Case No. ________

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT, DIVISION ONE

CITY OF SAN DIEGO,
Petitioner,

v.

PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent,

SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION, DEPUTY CITY ATTORNEYS ASSOCIATION, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL 127, SAN DIEGO CITY FIREFIGHTERS, LOCAL 145, IAFF, AFL-CIO, CATHERINE A. BOLING, T.J. ZANE, STEPHEN B. WILLIAMS, and 115,991 SAN DIEGO REGISTERED VOTERS WHO EXERCISED THEIR RIGHT TO PLACE A CITIZENS' INITIATIVE ON THE BALLOT
Real Parties in Interest.

Appeal of Public Employment Relations Board
Decision No. 2464-M
(Case Nos. LA-CE-746-M; LA-CE-752-M; LA-CE-755-M; and LA-CE-758-M)

CITY OF SAN DIEGO'S PETITION FOR WRIT OF EXTRAORDINARY RELIEF

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ATTORNEYS FOR PETITIONER, **CITY OF SAN DIEGO**

CERTIFICATE OF INTERESTED PARTIES

(California Rules of Court, Rule 8.208)

The following entities and persons have a financial or other interest in the outcome of the proceeding that justices should consider in determining whether to disqualify themselves:

1. City of San Diego, California;
2. San Diego Municipal Employees Association;
3. Deputy City Attorneys Association;
4. American Federation of State, County and Municipal Employees, AFL-CIO, Local 127;
5. San Diego City Firefighters, Local 145, IAFF, AFL-CIO;
6. Catherine A. Boling;
7. T.J. Zane;
8. Stephen B. Williams; and
9. 115,991 San Diego registered voters who exercised their right to place a citizens' initiative (Proposition B) on the ballot.

Dated: January 25, 2016

JAN I. GOLDSMITH, City Attorney

By____________________
M. Travis Phelps
Deputy City Attorney

Attorneys for Petitioner
CITY OF SAN DIEGO

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Pursuant to Government Code section 3509.5, and California Rules of Court, rule 8.498, Petitioner City of San Diego (City) respectfully petitions this Court for a writ of extraordinary relief and requests this Court vacate Decision No. 2464-M issued by Respondent Public Employment Relations Board (PERB) on December 29, 2015. Petitioner City further requests that the Court direct PERB to dismiss in their entirety the Unfair Practice Charges in PERB Case Nos. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, and LA-CE-758-M.

I.

INTRODUCTION

On December 29, 2015, PERB issued its long awaited decision on the validity of a citizens' initiative concluding that, due to the support of the City's Mayor, a duly certified citizens' initiative is not a "pure citizens' initiative" and therefore must comply with the Meyers-Milias-Brown Act (MMBA) meet-and-confer requirements before being placed on the ballot. The validity of a citizens' initiative has never before depended upon who supported it, or where the impetus for the initiative originated. PERB's decision is unprecedented and clearly erroneous.

Under the Constitution, there are *only* two ways to propose amendments to the City's Charter: (1) by a citizens' initiative or (2) by a vote of the City's "governing body." Cal. Const., art. XI, § 3(b). If a sufficient number of registered voters sign a petition to place an initiative

on the ballot, a city council *must* perform its ministerial duty which the California Constitution and Elections Code mandate, to place it on the ballot without change and without compliance with procedural prerequisites usually attached to city council sponsored measures, such as the California Environmental Quality Act (CEQA), or in this case, the meet-and-confer requirements of the MMBA. *See, e.g., Save Stanislaus Area Farm Economy v. Board of Supervisors*, 13 Cal. App. 4th 141, 149 (1993) ("A local government is not empowered to refuse to place a duly certified initiative on the ballot.")

Here, the key facts demonstrating the error of the PERB Decision are undisputed: Three private citizens, Catherine A. Boling, T.J. Zane, and Stephen B. Williams (the "Citizen Proponents") gave notice to the City that they intended to circulate a petition to have the Comprehensive Pension Reform Initiative (CPRI) placed on the ballot. The elections official, the San Diego County Registrar of Voters, certified that approximately 116,000 registered San Diego voters (approximately 20 percent of the electorate) signed the Citizen Proponents' petition to place the Proposition B on the ballot. Thereafter, the City's "governing body," the City Council, exercised its ministerial duty to place the CPRI on the ballot as Proposition B without change as required by law. On June 5, 2012, Proposition B was overwhelmingly approved by nearly two-thirds of the voters. The "governing body" of the City, the City Council, did *not* propose, or in any

way vote to support Proposition B. In fact, a majority of the City Council opposed Proposition B.

The Constitution does not distinguish between a "pure" and "impure" citizens' initiative. A citizens' initiative that has obtained the required verified signatures and been duly certified as a citizens' initiative by the elections official for qualification on the ballot *is* a citizens' initiative and is constitutionally protected as a right reserved to the people. ***It is not a right for which the people must bargain.***

After voters adopted the CPRI in June 2012, the City sought to stay administrative proceedings commenced by PERB requesting that this Court take direct jurisdiction to bypass PERB. The City argued that years of administrative hearings at PERB would be wasted as PERB already took a strong legal position and clearly wanted to test the boundaries of constitutional law.

This Court refused the City's request and sent the City to administrative hearings at PERB to defend the Unions'[1] unfair practice charges. *San Diego Municipal Employees' Ass'n v. Superior Court (MEA)*, 206 Cal. App. 4th 1447 (2012). In rejecting the City's request, this Court

[1] "Unions" refers collectively to Real Parties in Interest, San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, and San Diego City Firefighters, Local 145, IAFF, AFL-CIO.

found that allegations were sufficient to support an "arguable" violation of the MMBA that: the CPRI was a "sham device" (*Id.* at 1452); "officials of the City had placed the CPRI on the ballot by manipulating the citizen-initiative process. . . ." (*Id.* at 1453); and "the CPRI (while nominally a citizens' initiative) was actually placed on the ballot by City using strawmen to avoid its MMBA obligations. . . ." (*Id.* at 1460.)

Three years later, there is a record of proceedings and PERB findings. Even PERB could not find evidence of "strawmen." In fact, PERB found that the three Citizen Proponents of the CPRI were independent and not controlled by the Mayor or City. There was no finding that the CPRI was a "sham device" or that "officials of the City had placed the CPRI on the ballot by manipulating the citizen-initiative process."

Three years ago, this Court was convinced to deny the City's request because it was told there would be findings of "sham" and "strawmen." No such findings were made and no such evidence was presented.

Instead, in a 65 page opinion, PERB barely mentioned the three Citizen Proponents (only to state they were not controlled by the Mayor). Not once does PERB mention the nearly 116,000 petition signers and the voters who adopted the CPRI. The main groups who funded the signature gathering and election campaign – the Lincoln Club, San Diego Taxpayers Association and Chamber of Commerce – were mentioned, among other

"special interests" in a few paragraphs, primarily to point out that these groups believed that the Mayor's support for the CPRI was important.

Instead of "strawmen" and "sham," PERB simply concluded that Proposition B was not a "pure" citizens' initiative because the Mayor was the impetus and supported it. In a confusing and far reaching opinion, PERB decided that the Mayor was acting as an agent for the City Council or City (it is confusing which of the two PERB thinks is the principal), despite the City Council never having voted for or supported the CPRI; a majority opposing the CPRI; and, the Mayor having no vote on the City Council and no say – by vote or veto – on what propositions the City Council votes to place on the ballot.

Mayors and governors regularly advocate for or against initiatives without their advocacy being attributed to their city or state. The United States Supreme Court has long recognized and even encouraged elected leaders to advocate in the public arena as an exercise of their First Amendment rights. *See Bond v. Floyd*, 385 U.S. 116, 136-37 (1966) (holding "Legislators have an obligation to take positions on controversial political questions"). The right is reinforced by statute in California. *See* Gov't Code § 3203 ("no restriction shall be placed on the political activities of any officer or employee of a state or local agency").

In fact, California's political leaders for decades have openly led initiative movements to bypass legislatures and other obstacles to reform.

Indeed, the citizens' initiative is a power reserved to the people for just that purpose.

A government official does not lose his or her First Amendment rights due to his or her elected position. However, that is exactly what the PERB Decision concludes.

Under the PERB Decision, government officials who want to lead or support a citizens' initiative movement run the risk that an otherwise qualified citizens' initiative will somehow be deemed an "impure" citizens' initiative. Thus, if government officials wish to support a citizens' initiative, they do so at the risk of disenfranchising hundreds of thousands of individuals who signed a petition to place it on the ballot and voted for its implementation.

One only has to look at the 2012 California Sales and Tax Increase Initiative, an initiative placed on the ballot through the filing of over 800,000 signatures, to see how absurd PERB's ruling is. Governor Brown was the impetus for the initiative and aggressively campaigned for it as a way to bypass the state legislature because he could not get the two-thirds vote approval required by the Constitution for legislative tax increases. Under PERB's newly created constitutional law, the tax increase should be overturned because it resulted from an "impure" citizen's initiative (due to the Governor being the impetus), making the initiative really an act of the State. Accordingly, the measure should go to the state legislature for a

vote. Moreover, the same analysis could be applied to nearly all state and local citizens' initiatives having support from elected officeholders.

In the course of amending the California Constitution, PERB does give a nod to the judiciary, acknowledging that the courts must resolve the significant constitutional issues raised by this case. (PERB Dec., pp. 28, 39.) No case could be a clearer example of an inappropriate evisceration of the citizens' right to bring an initiative. This Court must enforce the Peoples' right to initiative and reverse PERB Decision No. 2464-M.

II.

THE PARTIES

1. Petitioner City of San Diego (City) is a "charter city" under Article XI of the California Constitution and is a municipal corporation with all municipal powers, functions, rights, privileges, and immunities authorized by the Constitution and laws of the State of California. The City is a "public agency" as defined in Government Code section 3501(c). The City has an interest that is directly affected by this proceeding in that it was the Respondent in the challenged PERB Decision and has been ordered to, among other things, join in and/or expend public funds to reimburse the Unions' litigation costs to rescind the provisions of Proposition B adopted by the City, and to restore the prior status quo as it existed before the adoption of Proposition B.

2. Respondent California Public Employment Relations Board (PERB) is the state agency charged with administering the Meyers-Milias-Brown Act (MMBA), which governs employer-employee relations between (most) local public agencies and their employees. On December 29, 2015, PERB issued its decision in Unfair Practice Case Nos. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, and LA-CE-758-M (PERB Decision No. 2464-M) which is the subject of this Petition for Writ of Extraordinary Relief.

3. Real Party in Interest, San Diego Municipal Employees Association (MEA), is an "employee organization" within the meaning of Government Code section 3501(a). MEA is the recognized exclusive representative of employees in the City's Administrative and Field Support, Technical, Professional and Supervisory Units. MEA was the Charging Party in Unfair Practice Case No. LA-CE-746-M, which is the subject of this Petition.

4. Real Party in Interest, Deputy City Attorneys Association (DCAA), is an "employee organization" within the meaning of Government Code section 3501(a). The DCAA is the recognized exclusive representative of the City's Deputy City Attorneys. DCAA was the Charging Party in Unfair Practice Case No. LA-CE-752-M, which is the subject of this Petition.

5. Real Party in Interest, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127 (AFSCME Local 127), is

an "employee organization" within the meaning of Government Code section 3501(a). AFSCME Local 127 is the recognized exclusive representative of the City's blue collar employees, representing employees in the City's Maintenance, Labor, Skilled Trades and Equipment Operator Units. AFSCME Local 127 was the Charging Party in Unfair Practice Case No. LA-CE-755-M, which is the subject of this Petition.

6. Real Party in Interest, San Diego City Firefighters, Local 145 (Firefighters Local 145), is an "employee organization" within the meaning of Government Code section 3501(a). Firefighters Local 145 is the recognized exclusive representative of the City's employees in the City's Fire Fighter Unit. Firefighters Local 145 was the Charging Party in Unfair Practice Case No. LA-CE-758-M, which is the subject of this Petition.

7. Real Party in Interest, Catherine A. Boling, is a citizen, taxpayer, and voter residing in the City of San Diego and an official proponent of the CPRI, which went to the ballot as Proposition B.

8. Real Party in Interest, T.J. Zane, is a citizen, taxpayer, and voter residing in the City of San Diego and an official proponent of the CPRI, which went to the ballot as Proposition B.

9. Real Party in Interest, Stephen B. Williams, is a citizen, taxpayer, and voter residing in the City of San Diego and an official proponent of the CPRI, which went to the ballot as Proposition B.

10. Real Party in Interest, 115,991 San Diego registered voters who exercised their right to place a citizens' initiative (Proposition B) on the ballot, but who were completely ignored by PERB.

III.

JURISDICTION

1. This Court has jurisdiction over this Petition pursuant to Government Code section 3509.5 and California Rules of Court, rule 8.498.

2. Government Code section 3509.5 provides in part: "Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case . . . may petition for a writ of extraordinary relief from that decision or order. . . . A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable."

3. The "board" mentioned in Government Code section 3509.5 is PERB. Gov't Code § 3501(f). This Court is the "district court of appeal having jurisdiction over" the County of San Diego.

4. PERB Decision No. 2464-M, issued on December 29, 2015, pertains to four unfair practice cases (which were consolidated for hearing) in which the City was the respondent, and therefore the City is a respondent

aggrieved by the decision and order. The City has filed its petition within 30 days from the date of the issuance of the decision.

5. California Rules of Court, rule 8.498(a)(1), provides in relevant part: "A petition to review an order or decision of the . . . Public Employment Relations Board must be filed in the Court of Appeal. . . ."

IV.

FACTS AND PROCEDURAL HISTORY

1. On April 4, 2011, three private citizens, Catherine A. Boling, T.J. Zane, and Stephen B. Williams (hereinafter referred to as the "Citizen Proponents") filed with the City Clerk a notice of intent to circulate a petition within the City for the purpose of amending the City's Charter, pursuant to Section 3 of Article XI of the California Constitution.

2. The Citizen Proponents' notice identified the CPRI as the proposition they intended to circulate a petition for in an effort to qualify the measure for presentation to the electorate, and requested the total number of signatures that will be required to be submitted by their coalition to ensure its placement on the June 2012 ballot.

3. The CPRI proposed to make changes to the City's retirement benefits for certain and future City employees, as well as define the terms the City must use when it begins labor negotiations with the City's recognized employee organizations. To accomplish such changes, the CPRI proposed to amend certain provisions of the City's Charter.

4. In order for the CPRI to qualify for the ballot, the Citizen Proponents needed to obtain verified signatures from at least 15 percent (94,346) of the City's registered voters.

5. On September 30, 2011, one of the Citizen Proponents, T.J. Zane, delivered the petition sections and signatures to the City Clerk and attested that the submitted petition contained at least 94,346 signatures. The City Clerk forwarded the petition to the San Diego County Registrar of Voters (SDROV) to officially verify the signatures.

6. The SDROV, using a random sample method in accordance with Elections Code section 9115, determined that the initiative petition contained 115,991 projected valid signatures. Accordingly, on November 8, 2011, the SDROV issued a Certification that the CPRI petition had received a "SUFFICIENT" number of valid signatures requiring it to be presented to the voters as a citizens' initiative.

7. The City Clerk submitted the SDROV's Certification to the City Council on December 5, 2011, and that same day the City Council passed Resolution R-307155, a resolution of intention to place the CPRI on the June 5, 2012 Presidential primary election ballot, as required by law.

8. On January 19, 2012, MEA filed an Unfair Practice Charge (UPC) with PERB over the City's refusal to bargain over the CPRI, which was then headed for the ballot on June 5, 2012, as Proposition B, because

the City claimed it was a "citizens' initiative" and not the "City's initiative."

9. Three other City employee unions, the DCAA, Firefighters Local 145, and AFSCME Local 12, also filed UPCs with PERB, and embraced the allegations of the MEA UPC.

10. Among the allegations in the various UPCs, were claims that the "so-called 'citizen initiative' is merely a sham device," that "Mayor Sanders hired the attorneys who wrote the proposition for pension reform to his specifications," and that "[t]he three initiative proponents, April Boling, T.J. Zane and Steve Williams 'filed the Mayor's initiative for him.'"

11. On January 30, 2012, fulfilling its ministerial duty under then Election Code section 9255(b)(2), the City Council enacted Ordinance O-20127 which placed the CPRI on the June 5, 2012 Presidential primary election ballot as Proposition B.

12. On February 10, 2012, PERB's Office of General Counsel issued a PERB complaint against the City based on MEA's UPC alleging the City had violated Government Code sections 3503, 3505, 3506 and California Code of Regulations section 32603. That same day, PERB's General Counsel notified the City that its Board had authorized the initiation of an action in San Diego Superior Court seeking injunctive and writ relief against the City.

13. PERB filed its verified complaint against the City on February 14, 2012, [San Diego Superior Court Case No. 37-2012-00092205-CU-MC-CTL] seeking temporary and permanent injunctive relief prohibiting the CPRI from being presented to the City voters and a permanent injunction and peremptory writ of mandate ordering the City to comply with the City's alleged meet and confer obligations relating to the CPRI and any future citizens' initiatives before placing them on the ballot for any subsequent election.

14. On February 21, 2012, the Superior Court denied PERB's request for a temporary restraining order, ruling that court proceedings should await the outcome of the June 5, 2012 election.

15. PERB, however, continued with its administrative hearings scheduled for April 2-5, 2012, on MEA's UPC against the City. On March 12, 2012, PERB issued subpoenas to multiple elected City officials as well as numerous unelected City employees and private citizens, requiring them to testify and turn over documents concerning their decision of whether or not to support the CPRI.

16. On March 27, 2012, following a March 23 hearing on the City's motion to stay PERB's administrative hearings and after having taken the matter under submission, the Superior Court issued a Minute Order staying PERB's administrative hearing, quashing the subpoenas

issued by PERB, and setting a status conference concerning the stay of administrative proceedings for June 22, 2012.

17. On April 11, 2012, MEA filed a petition for writ of mandate with this Court seeking immediate relief from the Superior Court's stay of the PERB administrative hearings.

18. On June 19, 2012, this Court issued a peremptory writ of mandate directing the Superior Court to vacate its stay order, and permit the PERB administrative hearings proceed. *San Diego Municipal Employees Ass'n v. Superior Court*, 206 Cal. App. 4th 1447 (2012).

19. On June 28, 2012, the City filed a petition requesting a rehearing. The City's rehearing request was denied on July 3, 2012.

20. PERB Administrative Law Judge Donn Ginoza (ALJ Ginoza) conducted the administrative hearing on July 17, 18, 20 and 23, 2012, after which the parties filed opening and closing briefs.

21. On February 11, 2013, ALJ Ginoza issued his Proposed Decision that the City had violated the MMBA by failing to meet and confer with the Unions over the CPRI.

22. On March 4, 2013, City filed with PERB its Statement of Exceptions to the Proposed Decision and Brief in Support. On April 15, 2013, the Unions filed their Consolidated Response to the City's Exceptions.

23. On December 29, 2015, the PERB Board issued its Decision, affirming the Proposed Decision and Remedy by ALJ Ginoza with minor modifications. (PERB Decision No. 2464-M is attached hereto as **EXHIBIT 1.**)

24. The PERB Decision held, that the City violated the MMBA and PERB regulations by failing and refusing to meet-and-confer with four recognized employee organizations representing employees over Proposition B, which was "championed" by the City's Mayor and other City officials and ultimately approved by voters in a municipal election.

a. Specifically, PERB found that: (1) under the City's Strong Mayor form of governance and common law principles of agency, Mayor Sanders was a statutory agent of the City with actual authority to speak for and bind the City with respect to initial proposals in collective bargaining with the unions; (2) under common law principles of agency, the Mayor acted with actual and apparent authority when publicly announcing and supporting Proposition B; and (3) the City Council had knowledge of the Mayor's conduct, by its action and inaction, and, by accepting the benefits of Proposition B, thereby ratified his conduct. (PERB Dec., p. 27.)

b. Addressing the Constitutional issues raised by the City, PERB noted that "the City raises some significant and difficult questions about the applicability of the MMBA's meet-and-confer requirement to a pure citizens' initiative," and concluded that "those issues

are not implicated by the facts of this case" and, therefore, chose not to address them. (PERB Dec., p. 28.) PERB held that "[i]n the absence of controlling appellate authority directing PERB that the meet-and-confer process is constitutionally inform or preempted by the citizens' initiative process, we must uphold our duty to administer the MMBA." (*Id.* at 39.) ***PERB then invited the parties to address the constitutional issues in the courts***, stating "[i]f the parties believe that our decision fails to resolve any underlying constitutional issues, or that our decision intrudes on constitutional rights, they are free to seek redress in the courts, having exhausted their administrative remedies." (*Id.*)

25. PERB Ordered the City to cease and desist from: (1) Refusing to meet and confer with the Unions before adopting ballot measures affecting employee pension benefits and other negotiable subjects; (2) Interfering with bargaining unit members' right to participate in the activities of an employee organization of their own choosing; and (3) Denying the Unions their right to represent employees in their employment relations with the City. (PERB Dec., p. 62.)

26. PERB also ordered the City to take the following, among other, affirmative actions: (1) Upon request, meet and confer with the Unions before adopting ballot measures affecting employee pension benefits and/or other negotiable subjects; (2) Upon request by the Unions, join in and/or reimburse the Unions' reasonable attorneys' fees and costs

for litigation undertaken to rescind the provisions of Proposition B adopted by the City, and the restore the prior status quo as it existed before the adoption of Proposition B; and (3) Make current and former bargaining-unit employees whole for the value of any and all lost compensation, including but not limited to pension benefits, offset by the value of new benefits required from the City under Proposition B, plus interest at the rate of seven (7) percent per annum until Proposition B is no longer in effect or until the City and Unions agree otherwise. (PERB Dec., pp. 62-63.)

V.

GROUNDS FOR REVIEW

Decision No. 2464-M by Respondent PERB was in error for the following reasons:

1. PERB exceeded its jurisdiction and scope of expertise in finding that Proposition B, a duly certified citizens' initiative, is anything other than a citizens' initiative, entitled to protection under the California Constitution. Permitting PERB to subject government officials and employees to subpoenas and questioning regarding their political support and contacts with initiative supporters violates the officials/employees' constitutional rights of association and privacy.

2. PERB erred as a matter of law and fact in its conclusion that Proposition B, a duly certified citizens' initiative, is not a "pure citizens' initiative."

3. PERB erred as a matter of law and fact in concluding that once a sufficient number of signatures in support of the CPRI had been certified, the City Council's placement of the CPRI (Proposition B) on the ballot was not a purely ministerial act required by the Election Code and applicable decisional law.

4. PERB erred as a matter of law in concluding that the MMBA meet-and-confer process applies to a citizens' initiative and the CPRI. PERB's decision fails to protect the citizens' Constitutional right to legislate by initiative.

5. PERB's decision is clearly erroneous as it violates Mayor Sanders', and other government officials', First Amendment rights. PERB erred as a matter of law by failing to determine that the MMBA meet-and-confer process is preempted by government officials' First Amendment rights. PERB fails to recognize that any and all government officials have a First Amendment right to engage in direct democracy, like any other citizen, and imposing a meet-and-confer requirement on such activity impermissibly impinges upon such right.

6. PERB's decision is clearly erroneous as it violates the rights of government officials recognized and protected by California Government Code sections 3203 and 3209.

7. PERB erred as a matter of law and fact as it violated PERB Regulation 32178 by abandoning the original basis of challenging

Proposition B contained in the Unions' UPCs. There was no evidence or finding that Proposition B was a "sham device," a "nominal" citizens' initiative, or resulted from manipulation of the citizen initiative process, or that it was placed on the ballot by "strawmen."

8. PERB erred as a matter of law and fact in concluding that Mayor Sanders acted as an "agent" of the City or the City Council to impose a meet-and-confer obligation upon the City with regards to Proposition B.

9. PERB erred as a matter of law and fact in finding that the City Council ratified Mayor Sanders' actions as being on behalf of the City.

10. PERB erred as a matter of law and fact in concluding that Mayor Sanders, by announcing his desire to pursue pension reform by initiative as a private citizen, had made a "Determination of Policy."

11. PERB erred as a matter of fact in confusing and conflating Mayor Sanders' ideas of pension reform with those supported by the citizen groups who were proceeding with their own initiative.

12. PERB erred as a matter of law in giving credence and precedential value to a 2008 City Attorney Opinion which the City had repudiated.

13. PERB's order is illegal and unenforceable in that it would require the City to violate its Charter, including sections of Proposition B,

even though PERB acknowledges that it does not have the authority to, and cannot, overturn Proposition B.

14. PERB exceeded its remedial authority in ordering the City to join in and/or reimburse the Unions' reasonable attorneys' fees and costs for litigation undertaken to rescind the provisions of Proposition B.

15. PERB's order (B.2) that the City reimburse the Unions' attorneys' fees and costs in seeking to overturn Proposition B violates the separation of powers doctrine, as an award of attorneys' fees and costs is a determination to be made by the court in favor of a prevailing party, not by PERB in advance of litigation.

16. PERB's order (A.1) that the City cease and desist from "[r]efusing to meet and confer with the Unions before adopting ballot measures affecting employee pension benefits and other negotiable subjects" and (B.1) are illegal infringements on the right of citizens' initiatives. If a citizens' initiative qualifies and is passed by the voters, the City must adopt such measure.

17. PERB's order is vague, ambiguous, unintelligible and, therefore, unenforceable, in that it requires the City to make "current and former" bargaining-unit employees "whole for the value of any and all lost compensation, including but not limited to pension benefits." Defined contribution and defined benefit pension plans are completely different and each has value over the other depending upon the unique circumstances of

each individual employee. Furthermore, Proposition B set up a procedure for freezing "pensionable pay" for five years, and it is entirely speculative as to what would have been negotiated with the Unions had such provision not been in the law.

18. PERB's order is illegal and unenforceable to the extent it purports to give the Unions the power to negotiate and change City employees' vested pension rights.

19. If the PERB Decision and Order stands Petitioner will be irreparably harmed. Petitioner will, among other things, be forced to join in and/or expend public funds to reimburse the Unions' litigation costs to rescind the provisions of Proposition B adopted by the City, and to restore the prior status quo as it existed before the adoption of Proposition B. Further, PERB's order requires the City to meet-and-confer with the Unions over any and all future citizens' initiatives affecting employee pension benefits and other negotiable subjects, thereby forcing the City to violate its citizens' initiative and free speech rights.

20. Petitioner has no right of appeal from Respondent PERB's decision and does not have a plain, speedy, and adequate remedy at law other than the relief sought in this Petition. Extraordinary relief is explicitly authorized by Government Code section 3509.5. There is no method for compelling proper action in this matter other than this writ for extraordinary relief.

21. Petitioner City has exhausted all available administrative remedies required to be pursued before filing this petition.

VI.

PRAYER

Wherefore, Petitioner City of San Diego prays that, after PERB certifies and files the record of the challenged proceedings pursuant to Government Code section 3509.5(b), and after the briefing and argument contemplated by California Rules of Court, rule 8.498, this Court:

1. Issue a preemptory writ directing PERB to set aside and vacate Decision No. 2464-M and direct PERB to enter a new and different order dismissing its complaints and the Unions' underlying unfair practice charges in their entirety.

2. Award the City its costs and attorneys' fees in this matter; and

3. Grant such other relief as may be just and proper.

Dated: January 25 2016

JAN I. GOLDSMITH, City Attorney

By ______________________
M. Travis Phelps
Deputy City Attorney

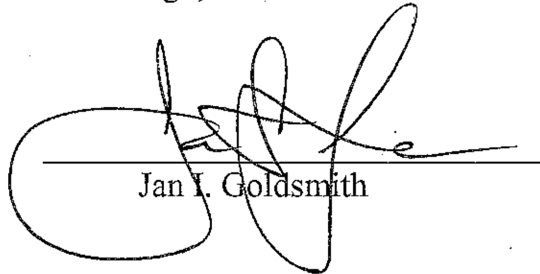
Attorneys for Petitioner
CITY OF SAN DIEGO

VERIFICATION

I, Jan I. Goldsmith, hereby declare as follows:

I am the City Attorney of the City of San Diego, Petition herein. I have read the foregoing Petition for Writ of Extraordinary Relief and know its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this verification was executed on January 25, 2016 at San Diego, California.



Jan I. Goldsmith

CERTIFICATE OF WORD COUNT

The text of this Petition, excluding title page, table of contents, table of authorities, and this certificate of word count consists of 5,079 words as counted by the Word 2013 word-processing program used to generate this Petition.

Dated: January 25 2016

JAN I. GOLDSMITH, City Attorney

By ______________________

M. Travis Phelps
Deputy City Attorney

Attorneys for Petitioner
CITY OF SAN DIEGO

COURT OF APPEAL, STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

PROOF OF SERVICE

City of San Diego v. Public Employment Relations Board

Appeal No. _________
Public Employment Relations Board Case Nos. LA-CE-746-M; LA-CE-752-M; LA-CE-755-M; and LA-CE-758-M

I, the undersigned, declare that:

I was at least 18 years of age and not a party to the case; I am employed in the County of San Diego, California. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

On January 25, 2016, I served true copies of the following document(s) described as:

- **CITY OF SAN DIEGO'S PETITION FOR WRIT OF EXTRAORDINARY RELIEF**

on the interested parties in this action as follows:

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Wendi Ross, Deputy General Counsel
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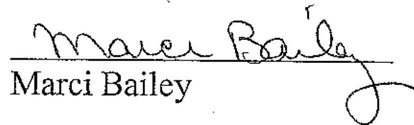
The Supreme Court of California **(1 pdf copy)**
www.courtinfo.ca.gov/courts/courtsofappeal/
terms.cfm

[XX] **(BY PERSONAL SERVICE)** I provided copies to Nationwide Legal for personal service on this date to be delivered to the office of the addressee(s) listed above

[XX] **(BY OVERNIGHT DELIVERY)** I enclosed said document(s) in an envelope or package provided by Golden State Overnight (GSO) and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of GSO.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 25th day of January 2016, at San Diego, California.



Marci Bailey