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6 JON COUPAL and  
HOWARD JARVIS TAXPAYERS ASSOCIATION

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SACRAMENTO

10  
11 JON COUPAL, an individual; HOWARD  
JARVIS TAXPAYERS ASSOCIATION, an  
12 incorporated California Association,

13 Petitioners,

14 v.

23 DEBRA BOWEN, as the Secretary of State of  
California,

16 Respondent.

17 \_\_\_\_\_  
18 KEVIN HANNAH, in his official capacity as  
interim State Printer; EDMUND G. BROWN, in  
19 his official capacity as ATTORNEY GENERAL  
OF THE STATE OF CALIFORNIA,

20 Real Parties In Interest.

Case No.

**VERIFIED PETITION FOR WRIT OF  
MANDATE**

**[ELEC. CODE, §§ 13314; 9092]**

**STATEWIDE ELECTION MATTER**  
**IMMEDIATE ACTION REQUESTED**

**Date:**

**Time:**

**Dept:**

**Judge:**

**Petition Filed: 07/26/10**

**[Proposition 23]**

22  
23 Petitioners JON COUPAL and HOWARD JARVIS TAX PAYERS ASSOCIATION will,  
24 and hereby do, seek a writ of mandate to prevent the printing of material authored by the Real  
25 Party In Interest ATTORNEY GENERAL OF THE STATE OF CALIFORNIA (“ATTORNEY  
26 GENERAL”) for Proposition 23 for the November 2010 ballot pamphlet that is false, misleading,  
27 or otherwise not fair and impartial.

28 This Petition is based upon this Notice, the separately filed Memorandum of Points and

1 Authorities, and all of the papers and pleadings in this matter, and such further evidence and  
2 argument as may be submitted at the hearing on this matter.

3 In support of the instant Petition for Writ of Mandate, Petitioners allege as follows:

4 **ISSUE PRESENTED**

5 1. This action concerns the ballot materials for Proposition 23, which would  
6 temporarily suspend the operation and implementation of California's "Global Warming Solutions  
7 Act of 2006" (AB 32) until California's unemployment rate drops to 5.5% for four consecutive  
8 calendar quarters.

9 2. Proposition 23 was placed on the ballot by initiative pursuant to Article II, Section  
10 8 of the California Constitution.

11 3. Real Party in Interest ATTORNEY GENERAL is required by law to prepare a fair  
12 and impartial "ballot label" and "title and summary" for any measure presented to the voters by  
13 initiative. (Cal. Elec. Code §§ 9050, 9051, 9086, 13247, Gov. Code § 88002.)

14 4. Here, however, the ATTORNEY GENERAL has failed to prepare a ballot label  
23 and title and summary that complies with the Elections Code.

16 5. Petitioners contend that the ATTORNEY GENERAL is attempting to influence  
17 the election with a misleading and clearly biased ballot label, and title and summary in violation of  
18 the Elections Code. In short, the ATTORNEY GENERAL has used biased words and phrases that  
19 advocate for the measure's defeat rather than merely informing voters of its chief purpose and  
20 effect. Indeed, the ATTORNEY GENERAL has made his opposition to Proposition 23 widely  
21 known, EVEN referring to supporters of Proposition 23 as "Neanderthals" in connection with his  
22 current bid for Governor.

23 6. This Court must correct or amend the ballot materials for Proposition 23 to ensure  
24 that they are fair and impartial and free from false and/or misleading statements.

25 **PARTIES**

26 7. Petitioner JON COUPAL is a resident of Sacramento County and is a registered  
27 voter in the State of California. He is also President of the Howard Jarvis Taxpayers Association.

28 8. Petitioner HOWARD JARVIS TAXPAYERS ASSOCIATION is an incorporated  
California association and taxpayer advocate group. HOWARD JARVIS TAXPAYERS

1 ASSOCIATION is one of many members of a coalition supporting Proposition 23 including small  
2 business organizations and labor organizations.

3 9. Respondent DEBRA BOWEN (“SECRETARY OF STATE” or “BOWEN”),  
4 Secretary of State of California is State’s chief elections officer. She is charged with the duty of  
5 preparing a ballot pamphlet with respect to statewide initiative measures as well as ballots, ballot  
6 materials, sample ballots, and other voting materials. (Cal. Elec. Code, §§ 9081-9086.) Elections  
7 Code sections 9092 and 13314 require that the Secretary of State be named as a respondent in this  
8 proceeding. She is named in her official capacity only.

9 10. Real Party in Interest KEVIN HANNAH is the interim State Printer of the State of  
10 California. He is charged with printing the ballot pamphlet prepared by the Secretary State.  
11 Elections Code section 9092 requires that the State Printer be named as a real party in interest in  
12 this proceeding. He is sued in his official capacity only.

13 11. Real Party in Interest ATTORNEY GENERAL is charged with the statutory duty  
14 to prepare a fair and impartial ballot label and ballot title and summary for initiative measures that  
23 have qualified for the ballot. Elections Code section 9092 requires the California Legislature be  
16 named as a real party in interest in this proceeding.

### 16 JURISDICTION AND VENUE

17 12. Elections Code section 9092 provides a 20-day period in which voters are entitled  
18 to review the ballot materials and file any legal challenges. Petitioners are informed and believe  
19 that any legal challenges to ballot materials must be completed by August 9, 2010 for the  
20 November 2010 election. (A true copy of the Secretary of State’s Election Calendar for the  
21 Special Election is attached hereto as **Exhibit A.**)

22 13. This Court has jurisdiction over this matter under Elections sections 9092 and  
23 13314. Pursuant to Elections Code section 13314(c), this action “shall have priority over all other  
24 civil matters” pending before the court.

25 14. The Elections Code mandates that the exclusive venue for this action is  
26 Sacramento County. (Cal. Elec. Code, §§ 9092, 13314(b).)

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28 ///

ALLEGATIONS

1  
2           15.       Proposition 23 is a duly qualified initiative measure that will appear on the  
3 November 2, 2010 General Election ballot. A true and correct copy of the ballot materials  
4 presently on public display by the SECRETARY OF STATE (including the ballot label and title  
5 and summary at issue here, the analysis by the Legislative Analyst and the ballot arguments for  
6 and against Proposition 23) can be found on the SECRETARY OF STATE’s website at  
7 [www.sos.ca.gov](http://www.sos.ca.gov).

8           16.       A true and correct copy of the text of Proposition 23 is attached hereto and  
9 incorporated herein as **Exhibit B**.

10           17.       A true and correct copy of the ATTORNEY GENERAL’s proposed ballot label is  
11 attached hereto and incorporated herein as **Exhibit C**.

12           18.       A true and correct copy of the ATTORNEY GENERAL’s proposed title and  
13 summary is attached hereto and incorporated herein as **Exhibit D**.

14           19.       A true and correct copy of the Legislative Analyst’s proposed analysis of  
15 Proposition 23 is attached hereto and incorporated herein as **Exhibit E**.

16           20.       The only legal effect of Proposition 23 is its temporary suspension of AB 32 while  
17 the state’s economy is mired in an economic recession, as measured by unemployment. Indeed,  
18 the operative text of Proposition 23 is less than 100 words and reads as follows:

19                   §38600(a) From and after the effective date of this measure, Division 25.5(commencing  
20 with section 38500) of the Health and Safety Code is suspended until such time as the  
21 unemployment rate in California is 5.5% or less for four consecutive calendar quarters.  
22 (b) While suspended, no state agency shall propose, promulgate, or adopt any regulation  
23 implementing Division 25.5(commencing with section 38500) and any regulation  
24 adopted prior to the effective date of this measure shall be void and unenforceable until  
25 such time as the suspension is lifted.

26           21.       Interestingly, AB 32 itself contemplated its possible suspension for economic  
27 considerations. Health and Safety Code section 38599, enacted as part of AB 32 provides “In the  
28 event of extraordinary circumstances, catastrophic events, or the threat of significant economic  
harm, the Governor may adjust the applicable deadlines for individual regulations, or for the state  
in aggregate, to the earliest feasible date after that deadline.” Despite the country’s worst

1 recession since the Great Depression, the suspension provision existing within AB 32 has not been  
2 triggered by the Governor. Proposition 23 would invoke that trigger.

3 22. Since Proposition 23 would temporarily suspend AB 32, it makes sense that the  
4 ballot label and title and summary should briefly describe the content of AB 32. The bill digest for  
5 AB 32 (a true and correct copy of the bill digest and text of AB 32 is attached hereto as **Exhibit F**)  
6 describe its scope as contemplated by the legislation:

7 This bill would require the state board to adopt regulations to require the reporting and  
8 verification of statewide greenhouse gas emissions and to monitor and enforce compliance  
9 with this program, as specified. The bill would require the state board to adopt a  
10 statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas  
11 emissions levels in 1990 to be achieved by 2020, as specified. The bill would require the  
12 state board to adopt rules and regulations in an open public process to achieve the  
13 maximum technologically feasible and cost-effective greenhouse gas emission reductions,  
14 as specified. The bill would authorize the state board to adopt market-based compliance  
23 mechanisms, as defined, meeting specified requirements. The bill would require the state  
16 board to monitor compliance with and enforce any rule, regulation, order, emission  
17 limitation, emissions reduction measure, or market-based compliance mechanism adopted  
18 by the state board, pursuant to specified provisions of existing law. The bill would  
19 authorize the state board to adopt a schedule of fees to be paid by regulated sources of  
20 greenhouse gas emissions, as specified. Because the bill would require the state board to  
21 establish emissions limits and other requirements, the violation of which would be a  
22 crime, this bill would create a state-mandated local program.

16 The bill digest is prepared by the office of Legislative Counsel and is prepared as a summary of  
17 the content of the bill and its affect on existing law for the benefit of members of the Legislature.  
18

19 23. Even the California State Legislative Analyst description of AB 32 in its analysis  
20 of Proposition 23 points to AB 32's principle purpose:

21 In 2006, the state enacted the California Global Warming Solutions Act of 2006,  
22 commonly referred to as Assembly Bill 32 or "AB 32." This legislation established the  
23 target of reducing the state's emissions of GHGs [greenhouse gases] by 2020 to the level  
24 that emissions were at in 1990. It is estimated that achieving this target would result in  
25 about a 30 percent reduction in GHG's in 2020 from where their level would otherwise be  
26 in the absence of AB 32.

25 **(Exhibit F.)**

26 24. The ballot label prepared by the ATTORNEY GENERAL for Proposition 23 and  
27 which BOWEN will order to be printed in the official ballot materials distributed to voters reads as  
28 follows:



1           26.       Elections Code section 9051 requires the title and summary prepared by the  
2 ATTORNEY GENERAL to be a “true and impartial statement of the purpose of the measure in  
3 such language that ... shall neither be an argument, nor be likely to create prejudice for or against  
4 the proposed measure.” (Cal. Elec. Code, § 9051.) The shorter ballot label is to be a “condensed”  
5 versions of the title and summary. (Cal. Elec. Code, § § 13247, 13280-81.)

6           27.       The California Supreme Court has made clear that “the government may not ‘take  
7 sides’ in election contests or bestow an unfair advantage on one of several competing interests.”  
8 (*Stanson v. Mott* (1976) 17 Cal.3d 206, 217.) As the *Stanson* court noted, governmental “attempts  
9 to influence the resolution of issues which our Constitution leaves to the ‘free election’ of the  
10 people-present a serious threat to the integrity of the electoral process.” (*Id.* at p. 217.)

11           28.       Supporters of Proposition 23 twice wrote letters to the ATTORNEY GENERAL  
12 asking him to correct the errors and bias included in the title and summary. The first letter was  
13 dated February 17, 2010 in connection with the “circulating title and summary” issued for use on  
14 initiative petitions pursuant to Elections Code section 9004. A true and correct copy of that letter  
15 is attached hereto and incorporated herein as **Exhibit G**.

16           29.       A similar letter, dated June 14, 2010, asked the ATTORNEY GENERAL to  
17 correct the errors and bias in the prior title and summary for inclusion in the ballot pamphlet and  
18 the ballot label. A true and correct copy of that letter is attached hereto and incorporated herein as  
19 **Exhibit H**. In both letters, the ATTORNEY GENERAL was urged to use the bill digest for AB  
20 32 as a starting place to draft the impartial summary of Proposition 23.

21           30.       Instead, the ATTORNEY GENERAL chose to take sides in this political debate.  
22 On February 11, 2010 (just days before the ATTORNEY GENERAL issued the circulating title  
23 and summary for the initiative) his opposition to the measure was reported by political  
24 commentators: “As a political matter, Brown has hardly been neutral about AB32. In fact, when  
25 he was on KGO Radio last week he referred to people opposing the measure as ‘Neanderthals . . .  
26 who want to turn the clock backwards.’” (A copy of article can be located at  
27 <http://www.calbuzz.com/2010/02/new-secret-offshore-deal-ab32-rollback-brawl/>.) As recently as  
28 June 10, 2010 the ATTORNEY GENERAL as a candidate for Governor reiterated this, and the  
Democratic party’s strong opposition to Proposition 23. (A copy of article can be located at

2 31. Elections Code section 9092 provides that this Court may issue a writ of mandate  
3 to prevent the publication of material in the ballot pamphlet that is “false, misleading or  
4 inconsistent with the requirements of [the Elections Code] or Chapter 8 (commencing with Section  
5 88000) of Title 9 of the Government Code” and Elections Code section 13314, which authorizes  
6 the Court to issue a peremptory writ of mandate “upon proof... that an error, omission, or neglect”  
7 violates the California Constitution and “that issuance of the writ will not substantially interfere  
8 with the conduct of the election.” (Cal. Elec. Code § 13314 (a)(2).)

9 32. Several statements in the ballot label and title and summary for Proposition 23 do  
10 not comply with the Elections Code and are false and/or misleading as those terms are used in  
11 Elections Code section 9092 including, but not limited to, the following:

- 12 (1) The ballot label does not inform the voters of the chief purpose and point of the  
13 initiative by excluding the principle purpose of AB 32, namely its imposition of a  
14 greenhouse gas emission, mostly CO2 and methane, reduction target date;
- 15 (2) The ballot label and title and summary falsely imply that Proposition 23 suspends  
16 all or many “air pollution control laws” when in actuality Proposition 23 suspends  
17 only one law dealing with Global Warming, not air pollution;
- 18 (3) The ballot label and title and summary falsely state that AB 32 requires “major  
19 polluters to report and reduce” GHG emissions.
- 20 (4) The ballot title and summary falsely states that Proposition 23 requires state to  
21 abandon “comprehensive” GHG reduction program. Most of the state’s GHG  
22 reduction program, found in other laws, is not affected by Proposition 23.

23 33. The ballot label and title and summary for Proposition 23 are not fair and  
24 impartial and are impermissibly designed to create prejudice voters in opposition to the measure in  
25 several ways including, but not limited to, the following:

- 26 (1) The use of the term “major polluters” is prejudicial in that AB 32 applies to many  
27 persons, businesses, and government entities, none of which would be considered  
28 a “major polluter.” Further, the title and summary falsely uses the term “abandon”  
as a synonym for the term “suspends” in a prejudicial manner. Finally, the title  
and summary focuses on “major polluters such as power plants and oil refineries”  
instead of the thousands of persons, businesses, and government entities impacted  
by AB 32.





1                    **SUSPENDS AIR POLLUTION CONTROL LAWS**  
2                    **REQUIRING MAJOR POLLUTERS TO REPORT AND**  
3                    **REDUCE GREENHOUSE GAS EMISSIONS THAT**  
4                    **CAUSE GLOBAL WARMING UNTIL UNEMPLOYMENT**  
5                    **DROPS TO 5.5 PERCENT OR LESS FOR FULL YEAR.**  
6                    **INITIATIVE STATUTE.**

7                    •            [moved to first sentence above] Suspends State law that  
8                    requires greenhouse gas emissions be reduced to 1990 levels by  
9                    2020, until California's unemployment drops to 5.5 percent or less  
10                    for four consecutive calendar quarters. [taken from Bill Digest for  
11                    AB 32] Suspends State law that requires the state air resources  
12                    board to adopt regulations to require the reporting and verification  
13                    of statewide greenhouse gas emissions and to monitor and enforce  
14                    compliance with this program

15                    •            Requires State to ~~abandon~~ suspend implementation of  
16                    comprehensive greenhouse-gas-reduction program that may  
17                    includes increased renewable energy and cleaner fuel  
18                    requirements, and mandatory emissions reporting and fee  
19                    requirements for major polluters such as power plants and oil  
20                    refineries, until suspension ends.

21                    **Summary of Legislative Analyst's Estimate of Net State and**  
22                    **Local Government Fiscal Impact:**

23                    •            The suspension of AB 32 could result in a modest net  
24                    increase in overall economic activity in the state. In this event,  
25                    there would be an unknown but potentially significant net increase  
26                    in state and local government revenues.

27                    •            Potential loss of a new source of state revenues from the  
28                    auctioning of emission allowances by state government to certain  
29                    businesses that would pay for these allowances, by suspending the  
30                    future implementation of cap-and-trade regulations..

31                    •            Lower energy costs for state and local governments than otherwise.

32                    49.        This suggested language is a fair and accurate informational summary of

33        Proposition 23.

34                    **RELIEF**

35        **WHEREFORE**, Petitioners pray that this Court:

- 36        1.        Issue an alternative writ of mandate compelling Respondent to amend the ballot label and  
37                    title and summary for Proposition 23 or, in the alternative, to show cause before this Court  
38                    at a specified time why Respondent has not done so;
- 39        2.        Issue a peremptory writ of mandate commanding Respondent to amend the ballot label  
40                    and title and summary for Proposition 23 as set forth above, and to conform any

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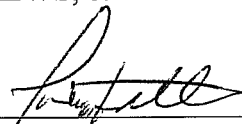
translations of these materials to the changes ordered by this Court;

3. Award Petitioners attorneys' fees and costs incurred in connection with this matter; and

4. Grant other such and further relief as the Court may deem necessary.

Dated: July 21, 2010

Respectfully Submitted,  
BELL, McANDREWS, & HILTACHK, LLP

By:   
\_\_\_\_\_  
THOMAS W. HILTACHK  
BRIAN T. HILDRETH

Attorneys for Petitioners,  
JON COUPAL and HOWARD JARVIS  
TAXPAYERS ASSOCIATION

VERIFICATION

I, JON COUPAL, declare that I am the individual Petitioner herein.

I am President of Petitioner HOWARD JARVIS TAXPAYERS ASSOCIATION.

I have read the foregoing PETITION FOR WRIT OF MANDATE and know the contents thereof. The same is true of my own knowledge, except as to those matters that are herein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26<sup>th</sup> day of July, 2010, at Sacramento, California.

  
\_\_\_\_\_  
JON COUPAL