

1 JONATHAN M. COUPAL, State Bar No. 107815
TREVOR A. GRIMM, State Bar No. 34258
2 TIMOTHY A. BITTLE, State Bar No. 112300
BRITTANY A. SITZER, State Bar No. 304313
3 Howard Jarvis Taxpayers Foundation
921 Eleventh Street, Suite 1201
4 Sacramento, CA 95814
(916) 444-9950

5 Attorneys for Petitioners
6
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF AMADOR
10

11 HOWARD JARVIS TAXPAYERS ASSN.;) No.
12 CHARLOTTE ASHER, and LAURA)
BOGGS,)

13 Petitioners,)

14 v.)

15 AMADOR WATER AGENCY, ITS BOARD)
16 OF DIRECTORS, and CRIS THOMPSON)
17 IN HER OFFICIAL CAPACITY AS CLERK)
OF THE BOARD)

18 Respondents.
19 _____

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THE
PETITION FOR ALTERNATIVE WRIT OF
MANDATE

IMMEDIATE ACTION REQUIRED:
ELECTION-RELATED MATTER ENTITLED
TO CALENDAR PREFERENCE (CCP § 35)
IN ORDER TO COMPLY WITH APRIL 18,
2016 BALLOT PUBLICATION DEADLINE

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21 **ELECTION MATTER: PRIORITY REQUESTED**
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Petitioners Howard Jarvis Taxpayers Association, Charlotte Asher, and Laura Boggs ("Petitioners") submit the following Memorandum of Points and Authorities in Support of their Verified Petition for Alternative Writ of Mandate.

INTRODUCTION

In July 2015, the Amador Water Agency ("Agency") passed an ordinance implementing a new water rate structure, water shortage surcharge, and other rate related increases. The Ratepayers Protection Alliance ("Ratepayers") responded with a referendum petition, asking the Agency to repeal the increases or to place the matter on the next ballot for a vote of the people according to Elections Code § 9145. The referendum complied with all statutory requirements of the Elections Code, and the County Registrar of Voters verified a sufficient number of valid signatures. Despite this, the Agency's Board of Directors ("Board") and the Agency's elections official, Cris Thompson, who is the Clerk of the Board ("Clerk") (collectively "Agency" or "Respondents"), are disregarding their ministerial duties and refusing to take action to repeal the increased rates or to submit the issue to the voters. The Clerk sent a letter to Ratepayers detailing three legal theories which the Agency believes justify its refusal to act. None has merit.

Californians have a constitutional right to refer legislative actions, including those of a water agency, to a vote of the people. (Cal. Const., art II, §§ 9, 11.) The courts have prioritized and protected the citizens' right of referendum and initiative:

"Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it 'the duty of the courts to jealously guard the right of the people,' the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process.'" (*Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1032.)

Consistent with the goal of preserving the citizens' right of referendum and initiative, statutory requirements governing the processing of petitions are purely procedural, not

1 adjudicative or discretionary, calling simply for ministerial implementation by government
2 officials. "In certifying a municipal referendum petition, a clerk's duty is limited to the ministerial
3 function of determining whether the procedural requirements have been met." (*Lin v. City of*
4 *Pleasanton* (2009) 175 Cal.App.4th 1143.) The Clerk is tasked only with evaluating whether
5 the petition meets the procedural requirements, not whether the measure would be valid if
6 enacted. (*Friends of Bay Meadows v. City of San Mateo* (2007) 157 Cal.App.4th 1175 (holding
7 that the role of a city elections official in certifying a petition is intended to be as "impersonal
8 as possible."))

9 In the present case, Ratepayers submitted a petition that garnered sufficient signatures
10 and complied with all statutory requirements governing the referendum process. As such, the
11 petition should have been processed as a qualified referendum and submitted to the voters at
12 the earliest election for which it qualified. Instead, the Agency is improperly refusing to perform
13 its ministerial duties.

14 As will be discussed below, none of the reasons offered by the Agency for its inaction
15 are well taken. The Agency must comply with its ministerial responsibilities under the Elections
16 Code, and mandamus is the proper remedy to compel its compliance. Petitioners seek the
17 issuance of an Alternative Writ of Mandate, an accelerated briefing schedule and calendar
18 preference for a hearing on the alternative writ, concluded by issuance of a Peremptory Writ
19 of Mandate directing the Clerk to immediately certify the petition, and directing the Board to
20 immediately call an election for the referendum to be presented to the voters.

21 FACTUAL SUMMARY

22 The Amador Water Agency is a local government agency created and governed by the
23 Amador Water Agency Act. On July 21, 2015, the Board passed a resolution adopting new
24 uniform water rates for single-family customers, temporary water shortage rate surcharges on
25 water usage, metered water rates for flat-rate water customers, and a schedule of annual
26 automatic inflationary rate adjustments. (Request for Judicial Notice ("RJN"), **Exhibit A**).
27 Ratepayers circulated a "Referendum Against a Resolution Passed by the Amador Water
28 Agency Board of Directors." The circulated referendum petition read:

1 “We hereby request that Resolution Number 2015-19 be reconsidered and
2 repealed by the Board of Directors or that the resolution be submitted to a vote
3 of the People of Amador County at the next regular election. The title and text
4 of the ‘FY 15-16 Water Rate Update and Water Shortage Financial Strategy’ and
5 ‘System-Wide Cost of Service and Water Rate Study’ are below in their entirety.”
6 (RJN, **Exhibit B**, page 1.)

7 As required by Elections Code section 9147(b), the petition contained the complete text
8 of Resolution No. 2015-19. As further required by case law interpreting section 9147(b), the
9 petition also contained two documents incorporated in the Resolution by reference or
10 attachment, the Fiscal Year 2015-2016 Water Rate Update and Water Shortage Financial
11 Strategy Final Report (“Water Rate Update”) and the Amador Water Agency System-Wide Cost
12 of Service and Water Rate Study (“Cost of Service Study”). (RJN, **Exhibit B**.)

13 After collecting signatures, Ratepayers timely presented the referendum petition to the
14 Clerk as the Agency’s elections official. The Clerk, in turn, forwarded the petition to the County
15 Registrar of Voters to have the signatures verified and counted. The Registrar verified a
16 sufficient number of valid signatures, and returned the petition to the Clerk with her official
17 verification. (RJN, **Exhibit C**.) At that point, the Clerk had a duty to “certify” the petition to the
18 Board, and the Board had a duty to either repeal the subject Resolution or call an election in
19 order to present it to the voters. However, the Clerk refused to certify the petition. (RJN,
20 **Exhibit D**.) The Board ratified the Clerk’s refusal by holding a hearing on the matter on
21 October 8, 2015, at which it too decided to take no action on the petition. (RJN, **Exhibits E &**
22 **F**.)

23 The Clerk sent a letter to Ratepayers in which she gives three reasons for the Agency’s
24 refusal to process the petition. (RJN, **Exhibit D**.) The first reason claims that the Agency is
25 required to do all acts necessary to provide service, including setting rates sufficient to pay the
26 expenses of the Agency. Misapplying the opinion in *Mission Springs Water District v. Verjil*
27 (2013) 218 Cal.App.4th 892, the letter states, “an initiative (or referendum) that seeks to repeal
28 a rate, resulting in a rate insufficient to comply with the Agency Act’s mandate is beyond the

1 initiative power of the voters of the Agency....” (RJN, **Exhibit D**, page 1.) The letter next
2 claims that the right of referendum is not available to voters to repeal a rate increase. Voters
3 can repeal a rate increase, it argues, only by passing an initiative. For this it cites article XIII
4 C, section 3 of the California Constitution and *Bighorn-Desert View Water Agency v. Verjil*
5 (2006) 39 Cal.4th 205. (RJN, **Exhibit D**, page 1.) Finally, the letter concludes that the petition
6 is flawed because it contains more than just the text of the subject Resolution; it also contains
7 the Water Rate Update and the Cost of Service Study. (RJN, **Exhibit D**, page 2.)

8 The Ratepayers and many Amador County voters who signed the petition have asked
9 the Agency to take action on the referendum, yet the Agency continues to ignore its duties and
10 the requests of its residents.

11 **ARGUMENT**

12 **THIS CASE IS ENTITLED TO CALENDAR PREFERENCE**

13 Had Respondents complied with their ministerial duties under the Elections Code, the
14 Board would have called an election at its meeting on October 8, 2015, instead of deciding to
15 withhold the referendum from the voters. This action seeks a writ of mandate directing
16 Respondents to perform the ministerial duties required of them on October 8, 2015, by
17 certifying the petition and calling the election. The proper date for that election is the fast-
18 approaching June Primary. Elections Code section 1410 requires that the election for a
19 qualified referendum “shall be held at the jurisdiction’s *next regular election* occurring not less
20 than 88 days after the date of the order of election or at a special election called for that
21 purpose.”¹

22 As stated in the accompanying Declaration of Brittany A. Sitzer, Petitioners have been
23 informed by the Amador County Registrar of Voters that the ballots for the June election go to
24 print on **April 18, 2016**. This must be preceded by a 10-day public examination period and an
25 opportunity for submitting ballot arguments for and against the measure. (Elections Code §
26 9316.) Thus, time is of the essence.

27 _____
28 ¹ Unless noted otherwise, all emphasis is added.

1 Code of Civil Procedure section 35 provides, "Proceedings in cases involving ... the
2 certification or denial of certification of ballot measures ... shall be placed on the calendar in the
3 order of their date of filing and *shall be given precedence.*" (See also Elec. Code §
4 13314(a)(3). Petitioners therefore respectfully request the Court's earliest available hearing
5 date.

6
7 **II**
8 **RESPONDENTS HAVE A MINISTERIAL DUTY TO REPEAL**
9 **THE SUBJECT ORDINANCE OR PLACE IT ON THE BALLOT**

10 When presented with the Registrar's signature verification, the Clerk of the Board has
11 a ministerial duty under Elections Code section 9114 to certify the referendum petition. "If the
12 petition is found sufficient, the elections official shall certify the results of the examination to the
13 board." (Elec. Code § 9114.) Similarly, the Board has a ministerial duty to either repeal the
14 challenged ordinance or place it on the ballot for the voters to approve or reject:

15 "If the board...does not entirely repeal the ordinance against which a petition is
16 filed, the board shall submit the ordinance to the voters either at the next
17 regularly scheduled county election occurring not less than 88 days after the
18 date of the order, or at a special election called for that purpose not less than 88
19 days after the date of the order. The ordinance shall not become effective
20 unless and until a majority of the voters voting on the ordinance vote in favor of
21 it." (Elec. Code § 9145.)²

22 Neither the Clerk nor the Board have any prerogative to exercise discretion. Once it has
23 been determined that the petition has met the statutory procedural requirements (regarding the
24 form of the petition, the deadline for submission, and the number of signatures), they must

25 _____
26 ² There are several cross-references in the Elections Code. The chapter dealing with District
27 elections (which would apply to the Amador Water Agency) makes the rules for County
28 elections applicable to District referenda: "The voters of any district ... shall have the right to
petition for referendum on legislative acts of the district in the same manner and subject to the
same rules as are set forth in [the chapter on County elections]." (Elec. Code § 9340.) Then,
for certain purposes, the County statutes governing referenda make the rules for initiatives
applicable: "The provisions of this code relating to the form of petitions, the duties of the county
elections official, and the manner of holding elections when an ordinance is proposed by
initiative petition, govern the procedure on ordinances against which a protest is filed." (Elec.
Code § 9146.)

1 respond by performing the ministerial duties prescribed in sections 9114 and 9145.

2 Where a statute or ordinance “clearly defines the specific duties or course of conduct
3 that a governing body must take, that course of conduct becomes mandatory and eliminates
4 any element of discretion.” (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 504-05.) It is
5 undeniable that sections 9114 and 9145 clearly define Respondents’ duties. The Clerk “shall
6 certify the results of the examination to the board.” (Elec. Code § 9114.) The Board, in turn,
7 must select one of two exclusive options: (1) “entirely repeal the ordinance against which [the]
8 petition is filed,” or (2) “submit the ordinance to the voters.” (*Id.*, § 9145.)

9 “A ministerial act is an act that a public officer is required to perform in a prescribed
10 manner in obedience to the mandate of legal authority and without regard to his own judgment
11 or opinion concerning such act’s propriety or impropriety, when a given set of facts exists.”
12 (*California Assn. of Prof. Scientists v. Dept. of Finance* (2011) 195 Cal.App.4th 1228, 1236
13 (quoting *Kavanaugh v. West Sonoma County Union High Sch. Dist.* (2003) 29 Cal.4th 911,
14 916.)) Ministerial actions are “essentially automatic based on whether certain fixed standards
15 and objective measures have been met.” (*Sustainability of Parks, Recycling & Wildlife Legal*
16 *Defense Fund v. County of Solano Dept. of Resource Mgmt.* (2008) 167 Cal.App.4th 1350,
17 1359.) It is a duty that a governmental body is required to perform without the exercise of
18 independent judgment or opinion. (*Ellena v. Dept. of Insurance* (2014) 230 Cal.4th 198.)

19 It is well settled that the referendum statutes call for a strict application and mechanical
20 performance of ministerial duties, and a refusal to act is unwarranted. (*Save Stanislaus Area*
21 *Farm Economy v. Board of Supervisors* (1993) 13 Cal.App.4th, 141, 149 (“The law is clear: A
22 local government is not empowered to refuse to place a duly certified initiative on the ballot”);
23 *Farley v. Healey* (1967) 67 Cal.2d 325, 327.) “If every public official who is under a statutory
24 duty to perform a ministerial act were free to refuse to perform that act based on the official’s
25 view that the underlying statute is unconstitutional, any semblance of a uniform rule of law
26 quickly would disappear, and constant and widespread judicial intervention would be required
27 to permit the ordinary mechanisms of government to function.” (*Lockyear v. City and County*
28 *of San Francisco* (2004) 33 Cal.4th 1055, 1119.)

1 Accordingly, it is a violation of Elections Code sections 9114 and 9145 for the Clerk and
2 the Board in this case to refuse to perform their ministerial duties based solely on their opinion
3 that the petition is improper. (*Save Stanislaus Area Farm Economy* at 148 (“... local
4 governments have the purely ministerial duty to place duly certified initiatives on the ballot”);
5 *Schmitz v. Younger* (1978) 21 Cal.3d 90, 92-93 (an official cannot refuse to perform a
6 ministerial duty); *Baroldi v. Denni* (1961) 197 Cal.App.2d 472, 477 (after qualifying petitions the
7 clerk had an immediate ministerial duty to place them on the ballot for an election)).

8 The referendum petition at issue has satisfied the law’s procedural prerequisites.
9 Enough registered voters signed it to earn a place on the ballot. The Clerk and the Board are
10 therefore obligated to call an election. Refusal to act on these duties is an infringement on the
11 people’s reserved right of referendum. The issue is not whether the subject rate increase is
12 necessary, but whether the Clerk and Board are complying with their ministerial duties. They
13 are not, and a writ of mandate is proper to compel their compliance.

14 **III**
15 **MANDAMUS IS THE PROPER REMEDY TO**
16 **COMPEL PERFORMANCE OF A MINISTERIAL ACT**

17 A writ of mandate will compel “any inferior tribunal, corporation, board, or person” to
18 perform “an act which the law specially enjoins, as a duty resulting from an office, trust, or
19 station.” (Code of Civ. Proc. § 1085(a).) Mandamus is appropriate when seeking to compel a
20 clear, present, ministerial duty. (*Ellena v. Dept. of Insurance* (2014) 230 Cal.App.4th 198, 205
21 (mandate suitable “to compel a public agency or officer to perform a mandatory duty.”)) A
22 ministerial duty is imposed on a person in a public office who, by virtue of that position, is
23 obligated to perform in a legally prescribed manner when a given state of facts exists. (*Flores*
24 *v. California Dept. of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 205; *Sacks v.*
25 *City of Oakland* (2010) 190 Cal.App.4th 1070, 1081; *Hartsock v. Merritt* (1928) 94 Cal.App. 431,
26 432-33 (“[W]here the law imposes upon [a public official] specific duties and he either
27 whimsically or arbitrarily refuses to perform those duties, or where his refusal to perform is
28 based upon an erroneous conclusion of his legal duties, or where the right of the individual is
so fixed that the refusal of the official to act is a clear abuse of discretion, mandamus is the

proper remedy.”))

Mandate is appropriate to require obedience to the requirements of the Elections Code, such as compelling an officer to conduct an election or place an initiative or referendum on the ballot. (*Hoffman v. State Bar* (2003) 113 Cal.App.4th 630, 634; *Farley v. Healey* (1967) 67 Cal.2d 325, 326 (writ issued to compel the registrar of voters and county clerk to determine the sufficiency of a petition’s signatures and, if sufficient, to place the initiative on the local ballot); *Duran v. Cassidy* (1972) 28 Cal.App.3d 574, 579 (writ issued to compel city clerk to accept and process an initiative petition); *Defend Bayview Hunters Point Comm. v. County of San Francisco* (2008) 167 Cal.App.4th 864, 858 (mandate used to compel the acceptance of a referendum petition.))

The increased water rate structure is currently in effect, costing ratepayers irreparable harm if no action is taken on the submitted petition. Petitioners have exhausted all other remedies and resources; there is no other applicable remedy at this point, and further delay in the prescribed ministerial duties of certifying the petition and calling an election would be a gross violation of the people’s constitutional rights.

IV
THE CLERK’S THREE REASONS FOR NOT
PROCESSING THE REFERENDUM ARE INVALID

As mentioned above, the Clerk’s letter to Ratepayers gave three reasons supposedly justifying the Agency’s refusal to process Ratepayers’ referendum. The reasons in a nutshell are: (1) the Board is required to set rates that are sufficient to pay the expenses of the Agency; a referendum that would result in inadequate revenue is therefore beyond the power of the voters; (2) the constitution does not reserve the referendum power as a means of repealing a rate increase, it reserves only the initiative power for that purpose; and (3) the petition is fatally confusing because it contains more than just the text of the subject Resolution; it also contains the Water Rate Update and the Cost of Service Study. (RJN, **Exhibit D.**) None of these arguments has merit.

1 **A. A Referendum on Rates is Not Beyond the Power of the Voters**

2 Respondents' first contention is that the Board is required to set rates sufficient to pay
3 the expenses of the Agency, therefore a referendum protesting rates is beyond the power of
4 the voters.

5 While it is true that the Agency must be able to pay expenses, achieving a balanced
6 budget can be accomplished in more ways than one. The Agency's preferred method,
7 increasing revenue, is one way. But reducing expenses is another way, and a combination of
8 reduced expenses together with a more affordable rate increase is yet a third way. Voters who
9 signed the referendum petition believe expenses are too high and that the recent rate increase
10 is therefore unwarranted. The Court cannot presume the correctness of either viewpoint, but
11 must let the voters decide.

12 Respondents rely upon the decision in *Mission Springs Water District v. Verjil* (2013)
13 218 Cal.App.4th 892, to support their contention that a referendum on rates set by the Board
14 is beyond the power of the voters. (RJN, **Exhibit D**, page 1.) But Respondents are
15 misrepresenting *Mission Springs* and attempting to cloud a critical distinction between initiatives
16 and referenda.

17 Although the initiative and referendum are companion powers, each serves a distinctly
18 different function. "The initiative is the power of the electors to propose statutes and
19 amendments to the Constitution and to adopt or reject them." (Cal. Const., art. II, § 8(a).) The
20 referendum, however, is "the power of the electors to approve or reject statutes or parts of
21 statutes [adopted by the governing body.]" (Cal. Const., art. II, § 9(a).) To put the distinction
22 in context, voters would use an initiative if they wanted to set specific rates themselves. They
23 instead have used a referendum because they want merely to reject the rates set by the Board,
24 without specifying what the new rates should be.

25 In *Mission Springs*, the Water District's voters presented two initiatives whereby they
26 would have set the rates themselves, at a reduced amount which the District contended was
27 so low the District would be unable to provide service or pay its debts. Unlike the Agency here,
28 which has simply refused to act, the Mission Springs Water District filed an action for

1 declaratory relief and “presented extensive and detailed evidence that its 2011 water and sewer
2 rate increases were absolutely necessary due to revenue declines and cost increases, both of
3 which were beyond its control. ‘Between 2007 and 2010, [the District] experienced operating
4 losses of \$2.9 million to \$3.5 million annually.’ If the initiatives pass and rates are rolled back,
5 the District would be unable to meet its costs, pay its debts, and stay in business; the potential
6 consequences for the local water supply would be disastrous. The Proponents did not
7 contradict this evidence.” (*Mission Springs*, 218 Cal.App.4th at 917.)

8 Here, there is no study or other evidence of a budget crisis. This case is more like
9 *Brooktrails Township Community Services District v. Board of Supervisors* (2013) 218
10 Cal.App.4th 195, another initiative case, where the Court upheld the voters’ outright repeal of
11 a particular water fee. The District presented no convincing evidence that it could not weather
12 the loss of that fee, wherefore the Court ruled that the voters, through their initiative power, had
13 every right to repeal it. (*Id.* at 207.)

14 The case at bar is not only different from *Mission Springs* factually, it also involves the
15 exercise of a different power—the referendum power. Ratepayers here are not proposing to set
16 the rates themselves through an initiative. They are not tying the Agency’s hands regarding
17 future ratemaking. They simply believe that the rates recently adopted by the Board are too
18 high and want the Board to reconsider its budget and bring back a more affordable proposal.

19 As Respondents admit in the Clerk’s letter, the local electorate’s power is coextensive
20 with the legislative power of the elected Board. (RJN, **Exhibit D**, page 1.) “The electorate’s
21 legislative power is ‘generally coextensive with the power of the Legislature to enact statutes.’”
22 (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1042
23 (quoting *Santa Clara County Local Transp. Auth. v. Guardino* (1995) 11 Cal.4th 220, 253).)
24 Since the Board, on its own, could reconsider its budget and adopt some combination of cost-
25 savings plus a more affordable rate increase, the voters may therefore compel that
26 reconsideration via referendum.

27 Because there is no evidence of a budget crisis, and Petitioners seek merely to referend
28 the rates set by the Board, not to engage in rate setting themselves, the Agency’s first reason

1 for defying the mandates of the Elections Code is invalid.

2 **B. The Constitution Does Not Limit Ratepayers to Just the Initiative Power**

3 Respondents' second contention is that the constitution does not reserve the
4 referendum power as a means of repealing a rate increase, it reserves only the initiative power
5 for that purpose. For this the Clerk's letter cites article XIII C, section 3 of the California
6 Constitution and *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal 4th 205.

7 Petitioners presume that article XIII C, section 3, is cited because it contains no specific
8 mention of the people's referendum power. It reads in pertinent part, "Notwithstanding any
9 other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II,
10 the initiative power shall not be prohibited or otherwise limited in matters of reducing or
11 repealing any local tax, assessment, fee or charge." From this the Agency argues that "the
12 constitutionally mandated method for repealing [a rate increase] is an initiative." (RJN, **Exhibit**
13 **D**, page 1.)

14 The first problem with the Agency's position is that article XIII C, section 3 does not
15 "mandate" anything. It *prohibits* an interpretation of the constitution that would deny voters
16 resort to their power of initiative to reduce or repeal any tax, assessment, fee or charge. To say
17 that a prohibition amounts to a mandate is a grammatical distortion of the text. For example,
18 article X, section 2 of the constitution states, "nothing herein shall be construed as depriving
19 any riparian owner of the reasonable use of water of the stream to which the owner's land is
20 riparian." If that section were read as the Agency reads article XIII C, section 3, it would mean
21 that riparian owners are "mandated" to get their water from the stream; that receiving water
22 from a well or municipal pipeline is disallowed!

23 To understand why section 3 does not mention the referendum power, a history lesson
24 is in order. Prior to Proposition 218 adding article XIII C to the constitution, several cases had
25 held that, because the constitution prohibits a referendum of a tax (see Cal. Const., art. II, §
26 9 ("The referendum is the power of the electors to approve or reject statutes or parts of statutes
27 except ... statutes providing for tax levies")), neither may the voters repeal a tax by an initiative
28 because such an initiative would act as the functional equivalent of a referendum. For this line

1 of cases, see *Myers v. City Council of Pismo Beach* (1966) 241 Cal.App.2d 237; *City of*
2 *Atascadero v. Daly* (1982) 135 Cal.App.3d 466; *Gibbs v. City of Napa* (1976) 59 Cal.App.3d
3 148; *Campen v. Greiner* (1971) 15 Cal.App.3d 836; and *Dare v. Lakeport City Council* (1970)
4 12 Cal.App.3d 864. Proposition 218 was being written at the same time the California Supreme
5 Court had under review *Rossi v. Brown* (1995) 9 Cal.4th 688, challenging the *Myers* line of
6 cases. In fact, the attorneys who drafted Proposition 218 were counsel of record for the
7 initiative proponents in *Rossi*. Although *Rossi* ultimately ruled that the initiative power is
8 available to voters to repeal a tax, the decision was based in part on San Francisco's city
9 charter. (*Rossi*, 9 Cal.4th at 693.) To ensure that the *Myers* line of cases was never used in
10 the future to block an initiative proposing the repeal of a tax in a city other than San Francisco,
11 and to clarify that initiatives could also be used to reduce or repeal assessments and fees,
12 section 3 was maintained in the text of Proposition 218 even after *Rossi* vindicated the principle
13 that it ultimately enshrined in our constitution. With this history in mind, the Court can see that
14 the referendum power was not mentioned in Proposition 218 because the targeted *Myers* line
15 of cases never said anything to limit the referendum power.³

16 The purpose of Proposition 218 was to reinforce and expand the people's right of direct-
17 democracy, not limit it. In strengthening the people's initiative power, section 3's mention of
18 the "initiative power" and omission of the word "referendum" cannot be construed as an
19 indication that California's voters impliedly intended to strip themselves of their referendum
20 power expressly reserved elsewhere in the constitution. "The presumption that the people
21 retain the power of referendum is overcome only by a clear showing of [voter] intent." (*Empire*
22 *Waste Management v. Town of Windsor* (1998) 67 Cal.App.4th 714, 718.) To imply that the
23 referendum power is negated by implication would severely undermine the structure of the
24 constitution. As our Supreme Court has repeated many times, "The law shuns repeal by

25
26 ³ One could even argue that since the referendum and initiative powers are corollary powers,
27 where one is invoked the other can be inferred to exist. "The initiative power springs from the
28 electorate's retained power of initiative and referendum. There is no textual basis for
construing the power of referendum as broader than the initiative power, or vice versa." (*Save*
Stanislaus Area Farm Economy v. Board of Supervisors (1993) 13 Cal.App.4th 141, 152, fn.3.
(citations omitted).)

1 implication; thus, we are bound to harmonize constitutional provisions that are claimed to stand
2 in conflict.” (*California School Boards Assn. v. Brown* (2011) 192 Cal.App.4th 1507, 1523
3 (quoting *Kennedy Wholesale, Inc. v. State Board of Equalization* (1991) 53 Cal.3d 245,
4 249-250).)

5 In the case at bar, there is no question that the Agency’s voters have referendum power.
6 The Amador Water Agency Act itself expressly grants the referendum power to its voters. It
7 states, “The initiative and referendum powers are hereby granted to the electors of the agency
8 to be exercised in relation to the enactment or rejection of agency ordinances in accordance
9 with the procedure established by the laws of this State for the exercise of such powers in
10 relation to counties.” (Water Code App. § 95-7.3.) Water Code § 30831 further indicates the
11 voters’ unambiguous right to referend ordinances enacted by water districts, such as the
12 Agency here: “Ordinances may be subject to referendum in accordance with Article 2
13 (commencing with Section 9140) of Chapter 2 of Division 9 of the Elections Code.”

14 The Clerk’s letter also cites *Bighorn-Desert View Water Agency v. Verjil* for this theory
15 that the Agency’s voters have only the initiative power, not the power of referendum. However,
16 *Bighorn* supports Petitioners, not Respondents.

17 In *Bighorn*, proponents qualified an initiative that would have done two things. First, it
18 would have reduced certain water rates. Second, “[t]he initiative also would have required the
19 Agency to obtain voter approval before increasing any existing water rate, fee, or charge, or
20 imposing any new water rate, fee, or charge.” (*Bighorn*, 39 Cal 4th at 210.) The trial court
21 followed the same logic advanced in the Clerk’s letter here: “The trial court, declaring that
22 voters in the area served by the Agency lacked power to affect its water rates and fees and
23 charges ... entered a judgment of declaratory relief for the Agency.” (*Id.* at 211.) The Court of
24 Appeal affirmed, but the Supreme Court reversed. It held that Proposition 218’s article XIII C,
25 section 3 guarantees voters the right, by exercising their power of initiative, to reduce or repeal
26 utility fees and charges.

27 *Bighorn* says nothing about referenda except in footnote 3 where it states, “tax
28 measures are exempt from referendum. ... But the state Constitution imposes no similar

1 limitation on the initiative.” Yet *Bighorn* is relevant to the case at bar because the Supreme
2 Court clarified that water rates are *not* taxes that would be exempt from referendum. The Court
3 answered the question, “Are the amounts that the Agency bills its customers for the delivery
4 of domestic water properly characterized as fees or charges [v. taxes]?” (*Id.* at 213.) The
5 Court concluded, “a public water agency’s charges for ongoing water delivery, which are *fees*
6 *and charges* within the meaning of article XIII D ... are also *fees* within the meaning of section
7 3 of article XIII C. Therefore, section 3 of article XIII C establishes that the initiative power
8 ‘shall not be prohibited or otherwise limited in matters of reducing or repealing’ a public
9 agency’s water delivery charges. In other words, this constitutional provision expressly
10 authorizes initiative measures like Kelley’s insofar as they seek to reduce or repeal a public
11 agency’s water rates and other water delivery charges.” (*Id.* at 216.)

12 After *Bighorn* was decided, Proposition 26 was passed in 2010, reinforcing its holding
13 that water rates are fees, not taxes. As added by Proposition 26, article XIII C, section 1(e)
14 defines “tax” as follows: “‘tax’ means any levy, charge, or exaction of any kind imposed by a
15 local government, except the following: ... (2) A charge imposed for a specific government
16 service or product provided directly to the payor that is not provided to those not charged, and
17 which does not exceed the reasonable costs to the local government of providing the service
18 or product; ... (7) Assessments and property-related fees imposed in accordance with the
19 provisions of Article XIII D.” Both (2) and (7) exempt water rates from the definition of “tax.”
20 (See also *Paland v. Brooktrails Township Comm. Services Dist.* (2009) 179 Cal.App.4th 1358,
21 1371-72; *Brooktrails Township Comm. Services Dist. v. Board of Supervisors* (2013) 218
22 Cal.App.4th 195, 207 (“the money property owners were required to pay [for water service] did
23 not qualify as a tax requiring a two-thirds vote, or even as an assessment that required a simple
24 majority vote ... the money exacted was a fee.”)) Since the Agency’s water rates in the case
25 at bar are therefore not “taxes,” they are not exempt from referendum.

26 In sum, the constitution, the Water Code, and the Agency’s own enabling act guarantee
27 ratepayers the right to referend water rates enacted by the Board. The Agency’s second
28 reason for defying the mandates of the Elections Code is invalid as well.

1 **C. The Petition is Not Confusing**

2 The last reason in the Clerk's letter for withholding Ratepayers' referendum from the
3 ballot is that the "plain text" of the petition is fatally confusing because it contains more than just
4 the text of the subject Resolution; it also contains the Water Rate Update and the Cost of
5 Service Study. This contention is easily refuted because the petition is *required* to contain the
6 Water Rate Update and the Cost of Service Study.

7 To begin, the Water Rate Update and the Cost of Service Study are just exhibits
8 attached to the referendum petition. The referendum itself was the top page of the petition
9 used by circulators to collect signatures. The referendum reads, in pertinent part:

10 "We, the undersigned, duly registered and qualified voters of Amador County,
11 hereby protest the adoption of Resolution 2015-19 (a resolution adopting new
12 uniform water rates for single family customers, temporary water shortage rate
13 surcharges on water usage, metered water rates for flat-rate customers, and a
14 schedule of annual automatic inflationary rate adjustments), adopted by the
15 Amador Water Agency Board of Directors on July 21, 2015. We hereby request
16 that Resolution Number 2015-19 be reconsidered and repealed by the Board of
17 Directors or that the resolution be submitted to a vote of the People of Amador
18 County at the next regular election." (RJN, **Exhibit B**, page1.)

19 Surely the above-stated purpose of the referendum is not confusing. Under Elections Code §
20 9147(b) each section of a referendum petition shall include the "text" of the ordinance or the
21 portion of the ordinance subject to referendum. To satisfy the "text" requirement under this
22 section, as defined by case law, proponents must include not only the words of the challenged
23 ordinance, but also any texts that are incorporated by reference in the ordinance or physically
24 attached to it as exhibits. (*Lin v. City of Pleasanton* (2009) 176 Cal.App.4th 408, 417.)

25 The purpose of section 9147(b)'s "text" requirement, which is to reduce voter confusion,
26 would be *defeated* if documents attached to the ordinance as exhibits or incorporated by
27 reference were *omitted* from the initiative petition. (*Lin*, 176 Cal.App.4th at 419.) "The text
28 requirement [of section 9147(b)] is designed to reduce voter confusion regarding the content

1 of a referendum In all but the most extreme situations, this purpose is fulfilled by construing
2 the ‘text’ to include the language of the ordinance itself, plus any documents attached as
3 exhibits or expressly incorporated by reference.” (*Id.*)

4 In the case at bar, Ratepayers included, under the referendum and signature page,
5 Resolution Number 2015-19 (the resolution that was the subject of the referendum) set out
6 verbatim, as well as the Water Rate Update and the Cost of Service Study which were
7 incorporated by reference in the resolution. (RJN, **Exhibit B.**)

8 The *Lin* Court thought it was providing a bright line rule that would guide referendum
9 proponents and eliminate the risk of clerks exercising discretion and interfering with the
10 people’s referendum power: “Our interpretation of the text requirement also ensures that city
11 and county clerks charged with certifying referendum petitions will not be called upon to make
12 quasi-judicial evaluations of a petition’s validity. In certifying a referendum petition, a clerk’s
13 duty is limited to the ministerial function of determining whether the procedural requirements
14 have been met.” (*Id.* at 420.) Unfortunately, in the case at bar, the proponents followed *Lin*,
15 but the Clerk has attempted to exercise discretion anyway.

16 Contrary to the Clerk’s claim that the petition confused signers, the petition included the
17 complete “text” of the ordinance, including—as required—related substantive information
18 expressly referenced in the ordinance, so as to avoid any ambiguities that would leave voters
19 unable to make a fully informed decision when asked to sign the petition. Thus, the Agency’s
20 third and final reason for defying the mandates of the Elections Code, like the others, is invalid.

21 CONCLUSION

22 The Agency is blatantly refusing to perform its ministerial duties as required by law and
23 in gross violation of a constitutional right that the Courts “jealously guard.” Mandamus is the
24 proper remedy. Time is of the essence if this referendum is to appear on the ballot for which
25 it qualified. For the reasons explained above, this Court should issue the accompanying
26 proposed Alternative Writ of Mandate, set a hearing at the earliest possible date to consider
27 the Agency’s defense, then issue a Peremptory Writ of Mandate directing the Clerk to certify
28 the petition, and directing the Board to call the election for June 7, 2016.

1
2 DATED: March 7, 2016.

Respectfully submitted,

3 JONATHAN M. COUPAL
4 TREVOR A. GRIMM
5 TIMOTHY A. BITTLE
6 BRITTANY A. SITZER

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Brittany A. Sitzer
Counsel for Petitioners

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): BRITTANY A. SITZER (SBN 304313) Howard Jarvis Taxpayers Foundation 921 11th Street, Suite 1201 Sacramento, CA 95814 TELEPHONE NO.: 916-444-9950 FAX NO. (Optional): 916-444-9823 E-MAIL ADDRESS (Optional): brittany@hjta.org ATTORNEY FOR (Name): HOWARD JARVIS TAXPAYERS ASSN., ET AL.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Amador STREET ADDRESS: 500 Argonaut Lane MAILING ADDRESS: CITY AND ZIP CODE: Jackson, CA 95642 BRANCH NAME:	
PETITIONER/PLAINTIFF: HOWARD JARVIS TAXPAYERS ASSN., ET AL. RESPONDENT/DEFENDANT: AMADOR WATER AGENCY, ET AL.	
<p style="text-align: center;">PROOF OF PERSONAL SERVICE—CIVIL</p>	

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**.
2. I served the following **documents** (specify):
 Memorandum of Points and Authorities in Support of the Petition for Alternative Writ of Mandate

☐ The documents are listed in the *Attachment to Proof of Personal Service—Civil (Documents Served)* (form POS-020(D)).

3. I personally served the following **persons** at the address, date, and time stated:

- a. Name: Steve Churchwell, Churchwell White LLP
- b. Address: 1414 K Street, 3rd Floor, Sacramento, CA 95814
- c. Date: 03/08/2016
- d. Time: Between the hours of 9:00 AM and 12:00 PM

☐ The persons are listed in the *Attachment to Proof of Personal Service—Civil (Persons Served)* (form POS-020(P)).

4. I am
 - a. ☒ not a registered California process server.
 - b. ☐ a registered California process server.
 - c. ☐ an employee or independent contractor of a registered California process server.
 - d. ☐ exempt from registration under Business & Professions Code section 22350(b).

5. My name, address, telephone number, and, if applicable, county of registration and number are (specify):

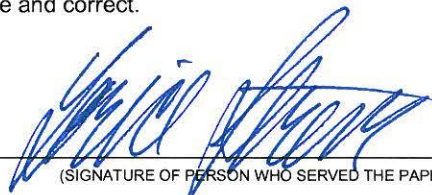
Lorice Strem
 921 11th Street, Suite 1201, Sacramento, CA 95814
 916-444-9950

6. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
7. ☐ I am a California sheriff or marshal and certify that the foregoing is true and correct.

Date: 03/08/2016

Lorice Strem

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)


 (SIGNATURE OF PERSON WHO SERVED THE PAPERS)