reasonably inform the pubic regarding the impact of Proposition 22 on local governments. (*See also* Elec. Code § 9087(b) and Gov't Code § 88003 (requiring the use of "clear and concise terms, so as to be easily understood by the average voter, and [to] avoid the use of technical terms wherever possible").)

Moreover, there is no need for the additional verbiage proposed by Petitioner. "[A] ballot summary need not contain a reference to 'auxiliary or subsidiary' matters; a statement of the major objective or 'chief points' of the measure is satisfactory." (*Tinsley*, *supra*, 150 Cal.App.3d

at 108 (citation omitted).) Petitioner understandably considers any and all impacts of Proposition 22 on local governments significant. However, it is clear from the Court's review of Proposition 22 and the Legislative Analyst's complete fiscal impact analysis that the primary impacts of Proposition 22 on local governments relate to transportation and redevelopment resources.

For instance, Proposition 22 itself considers the impact of the measure on "transportation improvement projects and services" so important that it is specifically referenced in both the Findings and Declarations and Statement of Purpose sections of the measure. (*See* Petition at Exh. "A" (Section One. Findings and Declarations, Section Two, Statement of Purpose).) Sections Five, Six, and Seven of Proposition 22 relate to the Highway Users Tax Account, the Public Transportation Account, and the Transportation Investment Fund, respectively. The Legislative Analyst's complete fiscal impact analysis, with which Petitioner takes no issue and in fact praises, also is largely focused on the impact of Proposition 22 on transportation-related programs. (Petition at Exh. "D.")

The Court's proposed language thus substantially complies "with the 'chief purpose and points' provision . . .." (*See Amador Valley, supra*, 22 Cal.3d at 243 (citation omitted); *Tinsley, supra*, 150 Cal.App.3d at 108 (citation omitted).)

III. DISPOSITION

The Legislative Analyst's objections to evidence submitted by Petitioner are SUSTAINED.

The petition for a peremptory writ of mandamus is GRANTED. A judgment shall be issued in favor of Petitioner, and against Respondent and Real Parties in Interest, granting the petition for peremptory writ of mandate. A peremptory writ shall issue from this Court to Respondent and Real Parties in Interest, commanding Respondent and Real Parties in Interest to revise the second bullet-point of the Legislative Analyst's Summary of Estimate of Net State and Local Government Fiscal Impact contained in the Ballot Title and Summary revised as follows:

- Comparable increases in funding for state and local transportation programs and local redevelopment.

The writ shall further command Respondent and Real Parties in Interest to revise the

Legislative Analyst's condensed Fiscal Impact summary contained in the Ballot Label as follows:

> Fiscal Impact: Decreased state General Fund spending and/or increased state revenues, probably in the range of $1 billion to several billions of dollars annually. Comparable increases in funding for state and local transportation programs and local redevelopment.

The writ shall further command Respondent and Real Parties in Interest to take any further action especially enjoined on them by law and make and file a return within 30 days after issuance of the writ, setting forth what they have done to comply with the writ. The Court reserves jurisdiction in this action until there has been full compliance with the writ.

In accordance with Local Rule 9.16, Petitioner is directed to prepare a formal order and judgment, incorporating this Court's ruling as an exhibit, and a peremptory writ of mandamus; submit them to opposing counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature and entry of judgment in accordance with Rule of Court 3.1312(b).

DATED: August 6, 2010

MICHAEL KENNY

Honorable MICHAEL P. KENNY
Judge of the Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: August 6, 2010

By: S. LEE,
Deputy Clerk

DECLARATION OF SERVICE BY ELECTRONIC MAIL and U.S. MAIL

Case Name: **Prop 22/Christopher K. McKenzie v. Debra Bowen (Kevin Hannah, et al.)**
No.: **34-2010-80000621**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 9, 2010, I served the attached **(1) [Proposed] Order and Judgment after Hearing on Petition for Peremptory Writ of Mandate and (2) Letter dated August 9, 2010 to Clerk of the Court** by transmitting a true copy via electronic mail as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 9, 2010, at Sacramento, California.

Rowena Aquino
Declarant

Signature

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