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FRESNO COUNTY SUPERIOR COURT
By _____

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7 MADERA COUNTY CHILDREN AND FAMILIES COMMISSION, FIRST 5 MERCED
8 COUNTY (an agency of the County of Merced), and KENDRA ROGERS

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF FRESNO, CENTRAL DIVISION

11
12 CHILDREN AND FAMILIES)
13 COMMISSION OF FRESNO COUNTY, a)
14 public agency, MADERA COUNTY)
15 CHILDREN AND FAMILIES)
16 COMMISSION, a public agency, FIRST 5)
17 MERCED COUNTY, an agency of the County)
18 of Merced, and KENDRA ROGERS, an)
19 individual and taxpayer,)

20 Petitioners and Plaintiffs,)

21 vs.)

22 EDMUND G. BROWN, JR., California State)
23 Governor, JOHN CHIANG, California State)
24 Controller, ANA J. MATOSANTOS,)
25 California Director of Finance, in their official)
26 capacities, and DOES 1 to 100, inclusive,)

27 Respondents.)
28)

Case No.: 11 CE CG 01077

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PEREMPTORY WRIT OF MANDATE
(CCP 1085, 1088.5)

Date: June 14, 2011

Time: 8:30 a.m.

Dept: 51

Judge: Honorable Deborah Kazanjian

Date Action Filed: April 5, 2011

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I.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners, CHILDREN AND FAMILIES COMMISSION OF FRESNO COUNTY (hereinafter "First 5 Fresno County"), MADERA COUNTY CHILDREN AND FAMILIES COMMISSION (hereinafter "First 5 Madera County"), FIRST 5 MERCED COUNTY, and KENDRA ROGERS, challenge provisions of the 2011-2012 State Budget Act and related legislation on grounds that these legislative acts unlawfully amend the California Children and Families Act of 1998 (the "Act," also known as "Proposition 10" or "Prop. 10") and illegally raid \$1 billion in Prop. 10 trust funds.

In 1998, the voters of the State of California, through the initiative process, created a trust fund, which is largely locally controlled and is dedicated to fostering the development of young children from the prenatal stage to the age of five years. In order to protect their creation, the voters provided that the initiative creating the trust fund could only be amended by either the voters themselves or by the Legislature with a two-thirds vote of both houses, and in the latter event only if the proposed amendment was consistent with the purposes and intent of the act creating the trust fund.

Currently, the State of California is facing a deficit of approximately \$26 billion. In an attempt to patch-up the deficit, Governor Edmund G. Brown, Jr. ("Governor Brown") and the Legislature are looking for every source of revenue possible. Governor Brown and the Legislature have focused on Prop. 10 revenues, legally beyond their reach, contained in a trust fund established by the voters, as a means to reduce the deficit. This motion for a peremptory writ of mandate challenges the Legislature's amendments to the voters' initiative, Prop. 10, because the amendments are inconsistent with the purposes behind the creation of the trust fund.

Contrary to the express purposes and intent of the Act, the State, through the challenged legislation, intends to supplant General Fund¹ money with Prop. 10 moneys and use

¹ The General Fund consists of money received into the treasury and not required by law to be credited to any other fund. (Gov. Code § 16300.)

1 the funds to pay for the State's pre-existing Medi-Cal services obligations. (Request for Judicial
2 Notice In Support of Petitioners' Motion for a Peremptory Writ of Mandate (hereinafter "RJN"),
3 Exh. 14, Ass. Budget Com., Preliminary Conference Com. Report for the 2011-12 Budget (March
4 3, 2011) (hereafter "Prelim. Conf. Com. Report") p. 9.²) Specifically, the Legislature has enacted
5 Health and Safety Code sections 130156, 130157, and 130158. These newly enacted statutes
6 create the Children and Families Health and Human Services Fund. (Health & Saf. Code, §
7 130156.) First 5 California is required to transfer \$50 million into this newly created fund
8 (Health & Saf. Code, § 130157), while the local First 5 county commissions are required to
9 collectively transfer \$950 million into the same fund (Health & Saf. Code, § 130158). As is
10 explained below, such acts are unconstitutional and violate Section 8 of Prop. 10 because they are
11 not consistent with the intent of the Act and do not further the Act's purposes.

12 II.

13 STANDARD OF REVIEW

14 The central question for the court is whether the challenged legislation, which
15 amends the California Children and Families Act of 1998, furthers the Act and is consistent with
16 its purposes. The validity of the challenged legislation depends upon the answer to this question.
17 (*Amwest Surety Insurance Company v. Wilson* (1995) 11 Cal.4th 1243, 1251.)

18 Article II, section 10, subdivision (c) of the California Constitution provides that
19 "[t]he Legislature...may amend or repeal an initiative statute by another statute that becomes
20 effective only when approved by the electors, unless the initiative statute permits amendment or
21 repeal without their approval." (Emphasis added.) The constitutional limitation on the
22 Legislature's power to amend initiative statutes is designed to "protect the people's initiative
23 power by precluding the Legislature from undoing what the people have done, without the
24 electorate's consent." (*Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132
25 Cal.App.4th 1354 [citing *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64

26 ² Providing that: Proposition 10 Fund Shift to Medi-Cal. Cuts Medi-Cal by \$1 billion General Fund by
27 replacing it with \$1 billion in Proposition 10 funds. Directs First 5 local commission to provide \$950 million and
28 the state commission to provide \$50 million in reserves to cover Medi-Cal services for children 0-5 years of age. . . .
(Emphasis added.)

1 Cal.App.4th 1473, 1984].) Section 8 of Prop. 10 provides: “This [A]ct may be amended only by
2 a vote of two-thirds of the membership of both houses of the Legislature. All amendments to
3 this [A]ct shall be to further the [A]ct and must be consistent with its purposes.” (Emphasis
4 added.) Accordingly, any amendment to Prop. 10 must meet the above-stated standards, set by
5 California voters.

6 “[T]he courts have the responsibility for determining the constitutionality of acts
7 of the Legislature, and in doing so to give effect to the will of the electorate which is, of course,
8 paramount.” (*Shaw v. Chiang* (2009) 175 Cal.App.4th 577, 595-596 [op. by Cantil-Sakauye,
9 J.].) Resolving whether a legislative amendment to a ballot initiative comports with the
10 initiative’s intent and purposes is a question of law for the court and requires statutory
11 interpretation. (*Id.* at p. 595.) The court is to “start[] with the presumption that the Legislature
12 acted within its authority, [and the court] shall uphold the validity of [the amendment] if, by
13 reasonable construction, it can be said that it furthers the purposes” of the original enactment and
14 is consistent with it. (*Amwest, supra*, 11 Cal.4th at p. 1256.) In determining the validity of a
15 legislative amendment, the question before the court is not whether the legislative act furthers
16 the public good; rather the court’s inquiry is limited to whether the legislative act furthers the
17 purposes of the initiative. (*Id.* at p. 1265.)

18 In identifying the purposes of an initiative, the court will examine the initiative as
19 a whole, and look to its general statements of purpose among other things, and give full effect to
20 the initiative’s specific language, as well as its major and fundamental purposes. (*Amwest,*
21 *supra*, 11 Cal.4th at pp. 1257, 1259; *Gardner v. Schwarzenegger* (2009) 178 Cal.App.4th 1366,
22 1374.)

23 III.

24 FACTUAL BACKGROUND

25 A. **Prop. 10 Created the First 5 Trust Fund to be Used Exclusively to Fund the First 5**
26 **Program For the Support and Improvement of Early Childhood Development**
Within Each Participating County.

27 Prop. 10 was adopted by the electorate in the November 1998 general election and
28 became effective on December 13, 1998. Prop. 10 created Division 108 of the California Health

1 and Safety Code (§ 130100 *et seq.*) entitled the “California Children and Families Program”
2 (now commonly known as the “First 5 Program”) and Division 2, Part 13, Chapter 2, Article 3 of
3 the California Revenue and Taxation Code (§ 30131 *et seq.*) entitled the “California Children
4 and Families Trust Fund Account,” which funds the First 5 Program. Moreover, Prop. 10
5 amended the California Constitution to exempt the trust fund account from the requirements of
6 Proposition 13 (increased taxes) and Proposition 98 (funds for schools). (RJN, Exh. 7, Prop. 10
7 §§3-4.)

8 The Act was introduced to address the issue of early childhood well-being,
9 especially its relationship to cigarette smoking and other tobacco use by pregnant women. (RJN,
10 Exh. 7, Prop. 10, § 2.) Prop. 10 declares a compelling need to promote, support, and improve
11 early childhood development because “children who succeed in school are far more likely to
12 engage in meaningful social, economic, and civic participation as adults and avoid the use of
13 tobacco and other addictive substances.” (RJN, Exh. 7, Prop. 10, § 2(g).) It also references the
14 small amount of money expended on early childhood development, and imposes a new surtax on
15 cigarettes (\$0.50 per pack) and other tobacco products to fund “well-coordinated programs that
16 enable children to begin school healthy, ready and able to learn, and emotionally well
17 developed.” (RJN, Exh. 7, Prop. 10, § 2(h).) The surtax revenue finances the creation of a
18 system of integrated and comprehensive parenting programs and related services to prepare
19 children to enter school. (RJN, Exh. 7, Prop. 10, § 2(m).)

20 Other than those funds required to reimburse the State Board of Equalization for
21 administration and the collection of the tax, all revenues generated by the First 5 Program are
22 deposited into the California Children and Families Trust Fund (the “First 5 Trust Fund”) in the
23 State Treasury and are appropriated on an ongoing basis for use by the First 5 Program. (Rev. &
24 Tax. Code, § 30131.1.) Twenty percent of the money generated by the tax is transferred to the
25 California Children and Families State Commission (now commonly known, and referred to
26 herein, as “First 5 California”), and the remaining eighty percent is transferred to participating
27 county commissions. (Health & Saf. Code, § 130105.) There are currently 58 participating
28 county commissions, including commissions in Fresno, Madera and Merced Counties. Each

1 participating county commission receives a portion of total moneys available to all county
2 commissions equal to the percentage of the number of births recorded in the relevant county in
3 proportion to the number of births recorded in all participating counties. (Health & Saf. Code, §
4 130140.)

5 Each participating county must adopt a strategic plan “for the support and
6 improvement of early childhood development within the county” that is “consistent with, and in
7 furtherance of the purposes of” the Act. (Health & Saf. Code, § 130140(a)(1)(C).) Each county
8 commission must conduct an annual audit and issue a written report to First 5 California that
9 includes a discussion of “the manner in which funds were expended, the progress toward, and the
10 achievement of program goals and objectives, and information on programs funded and
11 populations served for all funded programs.” (Health & Saf. Code, § 130150(a).)

12 Since its enactment, the language of the Act has been amended on thirteen
13 separate occasions. In 2000, the voters overwhelmingly rejected Proposition 28 which attempted
14 to repeal the \$.50 per pack tobacco tax on cigarettes and eliminate funding for the First 5
15 Program.³ (RJN, Exh. 8, League of Women Voters, *Proposition 28 Repeal of Proposition 10*
16 *Tobacco Surtax: Initiative Constitutional Amendment and Statute*, available at
17 www.smartvoter.org/2000/03/07/ca/state/prop/28 (last visited April 22, 2011).)

18 Notably, no amendment has permanently diverted First 5 Trust Fund moneys
19 away from the First 5 Program. AB 1389, enacted by the Legislature in 2008, amended
20 California Revenue and Taxation Code section 30131.4 to permit the State Controller to *loan*
21 money from the First 5 Fund to the General Fund. However, the amendment allows for loans
22 only, and specifically prohibits transfers “that will interfere with the carrying out of the object for
23 which [the Trust Fund] or other accounts were created.” (Health & Saf. Code, § 30131.4(b).)

24 In 2009, in an earlier effort to balance the State budget, the Legislature attempted
25 to amend the Act through Proposition 1D. Proposition 1D proposed to temporarily allow the use
26 of Prop. 10 trust fund moneys to offset existing state General Fund obligations to fund other
27

28 ³ The voters voted 72.2% against and 27.8% in favor of Proposition 28. (RJN, Exh. 8 .)

1 health and human services programs for children up to age five. (RJN, Exh. 10, *Budget Act of*
2 *2008. California Children and Families Use of Funds: Services for Children* (Feb. 25, 2009),
3 available at <www.lao.ca.gov/ballot/2009/1D_05_2009.aspx> (last visited April 22, 2011)
4 (hereinafter "Summary of Prop. 1D ").) Proposition 1D provided that \$340 million in "unspent
5 reserves" would be redirected to the General Fund. (*Id.*) Moreover, Proposition 1D provided
6 that \$54 million in future funds would be transferred to the General Fund over the subsequent
7 five years. (*Id.*) Proposition 1D was overwhelmingly defeated by voters.⁴ (RJN, Exh. 12,
8 California Secretary of State, *Statement of Vote*, available at
9 <www.sos.ca.gov/elections/sov/2009-special/complete-sov.pdf> (last visited April 22, 2011)
10 (hereinafter "Statement of Vote").)

11 **1. First 5 Fresno County.**

12 First 5 Fresno County was established in 1999. (Declaration of Kendra Rogers
13 (hereinafter "Rogers Decl."), ¶ 2.) It is led by a commission of nine members appointed by the
14 Fresno County Board of Supervisors. (Rogers Decl., ¶ 2.) Since 1999, First 5 Fresno County
15 has invested more than \$103 million in local programs serving young children and their families.
16 (Rogers Decl., ¶ 4.) Currently, First 5 Fresno County has an annual budget of approximately
17 \$18.9 million. (Rogers Decl., ¶ 4.)

18 As required by Health & Safety Code section 130140, First 5 Fresno County
19 adopted its most recent Strategic Plan in 2008 for 2008 through 2013. (Rogers Decl., ¶ 3 and
20 Exh. A thereto.) First 5 Fresno County's 2008-2013 Strategic Plan focuses on three service
21 areas: (1) health, (2) early care and education, and (3) family strengthening. (Rogers Decl., ¶ 3.)
22 These focus areas carry with them the goals of: (1) improving child health, (2) optimizing child
23 development, and (3) providing optimal environments for children. (Rogers Decl., ¶ 3.) To this
24 end, First 5 Fresno County funds many community health initiatives that focus on preventative
25 care and early identification of special health needs that are critical to the development of
26 children from a prenatal stage through age 5. (Rogers Decl., § 5.) Moreover, First 5 Fresno

27
28 ⁴ Sixty-six percent of the electorate voted "No." (RJN, Exh. 11, May 19, 2009 Statewide Special Election
– Statement of Vote, *supra*, at <www.sos.ca.gov/elections/sov/2009-special/complete-sovt.pdf> [as of March 12,
2011].)

1 County focuses its investments in early childcare and education based on the commission's
2 conclusion that a child's education is best supported through partnerships among parents,
3 childcare providers, and other members of a young child's life. (Rogers Decl., ¶ 4.)

4 Organizations receiving First 5 Program funds report financial, program and
5 evaluation data to the First 5 Fresno County Commission in order to prove compliance with their
6 contractual responsibilities. (Rogers Decl., ¶ 6.) First 5 Fresno County uses such data in order to
7 prepare its own annual report to First 5 California. (Rogers Decl., ¶ 6 and Exh. B thereto.)

8 **2. First 5 Madera County.**

9 First 5 Madera County was established in 1998. (Declaration of Chinayera Black
10 Hardaman (hereinafter "Hardaman Decl."), ¶ 2.) It is led by a commission of nine members
11 appointed by the Madera County Board of Supervisors. (Hardaman Decl., ¶ 2.) Since 1998,
12 First 5 Madera County has invested more than \$19 million in local programs serving young
13 children and their families. (Hardaman Decl., ¶ 4.) Currently, First 5 Madera County has an
14 annual budget of approximately \$5.2 million. (Hardaman Decl., ¶ 4.)

15 Pursuant to Health & Safety Code section 130140, First 5 Madera County adopted
16 its most recent Strategic Plan in 2010 for 2010 through 2014. (Hardaman Decl., ¶ 3 and Exh. A
17 thereto.) First 5 Madera County's 2010-2014 Strategic Plan focuses on (1) child health, (2)
18 family involvement, and (3) child development, which are manifested through the
19 accomplishment of the following goals: (A) that children are healthy; (B) that families have
20 resources and support to be successful caregivers; (C) that children have access to high quality
21 early care and education; and (D) that systems are integrated and coordinated. (Hardaman Decl.,
22 ¶ 3 and Exh. A thereto.) With these priorities in mind, First 5 Madera County funds programs
23 which promote children's health, prepare children for school, and support families during this
24 process. (Hardaman Decl. ¶ 3.) First 5 Madera County funds its Family Resource Centers
25 ("FRC") Initiative as a central mechanism for achieving its goals. (Hardaman Decl., ¶ 5.) By
26 design, FRCs are multi-dimensional in approach, and promote coordinated services for children
27 and their families. (Hardaman Decl., ¶ 5.) First 5 Madera County also funds preschool access
28 initiatives, parenting support programs, and case management services for at-risk families,

1 among others. (Hardaman Decl., ¶ 5.) Lastly, consistent with its obligation to conduct self
2 audits and file annual reports with the First 5 California, First 5 Madera County duly conducts
3 annual audits of its activities. (Hardaman Decl., ¶ 6 and Exh. D thereto.) Data in the audits is
4 gathered from funded programs, which are required to periodically provided quantitative and
5 qualitative summaries of their impacts on children and their families. (Hardaman Decl., ¶ 6.)

6 **3. First 5 Merced County.**

7 First 5 Merced County was established in 1998. (Declaration of Brian Mimura
8 (hereinafter "Mimura Decl."), ¶ 2.) It is led by a commission of nine members, five of whom are
9 appointed by the Merced County Board of Supervisors and four of whom are ex officio members
10 identified in the Commission's enacting ordinance. (Mimura Decl., ¶ 2.) Since 1998, First 5
11 Merced County has invested nearly \$50 million in local programs serving young children and
12 their families. (Mimura Decl., ¶ 4.) Currently, First 5 Merced County has an annual budget of
13 approximately \$5.89 million. (Mimura Decl., ¶ 4.)

14 First 5 Merced County adopted its most recent Strategic Plan in 2009, and again
15 approved it in 2010; the Strategic Plan focuses on five desired outcomes: (1) improving parents'
16 capacity to spend time with their children; (2) improving the quality of care provided to children
17 in out-of-home environments; (3) improving the system for early screening, referral, assessment
18 and services for children with special needs; (4) improving community awareness of the need to
19 prioritize care benefitting Merced County's youngest children; and (5) improving the availability
20 of affordable childcare and preschool services for children 0-5 years of age. (Mimura Decl., ¶ 3
21 and Exh. A thereto.) Through the achievement of these goals, First 5 Merced County aims to
22 optimize its impact on the Merced County community at large. (Mimura Decl., ¶ 3.) Among the
23 numerous programs funded by First 5 Merced County are: school readiness programs; preschool
24 programs; parenting education programs; health and health access programs; child development
25 programs; mental, social, and behavioral health services, services and programs for children with
26 special needs, tobacco prevention programs; and literacy programs. (Mimura Decl., ¶ 5.)

27 Finally, in upholding its statutory duty to account for its activities, First 5 Merced
28 County prepares and submits an annual audit to First 5 California. (Mimura Decl., ¶ 6 and Exh.

1 B thereto.) Data for the report is gathered by both First 5 Merced County and by independent
2 contractors and is compiled by the Commission. (Mimura Decl., ¶ 6.)

3 **B. In an Effort to Balance the State Budget, the California Legislature Has Amended**
4 **Prop. 10 to Divert First 5 Trust Fund Moneys to Fund the State's Pre-Existing**
5 **Medi-Cal Service Obligations.**

6 On March 16, 2011, the Legislature passed Assembly Bill No. 99 ("AB 99") by a
7 57 to 18 vote in the Assembly and a 36 to 3 vote in the Senate; AB 99 was signed by Governor
8 Brown on March 24, 2011. (RJN, Exhs. 18, 19, 20, *Unofficial Ballots* showing Senate and
9 Assembly votes on AB 99 on March 16, 2011, and AB 99 as signed by the Governor on March
10 24, 2011.) AB 99 adds three new sections to the Health and Safety Code within the California
11 Children and Families Program. These new sections amend the Act by: (1) creating a new fund,
12 called the Children and Families Health and Human Services Fund, in the State Treasury (Health
13 & Saf. Code, § 130156); (2) mandating that First 5 California transfer \$50 million from its share
14 of the First 5 Trust Fund into the newly created Children and Families Health and Human
15 Services Fund (Health & Saf. Code, § 130157); and (3) mandating that participating county First
16 5 commissions collectively transfer \$950 million, including reserve and already otherwise
17 designated funds, into the Children and Families Health and Human Services Fund (Health &
18 Saf. Code, § 130158).

19 Section 130158 of the amendment specifies that each local county commission
20 must transfer an amount equal to fifty percent (50%) of the balance in its Trust Fund account as
21 of June 30, 2010, including total reserved, total unreserved-designated, and total unreserved-
22 undesignated moneys. Under this formula, of the \$950 million First 5 Fresno County's share
23 will be approximately \$16,659,721 (Rogers Decl., ¶ 7), First 5 Madera County's share will be
24 approximately \$3,237,435 (Hardaman Decl., ¶ 7), and First 5 Merced County's share will be
25 approximately \$3,136,168 (Mimura Decl., ¶ 7), for a total of \$23,033,324.

26 AB 99 was designed and enacted to reduce the State's budget gap by replacing
27 Medi-Cal funding with Prop. 10 funds and thereby achieve one of the objectives of the 2011-
28 2012 State budget (the "Budget"): closing the budget gap. This intent behind AB 99 is apparent
from interpretive guidance regarding the Budget. For instance, in his original budget proposal,

1 Governor Brown stated that the State of California is facing a budget deficit of almost \$26 billion
2 for the 2011-2012 fiscal year. (RJN, Exh. 13, Governor's Budget Summary 2011-2012 (January
3 10, 2011) (hereafter "Budget Summary") p. 4.) Governor Brown proposed to close the deficit by
4 (1) reducing government spending by \$12.5 billion, (2) borrowing \$1.8 billion from special
5 funds, (3) shifting \$1.7 billion in property taxes, (4) taking \$1.0 billion from Proposition 10, and
6 (5) taking \$0.9 billion from Proposition 63. (RJN, Exh. 13, Budget Summary at pp. 5-6
7 [emphasis added].) Specifically, Governor Brown proposed to "use \$1 billion in Prop. 10 funds
8 to fund Medi-Cal services for children through age five." (RJN, Exh. 13, Budget Summary at p.
9 102.)

10 In accordance with the above-noted intent, after discussing Prop. 10 revenues in
11 conference committee, the Legislature decided to "[c]ut[] Medi-Cal by \$1 billion General Fund
12 (sic) by replacing it with \$1 billion in Proposition 10 funds." (RJN, Exh. 14 Preliminary Conf.
13 Com. Rep. at p. 9 [emphasis added].) The Legislature and Governor acknowledged that this was
14 the purpose of transferring funds from the voter-created First 5 Trust Fund to the Legislature-
15 created Children and Families Health and Human Services Fund when they stated in AB 99 that
16 "[a]bsent this solution, substantial reductions would be needed" in Medi-Cal. (RJN, Exh. 20, AB
17 99 as passed by the Legislature and signed by the Governor.)

18 There is no question that transferring funds from Prop. 10, especially from local
19 county commissions, will have a negative effect on local programs. (Rogers Decl., ¶ 7;
20 Hardaman Decl., ¶ 7; Mimura Decl., ¶ 7.) The Legislature's amendments do not exempt those
21 funds that are already obligated under contract to reimburse current service providers. (See e.g.,
22 RJN, Exh. 20, AB 99 as passed by the Legislature and signed by the Governor, at Sec. 3, adding
23 Health & Saf. Code §130157 and Sec. 4, adding Health & Saf. Code §130158, subdiv. (d),
24 releasing First 5 California and participating county First 5 commissions from liability for
25 terminating contracts with providers.) If local county commissions no longer have money to
26 fund a specific program or service, the service provider will be forced to shut down that program
27 or service, regardless of how necessary that program or service may be to the local community.
28 (Rogers Decl., ¶ 7; Hardaman Decl., ¶ 7; Mimura Decl., ¶ 7.)

1 IV.

2 **THE NEWLY ENACTED LEGISLATION UNCONSTITUTIONALLY AMENDS PROP.**
3 **10 BECAUSE THE LEGISLATION IS INCONSISTENT WITH PROP. 10'S PURPOSE**
4 **AND INTENT.**

5 As established above, the newly enacted legislation raids \$1 billion dollars from
6 the First 5 Trust Fund to fund a short-fall in the General Fund. This action is contrary to the
7 express language of the Act. The Act, at Revenue and Taxation Code section 30131.4, states "all
8 moneys raised pursuant to the taxes imposed by Section 30131.2 shall be deposited in the
9 California Children and Families Trust Fund and shall be continuously appropriated for the
10 exclusive purpose of the California Children and Families Program." (Emphasis added.) The
11 transfer of \$1 billion from the First 5 Trust Fund to the State of California treasury to fund the
12 State's pre-existing Medi-Cal obligations is undeniably an amendment of the Act. Such an
13 amendment by the Legislature is only permitted if it "further[s] the [A]ct and [is] consistent with
14 its purposes." (RJN, Exh. 7, Prop. 10, § 8.) As explained in detail below, because the
15 amendment does not further Act, nor is it consistent with its purposes, it is unconstitutional.

16 **A. The Citizens of California Have Directed That the Legislature May Only Amend**
17 **Prop. 10 if the Amendment Furthers the Act and is Consistent With Its Purposes.**

18 The legislation at issue in this proceeding violates the express constitutional
19 restrictions on the use of this revenue imposed by Prop. 10, a statutory initiative measure.
20 Article II, section 10, subdivision (c) of the California Constitution provides that "[t]he
21 Legislature ... may amend or repeal an initiative statute by another statute that becomes effective
22 only when approved by the electors unless the initiative statute permits amendment or repeal
23 without their approval." The purpose of this constitutional limitation on the Legislature's power
24 to amend initiative statutes "is to 'protect the people's initiative powers by precluding the
25 Legislature from undoing what the people have done, without the electorate's consent.'" (*Shaw*,
26 *supra*, 175 Cal.App.4th at p. 597.) The power vested in the electorate to decide whether the
27 Legislature can amend an initiative statute "is absolute and includes the power to enable
28 legislative amendment *subject to conditions attached by the voters.* [Citations.]" (*Amwest*,
supra, 11 Cal.4th at p. 1251.)

1 As explained by the California Court of Appeals for the Third District:

2 Statutes and constitutional provisions adopted by the voters must
3 be construed liberally in favor of the people's right to exercise the
4 reserved powers of initiative and referendum. The initiative and
5 referendum are not rights granted [to] the people, but ... power[s]
6 reserved by them. Declaring it the duty of the courts to jealously
7 guard this right of the people [citation], the courts have described
8 the initiative and referendum as articulating one of the most
9 precious rights of our democratic process [citation]. It has long
10 been our judicial policy to apply a liberal construction to this
11 power wherever it is challenged in order that the right not be
12 improperly annulled. If doubts can reasonably be resolved in favor
13 of the use of this reserve power, courts will preserve it.
14 [Citations.]. In fact, [t]he people's reserved power of initiative *is*
15 greater than the power of the legislative body. The latter may not
16 bind future Legislatures [citation], but by constitutional character
17 and mandate, unless an initiative measure expressly provides
18 otherwise, an initiative measure may be amended or repealed only
19 by the electorate. Thus, through exercise of the initiative power
20 the people *may* bind future legislative bodies other than the people
21 themselves.

22 (*Shaw, supra*, 175 Cal.App.4th at p. 596 [emphasis in original; internal quotations
23 omitted].).

24 Prop. 10, Section 8, gives the Legislature the power to amend the Act *only if* the
25 amendment "further[s] the act and [is] consistent with its purposes."

26 **B. Courts Interpret the Purposes and Intent of a Voter-Approved Initiative Statute By
27 Examining the Initiative's Specific Language, Historical Context, and Ballot
28 Arguments.**

29 Whether a legislative amendment to a ballot initiative comports with the
30 initiative's intent and purposes requires statutory interpretation. (*Shaw, supra*, 175 Cal.App.4th
31 at p. 595.) In identifying the purposes of an initiative, the court is to examine the initiative as a
32 whole, and look to its general statements of purpose. (*Amwest, supra*, 11 Cal.4th at p. 1257;
33 *Gardner, supra*, 178 Cal.App.4th at p. 1374.) The court must give effect to the initiative's
34 specific language as well as its major and fundamental purposes. (*Amwest, supra*, 11 Cal.4th at
35 pp. 1259-1260; *Gardner, supra*, 178 Cal.App.4th at p. 1374.) Evidence of purpose may also be
36 drawn from other sources including the historical context of the amendment, and the ballot
37 arguments favoring the measure. (*Amwest, supra*, 11 Cal.4th at p. 1256 [citing *California
38 Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 177].)

1 Only a handful of cases have discussed situations similar to the case at hand.⁵
2 The California Supreme Court took up the issue of determining whether a legislative amendment
3 comports with the substantive mandate provided by voters as an issue of first impression in
4 *Amwest Surety Insurance Company v. Wilson, supra*, 11 Cal.4th at p. 1251. *Amwest* involved
5 legislative amendments to Proposition 103 (the Insurance Rate Reduction and Reform Act)
6 which imposed a rate rollback limitation on certain types of insurance. (*Id.* at p. 1247.)
7 Language in Proposition 103 provides that its provisions may only be amended by the
8 Legislature by a two-thirds vote and “to further its purposes.” (*Ibid.*) The Court was asked to
9 interpret whether the Legislature’s enactment of Insurance Code section 1861.135, which
10 excluded surety insurance from the rollback requirement, furthered the purposes of Proposition
11 103. In making this determination, the court articulated that, in addition to the express statement
12 of purpose included in the initiative, “evidence of its purpose may be drawn from many sources,
13 including the historical context...and the ballot arguments favoring the measure.” (*Ibid.*)
14 Considering these factors, the court declared that the two major purposes of Proposition 103
15 were to reduce insurance rates and to replace a previous system of regulated competition with a
16 system in which the commissioner must approve such rates prior to their use. (*Ibid.* at p. 1259.)
17 Using these purposes as the standard against which to measure the merits of the amendment, the
18 court held that excluding surety insurance from Proposition 103’s rollback provisions did not
19 further the purposes of Proposition 103 because exclusion would subvert the clear intent of the
20 electorate to include, not exclude, surety insurance in the type of insurance covered by
21 Proposition 103 and to allow the insurance commissioner to approve rates. (*Ibid.* at p. 1268.)

22 Following *Amwest*, the validity of legislative amendments to initiative measures
23 has been decided on a few occasions. Most notably, the court examined the issue in *Shaw v.*
24 *Chiang, supra*, 175 Cal.App.4th 577, which involved facts and circumstances very similar to the
25 present case. *Shaw* involved an attempt by the Legislature to divert spillover gas tax revenues
26

27 ⁵ *Amwest Surety Insurance Company v. Wilson* (1995) 11 Cal.4th 1243 (Proposition 103); *Shaw v. Chiang*
28 (*2009*) 175 Cal.App.4th 577 (Proposition 116); and *Gardner v. Schwarzenegger* (2009) 178 Cal.App.4th 1366
(Proposition 36); *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354
(Proposition 103).

1 from the state's Public Transportation Account ("PTA"), a designated trust fund, to a newly
2 created Mass Transportation Fund ("MTF"). In 1990, the voters enacted Proposition 116, which
3 designated the existing PTA as a "trust fund," and specified that that funds designated to the
4 PTA may only be used "for transportation planning and mass transportation purposes." (*Ibid.* at
5 p. 598.) In contrast, the MFT, created by subsequent legislative amendment authorized use of
6 PTA trust funds for more general "transportation purposes." (*Ibid.* at p. 592.) The court looked
7 to the limitations on the use of the PTA trust funds provided in Proposition 116 to determine the
8 validity of the challenged legislative amendment. The court held that PTA trust funds could not
9 be transferred to the newly-created MTF because the provisions of the initiative, when read in
10 context and harmonized together, show that the voters intended for the PTA to be a trust fund
11 dedicated to supporting transportation planning and mass transportation projects only – as
12 opposed to being used for other transportation purposes. (*Ibid.* at p. 602.) The court further
13 found significance in the fact that, previously, other funds could tap PTA trust funds only if they
14 were *loaned* from the PTA. (*Ibid.*) "The fact that the Legislature believed revenue in the PTA
15 could be tapped only through loans...reflects its understanding of the effect of Proposition 116."
16 (*Ibid.*)

17 The validity of a legislative amendment to an initiative was also decided in
18 *Foundation of Taxpayers and Consumer Rights v. Garamendi, supra*, 132 Cal.App.4th 1354.
19 *Garamendi* involved a legislative amendment to Proposition 103. The amendment would have
20 allowed insurers to discount or increase a policyholder's auto insurance based on whether the
21 driver had prior insurance coverage. (*Ibid.* at p. 1366.) Noting that Proposition 103 expressly
22 prohibits insurers from using the absence of prior insurance coverage as a premium criterion to
23 promote fairness for previously uninsured drivers, the court held that the legislative amendment
24 facially conflicted with, and therefore did not further, the purposes of Proposition 103. (*Ibid.* at
25 p. 1366.) The court held that the voters' intent to prohibit discriminatory premium rates based on
26 a driver's history of coverage was clear from the language of the initiative. (*Ibid.* at p. 1370.)

27 In *Gardner v. Schwarzenegger, supra*, 178 Cal.App.4th 1366, petitioners
28 challenged whether certain provisions of Senate Bill 1137 ("SB 1137"), which amended

1 Proposition 36, furthered the purposes of the initiative. Proposition 36 generally provides that
2 those convicted of drug possession offenses are initially to receive probation with drug treatment
3 rather than incarceration. SB 1137 amended portions of the initiative to allow courts to impose
4 jail confinement for probation violations “as a tool to enhance treatment compliance,” where
5 such incarceration would be otherwise impossible under Proposition 36. (*Id.* at pp. 1375-1377.)
6 Looking to the express purposes of Proposition 36, the findings and declarations of the
7 electorate, and the Voter Information Guide arguments for its passage, the court held that
8 Proposition 36 was intended to “(1) promote public health by expanding treatment for drug
9 addiction and abuse; (2) enhance public safety by freeing jail cells for violent criminals; and (3)
10 save money by affording treatment in lieu of incarceration.” (*Id.* at p. 1377.) Invalidating SB
11 1137, the court noted that it necessarily contravenes the second and third purposes of the act.
12 (*Id.* at pp. 1377-1378.)

13 C. **Prop. 10’s Legislative History Establishes That First 5 Trust Fund Moneys Were**
14 **Intended For the Exclusive Purpose of Implementing the First 5 Program Through**
15 **Local First 5 Commissions and Were Not Intended to Supplant Current Programs**
16 **or Services.**

16 Prop. 10, section 8, Health and Safety Code sections 130100 and 130105, and
17 Revenue and Taxation Code sections 30131.3 and 30131.4 impose a prohibition on the
18 Respondents from, among other things: (1) using First 5 Trust Fund moneys for anything other
19 than funding the First 5 Program for children from the prenatal stage to five years of age; (2)
20 taking control over the expenditure of First 5 Trust Fund moneys away from local, participating
21 county First 5 commissions, and giving it to the state; and (3) using First 5 Trust Fund moneys to
22 supplant the funding of existing state services.

23 **1. The Text of the Act Is Clear That First 5 Trust Fund Moneys Are to be Used**
24 **Solely for the Purpose of Implementing the First 5 Program.**

25 Revenue and Taxation Code section 30131.3 clearly states that the First 5 Trust
26 Fund Moneys shall be used solely for the purpose of implementing the First 5 Program.

27 Specifically, section 30131.3 states, in relevant part:

28 ///

1 [A]ll moneys raised pursuant to the taxes imposed by Section 30131.2
2 shall be deposited in the [First 5] Trust Fund and are continuously
3 appropriated for the exclusive purpose of the [First 5] Program [].
(Emphasis added.)

4 Health and Safety Code section 130100 articulates the scope of the First 5
5 Program. Health and Safety Code section 130100 states, in relevant part:

6 There is hereby created a program in the state for the purposes of
7 promoting, supporting, and improving the early development of
8 children from the prenatal stage to five years of age. These
9 purposes shall be accomplished through the establishment,
10 institution, and coordination of appropriate standards, resources,
and integrated and comprehensive programs emphasizing
community awareness, education, nurturing, child care, social
services, health care, and research.

11 (a) It is the intent of this act to facilitate the creation and
12 implementation of an integrated, comprehensive, and collaborative
13 system of information and services to enhance optimal early
14 childhood development. This system should function as a network
15 that promotes accessibility to all information and services from
any entry point into the system. It is further the intent of this act to
emphasize local decision making, to provide for greater local
flexibility in designing delivery systems, and to eliminate duplicate
administrative systems.

16 (b) The programs authorized by this act shall be administered
17 by the California Children and Families Commission and by
18 county children and families commissions. In administering this
act, the state and county commission shall use outcome-based
accountability to determine further expenditures.

19 As the Act states above, all moneys in the First 5 Trust Fund shall be used
20 exclusively to fund the First 5 Program. Reinforcing the voters' intent in this regard, the Act
21 further limits the use of the First 5 Trust Fund moneys "only to supplement existing levels of
22 service and not to fund existing levels of service. No moneys in the California Children and
23 Families Trust Fund shall be used to supplant state or local General Fund money for any
24 purpose." (Rev. & Tax. Code, § 31031.4(a).)

25 The First 5 Trust Fund moneys allocated to the state commission, First 5
26 California, are to be used as articulated by Health and Safety Code section 130105(d)(1). Any
27 unspent funds are reallocated to First 5 California for the following fiscal year. (Health & Saf.
28 Code, § 130105(d)(1)(H) [stating, "Any moneys allocated and appropriated ... that are not

1 encumbered or expended ... shall ... revert to and remain in the same account for the next fiscal
2 period.”.) Therefore, at no point in time may any funds allocated from the First 5 Trust Fund to
3 First 5 California be used for any purposes other than those articulated by the First 5 Program.

4 Similarly, First 5 Trust Fund moneys allocated to local First 5 county
5 commissions, such as First 5 Fresno County, “shall be expended only for the purposes authorized
6 by [the] [A]ct.” (Health & Saf. Code, § 130105(d)(2)(A).) Furthermore, any unspent funds are
7 reallocated to the same local county commission for the following fiscal year. (Health & Saf.
8 Code, § 130105(d)(2)(B) [stating, “[a]ny moneys allocated and appropriated ... that are not
9 encumbered or expended ... shall ... revert to and remain in the same local [First 5 Trust Fund]
10 for the next fiscal period.”.) Therefore, at no point in time may any funds allocated to a local
11 First 5 commission be used for any purposes other than those articulated by the First 5 Program.

12 **2. When Passing Prop. 10, the Voters of California Intended That First 5 Trust**
13 **Fund Moneys Would be Used Solely for the Purpose of Implementing the**
14 **First 5 Program, and Not to Supplant Current Programs and Services.**

15 Information made available to the voters before the November 3, 1998
16 election made it clear to the voters that First 5 Trust Fund moneys would be used solely
17 for the purpose of implementing the First 5 Program, and could not be used to supplant
18 current programs and services.

19 First and foremost, the text of the initiative was available to the voters and
20 made clear that First 5 Trust Fund moneys would be used solely for the purpose of
21 implementing the First 5 Program, and could not be used to supplant current programs
22 and services. (RJN, Exh. 6, *California Voter Information Guide November 3, 1998*
23 *Ballot Pamphlet*, p. 126, (hereinafter "Ballot Pamphlet") [text of proposed Rev. & Tax.
24 Code, § 30131.4].) The uncodified “Findings and Declarations” of Prop. 10 also provide
25 considerable guidance and state, in relevant part:

26 The Children and Families First Act of 1998 [facilitates] the creation of a
27 seamless system of integrated and comprehensive programs and services,
28 and a funding base for the system with program and financial
accountability, that will:

- (1) Establish community-based programs to provide
parental education and family support services relevant to

1 effective childhood development. These services shall
2 include education and skills training in nurturing and in
3 avoidance of tobacco, drugs, and alcohol during pregnancy.
4 Emphasis will be on services not provided by existing
5 programs and on the consolidation of existing programs
6 and new services provided pursuant to this act into an
7 integrated system from the consumer's perspective.

8 (RJN, Exh. 6, Ballot Pamphlet at p. 122 [proposed language of Prop. 10, § 2(m)].)

9 Furthermore, the ballot materials made available to the voters state clearly that
10 the effect of passing Prop. 10 would be to create a new trust fund that would fund early
11 childhood development programs. Those same ballot materials also clearly state that the funds
12 kept in the newly created trust fund could only be used to supplement and not replace existing
13 service levels. For example, the Ballot Pamphlet published by the California Secretary of State
14 reads:

15 A YES vote on this measure means: Excise taxes would be
16 increased on cigarettes by 50 cents per pack and on other tobacco
17 products by the equivalent of \$1 per pack. The increased revenues
18 would primarily fund early childhood development programs
19 administered by a new state commission and county commissions.

20 (RJN, Exh. 6, Ballot Pamphlet at p. 6.)

21 Similarly, the summary of Prop. 10 issued by the Legislative Analyst's Office
22 states:

23 The measure requires that the revenues generated by the
24 *new* excise taxes on cigarettes and other tobacco products
25 be placed in a new special fund – the California Children
26 and Families [] Trust Fund. The revenues would: [¶] Fund
27 early childhood development programs. ...

28 (RJN, Exh. 6, Ballot Pamphlet at p. 45 [analysis by the Legislative Analyst].) The Legislative
Analyst also states: "The measure requires that funds be used to supplement and not replace
existing service levels." (RJN, Exh. 6, Ballot Pamphlet at 46.)

Several other documents made available to the voters likewise make clear that the
effect of passing Prop. 10 would be to create a new trust fund that would fund early childhood
development programs and that the funds kept in the newly created trust fund could only be used
to supplement and not replace existing service levels. (RJN, Exhs. 2, 3, 4, 5 California Children
and Families Initiative, *California Children and Families Initiative Qualifies for November*

1 Ballot (June 25, 1998) Press Release; California Children and Families Initiative, *10 Reasons to*
2 *Vote YES on Proposition 10*; California Children and Families Initiative, *Frequently Asked*
3 *Questions*; Cal. State Assoc. of Counties, Executive Briefing (August 12, 1998) Proposition 10
4 Discussion p. 23-28.)

5 **3. Recognizing That Shifting Prop. 10 Funds Away From the First 5 Program**
6 **Was Contrary to the Express and Understood Purposes of the Act, the**
7 **Voters of California Defeated Proposition 1D in 2009 – Rejecting Legislation**
8 **Almost Identical to the Legislation Challenged Here.**

9 The Legislature has tried and failed to reach Prop. 10 funds using the proper
10 legislative processes. In 2009, the voters defeated Proposition 1D, an initiative measure put on
11 the ballot in an effort to balance the State budget. Proposition 1D proposed to temporarily allow
12 Prop. 10 revenues to be used to offset existing state General Fund costs to fund other health and
13 human services programs for children up to age five. (RJN, Exh. 10, Summary of Prop. 1D)
14 Proposition 1D provided that \$340 million in “unspent reserves” would be redirected to the
15 General Fund. (RJN, Exh. 10, Summary of Prop. 1D) Additionally, Proposition 1D provided
16 that \$54 million in future funds would be transferred to the General Fund over the subsequent
17 five years. (RJN, Exh. 10, Summary of Prop. 1D) Proposition 1D was overwhelmingly defeated
18 by 60 % of the voters. (RJN, Exh. 12, Statement of Vote.) Having failed to reach the Prop. 10
19 funds using the proper legislative means, the Legislature now attempts to circumvent the
20 authority of the electorate by passing the amendment to Prop. 10 on its own.

21 **D. The Legislature’s Amendment Improperly (1) Diverts Revenues from the First 5**
22 **Trust Fund for Purposes Not Contemplated by Prop. 10, (2) Eliminates Local**
23 **Control of the Trust Fund Moneys, and (3) Supplants General Fund Moneys With**
24 **First 5 Trust Fund Moneys.**

25 **1. Health and Safety Code Sections 130156-130158 Unlawfully Expand the Use**
26 **of First 5 Trust Fund Moneys to Include Funding of Medi-Cal.**

27 As discussed in section IV.C.1., *supra*, pages 15 to 17, it was the intent of the
28 voters in acting Prop. 10 that all revenues deposited into the First 5 Trust Fund be used
exclusively to fund the First 5 Program. (Rev. & Tax. Code § 30131.3 (“[A]ll moneys raised
pursuant to ... Section 30131.2 shall be deposited in the [First 5] Trust Fund and are
continuously appropriated for the exclusive purpose of the [First 5] Program”).)

1 The Legislature has ignored this limitation and has enacted an amendment that is
2 facially inconsistent with Revenue and Taxation Code section 30131.3. Newly enacted Health
3 and Safety Code section 130156 states that the newly created Children and Families Health and
4 Human Services Fund “shall be used, upon appropriation by the Legislature, to provide health
5 and human services ... to children from birth through five years of age.” (Emphasis added.) As
6 discussed in more detail above, in section III.B., at pages 9 to 10 *supra*, the “health and human
7 services” to be funded are existing Medi-Cal programs and services.

8 The transfer of moneys from the First 5 Trust Fund into the newly created
9 Children and Families Health and Human Services Fund as a pool of money to fund Medi-Cal
10 programs and services is contrary to the clearly articulated intent of Prop. 10. Prop. 10,
11 including its revenue provisions, was enacted to fund the First 5 Program. Prop. 10 clearly
12 states that all funds from the First 5 Trust Fund shall be used exclusively to fund the First 5
13 Program. Medi-Cal programs and services pre-existed Prop. 10 and are not part of the First 5
14 Program. Medi-Cal was never intended to be part of the First 5 Program. The use of First 5
15 Trust Fund moneys to pay for Medi-Cal programs and services is contrary to the express
16 purpose and intent of Prop. 10. Consequently, the Legislature does not have the power to enact
17 this legislation. (Cal. Const., art. II, § 10, subd. (c); RJN, Exh. 7, Prop. 10, §8.)

18 **2. Health and Safety Code Section 130156-130-158 Illegally Transfers Control
19 Over First 5 Trust Fund Moneys to the Legislature, in Blatant Contradiction
20 of the Act’s Local Control Provisions.**

21 As discussed in section III.A, *supra*, pages 3 to 9, and section IV.C.1., *supra*,
22 pages 15 to 17, it was the intent of voters that Prop. 10 revenues in the First 5 Trust Fund would
23 be expended at the local level by local decision-makers. (See Health & Saf. Code, §130100(b).)
24 This purpose is contravened by the challenged legislation. Newly enacted Health and Safety
25 Code section 130158 requires local First 5 county commissions to transfer \$950 million into the
26 control of the State of California and the Department of the Treasury. The Legislature, not the
27 local First 5 county commissions, will have the sole authority to decide how, when and where the
28 funds will be spent. This is expressly contrary to the intent of the voters who passed Prop. 10.

///

1 Therefore, the Legislature does not have the power to enact this legislation. (Cal. Const., art. II,
2 § 10, subd. (c); RJN, Exh. 7, Prop. 10, §8.)

3 **3. Health and Safety Code Section 130156-130158 Improperly Substitute First 5**
4 **Trust Fund Moneys for the State's Pre-Existing Medi-Cal Obligations In**
5 **Clear Violation of the Act's Prohibition on Supplanting.**

6 As discussed in sections IV.C.2., *supra*, pages 17 to 19, the voters intended for all
7 revenues collected pursuant to Prop. 10 in the First 5 Trust Fund be used to fund new or
8 expanded programs and services for children. (*See* Rev. & Tax. Code, § 30131.4(a) [providing,
9 “all moneys ... shall be used only to supplement existing levels of service and not to fund
10 existing levels of service.”].) Furthermore, the Act clearly states that “[n]o moneys in the
11 California Children and Families Trust Fund shall be used to supplant state or local General
12 Fund money for any purpose.” (Rev. & Tax. Code, § 30131.4(a) [emphasis added].)

13 The Legislature explicitly presumed that the challenged legislation would not
14 violate this supplanting prohibition because the money will be used to fund essential health and
15 human services for children from birth through five years of age, services that are no longer
16 being funded by the state. (RJN, Exh. 20, AB 99, §1(g).) However, the legislation does, in fact,
17 violate the Act's prohibition against supplanting General Fund moneys.

18 The clear violation of the supplanting prohibition is evident by probing beyond
19 the explicit, self interested finding made by the Legislature. The March 3, 2011 Preliminary
20 Conference Report for the 2011-12 Budget states under the revealing heading “Proposition Fund
21 Shift to Medi-Cal”: “[The budget] [c]uts Medi-Cal by \$1 billion General Fund by replacing it
22 with \$1 billion in Proposition 10 funds. Directs First 5 local commission to provide \$950 million
23 and the state commission to provide \$50 million in reserves to cover Medi-Cal services for
24 children 0-5 years of age.” (RJN, Exh. 14, Prelim. Conf. Com. Report, at p. 9 [emphasis
25 added].)

26 The language from the Preliminary Conference Report clearly demonstrates that
27 the Legislature intends to raid, and is in fact raiding, \$1 billion in Prop. 10 funds to replace \$1
28 billion in General Fund moneys for Medi-Cal. Of course, Medi-Cal is California's pre-existing
29 Medicaid program which is funded 50% by the state and 50% by the federal government. (RJN,

1 Exh. 21 Cal. Dept. of Health Care Services, Summary of Medi-Cal, available at
2 <<http://www.dhcs.ca.gov/services/medi-cal/Pages/default.aspx>> (last visited April 22, 2011)
3 (hereinafter "Summary of Medi-Cal").)

4 In an effort to justify its unlawful diversion of Prop. 10 moneys from the First 5
5 Trust Fund, the Legislature has created a fiction that the state must cut its Medi-Cal services to
6 children unless the state treasury receives the Prop. 10 moneys. (RJN, Exh. 20 AB 99, § 1(g).)
7 This is disingenuous. Under relevant federal law (42 U.S.C.A. § 1396 *et seq.*), as a condition for
8 receiving funding from the Federal government for Medicaid, the State of California must
9 provide specific services to children who qualify for Medi-Cal - which California is already
10 doing. (*See* 42 U.S.C.A. §1396a(a)(10); and, RJN, Exh. 21, Summary of Medi-Cal.)
11 Moreover, the California cannot arbitrarily decide to cut its funding to Medi-Cal. (*See* 42
12 U.S.C.A. § 1396a(a)(2) [requiring that not less than 40% of the non-Federal share of the
13 expenditures must be funded by the State].) Federal law make it clear that in order to receive
14 federal funding for California's Medi-Cal Program, California is required to fund and make
15 specific services available to children who qualify for Medi-Cal – which California has done
16 continuously since the early 1960s.

17 The “direct health care services for children” that will be funded by Prop. 10
18 revenues raided from the First 5 Trust Fund are “existing programs and services” mandated by
19 federal law. Because Prop. 10 funds will be used to fund existing programs, the supplanting
20 provision of Prop. 10 has been violated. In this regard, AB 99 once again violates the voters’
21 intent and purpose in passing Prop. 10. Consequently, the Legislature does not have the power
22 to enact AB 99. (Cal. Const., art. II, § 10, subd. (c); RJN, Exh. 7, Prop. 10, §8.)

23 V.

24 **AB 99 NULLIFIES THE PEOPLE’S POWER OF INITIATIVE BY DENYING THE**
25 **ELECTORATE THE POWER IT RESERVED TO ITSELF TO AMEND THE PURPOSE**
AND INTENT OF PROP. 10.

26 Article II, section 10, subdivision (c) of the California Constitution provides that
27 “[t]he Legislature ... may amend or repeal an initiative statute by another statute that becomes
28 effective only when approved by the electors unless the initiative statute permits amendment or

1 repeal without their approval.” The purpose of this constitutional limitation on the Legislature’s
2 power to amend initiative statutes “is to ‘protect the people’s initiative powers by precluding the
3 Legislature from undoing what the people have done, without the electorate’s consent.’” (*Shaw*,
4 *supra*, 175 Cal.App.4th at 597.) The power vested in the electorate to decide whether the
5 Legislature can amend an initiative statute “is absolute and includes the power to enable
6 legislative amendment *subject to conditions attached by the voters*. [Citations.]” (*Amwest*,
7 *supra*, 11 Cal.4th at 1251.)

8 Prop. 10, Section 8, gave the Legislature the power to amend the Act *only if* the
9 amendment passed by a vote of two-thirds of the membership of both houses and it “further[s]
10 the [A]ct and [is] consistent with its purposes.” (RJN, Exh. 7.)

11 Unlike the Federal Constitution, which is a grant of power to Congress, the
12 California Constitution is a limitation on the powers of the Legislature. (*See Shaw, supra*, 175
13 Cal.App.4th at 595.) The law-making authority of the state is vested in the Legislature, *except*
14 *the people’s right of initiative and referendum*. (*Ibid.*) Restrictions and limitation [imposed by
15 the Constitution] are to be construed strictly, and are not to be extended to include matters not
16 covered by the language used. (*Ibid.*) However, the initiative power reserved to the people must
17 *be liberally construed* to promote the democratic process. (*California Association of Retail*
18 *Tobacconists v. State* (2003) 109 Cal.App.4th 792, 808 (quoting *Legislature v. Eu* (1991) 54
19 Cal.3d 492, 500-501) [emphasis in original].)

20 Although the enactment of a budget bill and other bills is a legislative function
21 expressly placed upon the Legislature by our state Constitution, even in matters involving the
22 state budget, “the courts have the responsibility for determining the constitutionality of acts of
23 the Legislature, and in doing so give effect to the will of the electorate which is, of course,
24 paramount..” (*Shaw, supra*, 175 Cal.App.4th at 595-596.)

25 Prop. 10, Section 8, limited the Legislature’s power to amend the Act to
26 circumstances where the amendment “further[s] the [A]ct and [is] consistent with its purposes.”
27 (RJN, Exh. 7.) As discussed above, the Legislature’s intent to divert Prop. 10 revenue to a newly
28 created fund in the State Treasury to pay a portion of the State’s pre-existing Medi-Cal

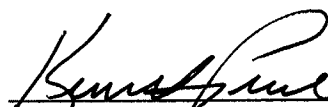
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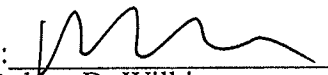
The First 5 Trust Fund must be used for promoting, supporting, and improving the early development of children from the prenatal stage through five years of age through locally controlled, integrated and comprehensive programs emphasizing community awareness, education, nurturing, child care, social services, healthcare and research. The fund cannot be used to supplant funding for existing programs such as Medi-Cal. These are the requirements imposed by the voters when they passed Prop. 10. The diversions of Prop. 10 revenues addressed in this motion are not consistent with the voters' will and the dictates of Prop. 10.

The Legislature, through its unauthorized diversions of \$1 billion dollars from the First 5 Trust Fund has intruded on the people's right to exercise their legislative power. Petitioners ask that the Court restore those rights by prohibiting the diversion of First 5 Trust Funds as identified in this motion for the issuance of a peremptory writ of mandate.

DATED: April 27, 2011.

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By: 
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COMMISSION OF FRESNO COUNTY

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