IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION EIGHT

DAVID HERNANDEZ and TED HAYES, Appellants, v. COUNTY OF LOS ANGELES, CITY OF LOS ANGELES, LOS ANGELES CITY COUNCIL, and DOES 1 through 30, inclusive, Respondents.	No. B203097 Los Angeles County No. BS106456 (Hon. David P. Yaffe)

APPELLANTS' OPENING BRIEF

Eric Grant (Bar No. 151064)
Attorney at Law
8001 Folsom Boulevard, Suite 100
Sacramento, California 95826
Telephone: (916) 388-0833
Facsimile: (916) 691-3261
E-Mail: grant@eric-grant.com

Sterling E. Norris (Bar No. 40993)
Judicial Watch, Inc.
2540 Huntington Drive, Suite 201
San Marino, California 91108
Telephone: (626) 287-4540
Facsimile: (626) 237-2003
E-mail: jw-west@judicialwatch.org

Anthony T. Caso (Bar No. 88561)
Law Office of Anthony T. Caso
8001 Folsom Boulevard, Suite 100
Sacramento, California 95826
Telephone: (916) 386-4432
Facsimile: (916) 386-8952
E-Mail: tom@caso-law.com

Attorneys for Appellants DAVID HERNANDEZ and TED HAYES

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INTRODUCTION

> [T]he ultimate purpose of the single subject requirement of the California Constitution is to prevent politicians and special interests from manipulating the initiative process by bundling together measures to force voters to accept all or none of them, when, if they were submitted to the voters separately, the voters would likely accept some and reject others. Such manipulation is precisely the effect of the bundling in this case. It is likely that many voters would vote one way on the anti-lobbying and ethics provisions of Measure R, and the opposite way on the term limits provisions, if they were given an opportunity . . . .

2 Joint Appendix ("J.A.") 556 (superior court's ruling).

Appellants David Hernandez and Ted Hayes challenged Measure R, a ballot measure approved by the voters of the City of Los Angeles, as a violation of the venerable "single-subject rule" that has restricted legislative power in California since 1849. As quoted above, the superior court correctly perceived that Measure R amounted to a classic violation of that rule, the result of cynical manipulation by the Los Angeles City Council. The superior court also ruled, however, that the single-subject rule does not apply to Measure R. As set forth herein, that latter ruling was erroneous as a matter of law, and the judgment of the superior court must therefore be reversed.

The issue in this case is whether Los Angeles politicians are specially privileged under the state constitution to manipulate local voters in a manner prohibited both to state and local initiative proponents and to the Legislature. Put another way, does the California Constitution really grant to a city council (whether of a charter city or not) a power that the constitution has consistently

denied to the state Legislature and to the proponents of state and local ballot initiatives throughout our history?

As explained in detail below, the answer is *no*. The California Constitution does not grant special voter-manipulation privileges to the Los Angeles City Council or to the city council of any other city, chartered or not. Rather, the single-subject requirement is inherent in the structure of the constitution and applies regardless of whether a measure is proposed by the voters, by the Legislature, or by the council of a chartered city. Because Measure R surely violates the single-subject rule, it is void and can have no effect.

STATEMENT OF THE CASE

A. Factual Background.

This case concerns "Measure R," a proposal submitted to the voters of the City of Los Angeles at the November 2006 general election. According to a declaration filed by the City in this action, Measure R had its genesis in a proposal by the League of Women Voters and the Los Angeles Area Chamber of Commerce. *See* 2 J.A. 390-91. In their July 14, 2006 letter to the Los Angeles City Council, those organizations described their "City Government Responsibility, Lobbying and Ethics Reform Act" as a "comprehensive ethics reform package, including term limits reform." 2 J.A. 395.

The City Council sent the package to the City Attorney with directions to prepare appropriate resolutions to be adopted by the council for placing the package on the upcoming November ballot. Following these directions, the

City Attorney prepared the documents "needed to place on the ballot the term limit extension and the ethics, lobbying, and campaign finance reform proposals." 1 J.A. 32. The City Attorney advised, however:

> Having reviewed the various proposals, we have concluded that the ethics, lobbying and campaign finance reform proposals can simply be adopted and implemented in their entirety through an ordinance passed by the City Council. Unlike the lengthening of term limits, these ethics reforms do not require a change of the City Charter or a vote of the people in order to be implemented.

Id. Indeed, the City Attorney believed that "this would be the first instance in which the City included a combination of a Charter amendment and an ordinance in the same ballot measure." 1 J.A. 34.

The City Council rejected this advice, deliberately choosing to bundle the various amendments to the City Charter and changes to the City code as a single, all-or-nothing proposition for voters. *See* 1 J.A. 13-24 (text of ballot measure). The record reveals no formal, public reason why the Council chose not to heed the City Attorney's advice and simply place the relaxation of term limits on the ballot as a stand-alone measure.

Accordingly, on August 2, 2007, the City Council placed on the ballot a comprehensive measure denominated "Charter Amendment and Ordinance Proposition R," or "Measure R" for short. This measure—which City Council President Eric Garcetti characterized as a "ballot initiative for November 2006 which includes ethics reforms and term-limit extensions," 2 J.A. 394—asked the voters to approve four amendments to the Los Angeles City Charter:

- relaxing term limits for City Council members by permitting them to serve as many as three terms rather than just two;

- prohibiting elective officers (and candidates for office) from soliciting contributions from lobbyists registered to lobby that office and prohibiting such lobbyists from making such contributions;

- requiring individuals and committees who make independent expenditures during a campaign to comply with any disclosure requirements imposed by ordinance; and

- prohibiting registered lobbyists from serving on commissions whose members must file financial disclosure statements.

1 J.A. 13-14. Additionally, Measure R proposed eight separately numbered amendments and additions to the Los Angeles City Code:

- changing the definition of "lobbying firm";

- changing the definition of "lobbyist";

- requiring each bidder on a city contract to include a statement indicating his agreement to comply with the disclosure requirements and prohibitions set forth in the Los Angeles Municipal Lobbying Ordinance;

- prohibiting lobbyists from making gifts to city officials and conversely prohibiting city officials from receiving such gifts;

- prohibiting elected officials from lobbying the City for a period of two years after leaving office;

- requiring city officials to participate in "ethics training" at least once every two years;

- requiring disclosure of independent expenditures made during election campaigns; and

- requiring candidates and campaign committees to disclose their sponsorship of campaign communications.

1 J.A. 15-22.

All of these charter and code changes, bundled together as Measure R, were approved by the voters of the City of Los Angeles at the November 7, 2006 statewide general election. *See* 2 J.A. 391-92, 444-49.

B. Superior Court Proceedings.

Appellants, who are electors of the City of Los Angeles, brought this challenge to the newly adopted Measure R on December 11, 2006. Their Verified Petition for Writ of Mandate named the County of Los Angeles (which administered the election) along with the City of Los Angeles as respondents and the Los Angeles City Council as the real party in interest. *See generally* 1 J.A. 1-73. After various fits and starts—including the City's peremptory challenge to the first assigned judge—the superior court heard the matter on the merits on July 16, 2007. *See* 2 J.A. 454 (ruling). Disputing no facts, the parties advanced purely legal arguments. *See* 1 J.A. 80-87, 102-16 (briefing).

The court issued a written ruling (later incorporated into the judgment) in favor of respondents the following day. The court did agree with appellants that Measure R "fails to comply with the single subject requirement," in that the City Council had "manipulat[ed] the initiative process by bundling together measures to force voters to accept all or none of them, when, if they were submitted to the voters separately, the voters would likely accept some and reject others." 2 J.A. 556. Nonetheless, the court denied the writ petition because it agreed with respondents that "the single subject requirement imposed by the [California] Constitution . . . does not apply" to Measure R. 2 J.A. 557.

On August 16, 2007, the superior court entered a final judgment in accord with its ruling in favor of respondents, and the clerk served a notice of entry of that judgment on the same day. *See* 2 J.A. 551-59, 560-61. Appellants timely moved to vacate the judgment pursuant to Code of Civil Procedure § 663; the court denied the motion on August 20, 2007. *See* 2 J.A. 562. On October 15, 2007, appellants timely filed a notice of appeal from both the judgment and the order denying their motion to vacate. *See* 2 J.A. 563-65.

C. Statement of Appealability.

The judgment appealed from is a final judgment denying appellants' petition for writ of mandate. As an order made after an appealable final judgment, the order appealed from is appealable under Code of Civil Procedure § 904.1(a)(2).

SUMMARY OF ARGUMENT

1. The single-subject rule applies to Measure R.

The California Constitution does not confer on any legislative body the power to submit manipulative ballot measures to the voters. That is, but for a brief exception that has long since been overturned, the people have never delegated any legislative authority that includes the power to propose ballot measures embracing more than one subject. The city councils of charter cities have no exemption from this fundamental structural limitation, for their power is only "as broad as" that of the state Legislature, which is constrained by the single-subject rule. The two rationales of that rule—avoiding logrolling and

voter confusion—apply with equal force to ballot measures proposed by city councils as to those proposed by the state Legislature or by the electorate.

2. Measure R violates the single-subject rule.

All provisions of a ballot measure must be germane to a common purpose or subject, which cannot be defined at a level of "excessive generality." A subject is excessively general if the number and scope of topics germane to it is "virtually unlimited."

Measure R's many and varied provisions fail this test. Any "subject" that can encompass provisions as disparate as changing Councilmember term limits from two terms to three terms, revising lobbyist registration thresholds, and requiring City employees to undergo ethics training (not to mention nine other changes to both the City Charter and the city code) is excessively general. This conclusion is reinforced by the fact that the City Council manipulated the electoral process with the knowledge that "many voters would vote one way on the anti-lobbying and ethics provisions of Measure R, and the opposite way on the term limits provisions, if they were given an opportunity."

3. Having been submitted to the voters in violation of the single-subject rule, Measure R must be invalidated.

The California Supreme Court recently considered whether severance or invalidation is the appropriate judicial response to a legislatively sponsored ballot measure containing more than a single subject, and the court chose the latter remedy. Under this rule, Measure R must be invalidated.

ARGUMENT

On undisputed facts, the superior court determined that (1) Measure R violates the single-subject rule but (2) the rule does not apply to Measure R. We address these two determinations in reverse order, showing that the latter was erroneous and the former correct. This Court's review is de novo. *See, e.g., City of Rancho Cucamonga v. Regional Water Quality Control Board*, 135 Cal. App. 4th 1377, 1384 (2006) ("The trial court's legal determinations receive a de novo review . . . .").

I. The Single-Subject Rule Applies to Measure R.

As prescribed by the California Constitution and as confirmed by the Elections Code, a city charter may not be amended unless and until the proposed amendment is submitted to—and approved by—a city's voters.[1] Here, the Los Angeles City Council desired to relax the term limits imposed on its own members by Section 206 of the City Charter. Consequently, as the City Attorney recognized, that desired relaxation "need[ed] a Charter amendment and, thus, a vote of the people." 1 J.A. 33. This appeal presents the question whether, in undertaking the constitutionally-mandated submission of that

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[1] *See* Cal. Const. art. XI, § 3(a) ("For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. . . . A charter may be amended, revised, or repealed in the same manner."); Elec. Code § 9255(a) ("The following city or city and county charter proposals shall be submitted to the voters . . . : (2) An amendment or repeal of a charter proposed by the governing body of a city or a city and county on its own motion. (3) An amendment or repeal of a city charter proposed by a petition signed by 15 percent of the registered voters of the city. . . .").

charter amendment to the voters of Los Angeles, the City Council was free to engage in what the California Supreme Court has recently called "logrolling-type manipulations"—that is, "combining two or more unrelated provisions in one measure, thereby forcing a single take-it-or-leave-it vote on matters that properly should be voted upon separately." *Californians for an Open Primary v. McPherson*, 38 Cal. 4th 735, 749, 781 (2006) ("*Open Primary*").

The City Council is unembarrassed to assert that indeed it has the unfettered power to present the voters with manipulative ballot measures, that is, measures containing "potentially deceptive combinations of unrelated provisions." *Senate v. Jones*, 21 Cal. 4th 1142, 1159 (1999) (quoting *California Trial Lawyers Association v. Eu*, 200 Cal. App. 3d 351, 359 (1988)). Appellants, on the other hand, will demonstrate herein that the City Council lacks such power because it is fundamentally incompatible with our state constitution's allocation of the people's reserved power to legislate.

A. The California Constitution Does Not Confer Any Power to Submit Manipulative Ballot Measures to the Voters.

Following the mid-nineteenth century trend in other states, California's first constitution provided that "[e]very law enacted by the Legislature shall embrace but one object, and that shall be expressed in its title." Cal. Const. of 1849, art. IV, § 25, *quoted in Open Primary*, 38 Cal. 4th at 777 n.48. The Constitution of 1879 "reaffirmed" this limitation, *id.* at 777, while changing it from a single-*object* rule to a single-*subject* rule: "Every Act shall embrace

but one subject, which subject shall be expressed in its title." Art. IV, § 24 (as adopted in 1879), *quoted in Open Primary*, 38 Cal. 4th at 777 n.49. (As slightly reworded and renumbered in 1966, the rule now provides: "A statute shall embrace but one subject, which shall be expressed in its title." Art. IV, § 9.) This change in language was not intended to alter the nature of the restriction; rather, those who framed the new constitution "accepted and generally endorsed retention of [the] rule from the Constitution of 1849." *Open Primary*, 38 Cal. 4th at 778.

As well as reaffirming the single-subject rule for proposed legislative acts, the Constitution of 1879 introduced what the California Supreme Court has called a "kindred" rule for proposed constitutional amendments, namely, the "separate-vote provision." *Id.* at 763. Thus, the new constitution authorized the Legislature to submit such amendments to the electorate; however, "should more amendments than one be submitted at the same election they shall be so prepared and distinguished by numbers or otherwise that each can be voted on separately." Cal. Const. art. XVIII, § 1 (as adopted in 1879), *quoted in Wright v. Jordan*, 192 Cal. 704, 711 (1923). (As rephrased in 1970, the provision now reads: "Each [proposed constitutional] amendment shall be so prepared and submitted that it can be voted on separately.") Since 1879, then, this rule has "restrict[ed] legislative authority to submit disparate proposed constitutional changes in a single measure." *Open Primary*, 38 Cal. 4th at 763. In substance, the separate-vote rule "has essentially the same effect as

the single subject rule": it requires "a showing that the challenged provisions are *reasonably germane* to a common theme, purpose, or subject." *Id.* at 777.

The Legislature, of course, is not the only body authorized to submit measures to the voters of this state. As amended in 1911, the California Constitution has recognized for nearly a century that "the people reserve to themselves the powers of initiative and referendum." Art. IV, § 1. The power of initiative is "the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them." Art. II, § 8(a). Since 1948, this power has been limited by yet another single-subject rule: "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." Art. II, § 8(d) (formerly Art. IV, § 1c).

The California Supreme Court immediately recognized that although this provision was "newly added extending the requirement to initiative constitutional amendments," the requirement that a measure embrace but a single subject "is not new in this state." *Perry v. Jordan*, 34 Cal. 87, 92 (1949) (citing the legislative single-subject rule formerly in Article IV, § 24 and now in Article IV, § 9). More recently, the court has equated the "restraint upon the *Legislature's* power to submit constitutional amendments to the voters" with the restraint "imposed upon the *people* through the initiative process." *Open Primary*, 38 Cal. 4th at 763.

The single-subject rule for initiatives set forth in Article II, § 8(d) does not expressly govern measures submitted to *local* voters. Nevertheless, the

Court of Appeal has consistently held that "[t]his rule applies to local as well as statewide initiatives." *Shea Homes Ltd. Partnership v. County of Alameda*, 110 Cal. App. 4th 1246, 1255 (2003); *accord Pala Band of Mission Indians v. Board of Supervisors*, 54 Cal. App. 4th 565, 582 (1997) (citing the single-subject rule as one of "the statewide limitations on the initiative and referendum power [that] apply in local elections"); *San Mateo County Coastal Landowners' Association v. County of San Mateo*, 38 Cal. App. 4th 523, 553 (1995) (assuming that the rule applied to the local initiative measure under review).

We may draw at least two conclusions from this survey of the constitutional landscape relating to ballot measures. First, the various single-subject rules, "despite their different phrasing, are kindred provisions that should be construed consistently—that is, as each having essentially the same substantive effect." *Open Primary*, 38 Cal. 4th at 765-66.

Second, the single-subject rule in its various manifestations has been a fundamental part of California's constitutional structure since 1849. That structure is animated by the theory that the

> reserved powers of the State reside primarily in the people; and they, by our Constitution, have delegated all their own powers to the three departments—legislative, executive and judicial—except in those cases where they have themselves exercised these powers, or expressly, or by necessary implication, reserved the same to themselves, to be exercised in the future.

Nougues v. Douglass, 7 Cal. 65, 69 (1857). In Article IV, § 1 of our constitution, the people so delegated their legislative power by "vest[ing]" it in the Legislature while "reserv[ing]" to themselves the power of initiative.

But in so doing, the people have consistently refused (save only for a relatively brief period and only with respect to initiatives) to confer on *anyone* who exercises legislative power the authority to submit to the voters measures "embracing more than one subject," that is to say, "potentially deceptive combinations of unrelated provisions." *Senate v. Jones*, 21 Cal. 4th at 1159. As we have shown:

- Every measure submitted to the statewide electorate by a proposal of the Legislature must satisfy the single-subject rule.
- Every measure submitted to the statewide electorate by an initiative of the people must satisfy the single-subject rule.
- Every measure submitted to the local electorate by an initiative of the people must satisfy the single-subject rule.

These limitations may be illustrated graphically:

	Voter initiative	**Legislative proposal**
Statewide measure	Article II, § 8(d), as construed in *Senate v. Jones*	Article IV, § 9 and Article XVIII, § 1, as construed in *Open Primary*
Local measure	Article II, § 8(d), as construed in *Shea Homes*, *Pala Band*, and *San Mateo*	

Given the foregoing, it would be fundamentally anomalous to conclude that in delegating legislative power to local bodies like the Los Angeles City Council, the people have conferred on such bodies—*and such bodies only*—the power to submit manipulative ballot measures to the voters. Yet that is

precisely what the City Council argues here. In accord with our long-standing constitutional tradition in California, that argument should be rejected.

B. Charter Cities Have No Special Power to Submit Manipulative Ballot Measures to the Voters.

As the California Supreme Court has observed, "[e]very California city possesses the general power to 'make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.'" *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 704 (1984) (quoting Cal. Const. art. XI, § 7). Furthermore, "charter cities have even greater authority: they have exclusive power to legislate over 'municipal affairs.'" *Id.* (quoting Cal. Const. art. XI, § 5(a)). Los Angeles is a charter city, and so the City Council has argued that this status gives it some kind of special power to submit manipulative ballot measures to the city's voters—a power that is (as we have demonstrated) denied to all other legislative actors. *See, e.g.*, 1 J.A. 110 ("[T]he Charter must be read as reserving to the City Council the right to propose . . . a ballot measure encompassing comprehensive reform [i.e., more than a single subject]."). As explained below, this argument has no merit.

The "municipal affairs" clause now embodied in Article XI, § 5(a) of the California constitution was adopted by the voters in the election of 1896. *See California Federal Savings & Loan Association v. City of Los Angeles*, 54 Cal. 3d 1, 13 (1991). The supreme court has expounded the genesis and purpose of the clause:

> [T]he historical impetus for adoption of the municipal home rule provision in 1896 was in part a series of decisions by this court holding that the power to adopt charters (and thus to adopt self-government) given cities by former section 8 (repealed June 2, 1970) of article XI of the Constitution could in effect be over-ridden by the language of then section 6 (now section 5) of article XI of the Constitution. It was to ensure that city charters could no longer "at once be superseded by . . . general legislative enactment" that the "municipal affairs" clause was proposed to and adopted by the voters.

Id. at 12 n.10 (citation omitted) (quoting *Ex Parte Braun*, 141 Cal. 204, 209 (1903)).

Thus, consistent with our constitution's theory of reserved powers, the "power of cities operating under freeholders' charters" was in 1896 "directly granted by the people of the state by the provisions of the state constitution." *Braun*, 141 Cal. at 211-12. To accept the City Council's argument is to conclude that in 1896, the people intended to grant to charter cities not simply a power of local self-government and a concomitant protection against interference by the state Legislature, but rather a new and superior political power to be exercised only by charter cities. Such a conclusion does not accord with long-established principles in this arena.

Just two months before it decided *Braun*, the California Supreme Court opined that the "power conferred by the constitution" on the governing body of a charter city is, within its proper sphere, "as broad as that of the legislature itself." *Odd Fellows' Cemetery Association v. City & County of San Francisco*, 140 Cal. 226, 231 (1903). More recently, the Court of Appeal used the

same language in recognizing that the power delegated by Article XI, §§ 5(a) and 7 of the state constitution is "as broad as that of the Legislature itself" within its proper sphere. *United Business Commission v. City of San Diego*, 91 Cal. App. 3d 156, 164 (1979) (quoting *Carlin v. City of Palm Springs*, 14 Cal. App. 3d 706, 711 (1971)). We have already seen that the Legislature's own power vis-à-vis ballot measures is constrained by the single-subject rule. Thus, in asserting a power to submit to the voters measures "embracing more than one subject," the Los Angeles City Council necessarily asserts a power not "as broads as" that of the California Legislature, but *broader*. This assertion cannot be countenanced.

We may profitably consider the issue from another perspective, asking just what authority the people intended to confer when they "directly granted" home rule to charter cities in 1896. *Braun*, 141 Cal. at 212. By that time, as we have documented above, the state constitution had for nearly two decades "restrict[ed] legislative authority to submit disparate proposed constitutional changes in a single measure." *Open Primary*, 38 Cal. 4th at 763. In these circumstances, is it reasonable to conclude that the people granted *un*restricted legislative authority to the governing bodies of charter cities, that is, authority to propose manipulative ballot measures? No, it is not reasonable.

To agree with the City Council here is to grant it and other local governing bodies a legislative power *not* just "as broad as that of the legislature itself," but one considerably broader. Indeed, it is truly to grant such bodies a

power possessed by no other lawmaking authority in California—not the Legislature, not the statewide electorate, not the local electorate. The home rule provisions of the state constitution do not mandate this anomalous result.

C. The Rationales of the Single-Subject Rule Apply with Full Force to Ballot Measures Proposed by City Councils.

Why limit the exercise of legislative power with a single-subject rule? The California Supreme Court has told us: "The single subject rule as applied to the initiative has the dual purpose of avoiding logrolling and voter confusion." *Harbor v. Deukmejian*, 43 Cal. 3d 1078, 1098 (1987). This very same "dual purpose" also animates the single-subject rule as applied to measures proposed by the Legislature: the rule "is designed to limit legislative power by barring submissions that otherwise might cause voter confusion or constitute 'logrolling.'" *Open Primary*, 38 Cal. 4th at 749. Related to voter confusion is the truth that placing "unrelated provisions" before the voters is likely to "obscure the electorate's intent with regard to each of the separate subjects included within the [measure], undermining the basic objectives sought to be achieved by the single-subject rule." *Senate v. Jones*, 21 Cal. 4th at 1168.

What is obvious about all of these rationales—and doubtless why they apply equally to initiatives and to measures proposed by the Legislature—is that the evils intended to be precluded by the rule have no connection to the *source* of the ballot measure. If logrolling improperly "forc[es] a single take-it-or-leave-it vote on matters that properly should be voted upon separately,"

Open Primary, 38 Cal. 4th at 749, the impropriety is surely present no matter who is forcing the vote—whether it be the statewide electorate, the Legislature, the local electorate, or (as here) the City Council. Likewise, if the voters will be confused (and their intent obscured) by a ballot measure that contains unrelated provisions, they will be confused (and their intent obscured) regardless of who placed that measure before them.

For all of these reasons, the single-subject rule that applies to all other lawmaking authorities in California applies to local governing bodies like the City Council here. Therefore, in submitting ballot measures like Measure R to the voters of Los Angeles, the Council was obligated to satisfy the single-subject rule. As set forth in the following part, the City Council failed in that constitutional obligation.

II. Measure R Violates the Single-Subject Rule.

The superior court ruled that if the single-subject rule is applicable to Measure R, the measure clearly violates the rule. In explaining why that ruling is correct, we first canvass the applicable law and then apply it to the facts of the present case.

A. All Provisions of a Ballot Measure Must Be Germane to a Common Purpose or Subject, Which Cannot Be Defined at a Level of Excessive Generality.

The single-subject rule requires that all provisions of a ballot measure be "reasonably germane" to a single subject. *Open Primary*, 38 Cal. 4th at 777 (legislative proposals); *Senate v. Jones*, 21 Cal. 4th at 1146 (initiatives).

Although the rule should not be applied "in an unduly narrow or restrictive fashion," *id.* at 1157, neither is it a "blank check" for sponsors of ballot measures to join "unduly diverse or extensive provisions," *id.* (quoting *Brosnahan v. Brown*, 32 Cal. 3d 236, 253 (1982)).

Some measures may be subject to challenge under the single-subject rule because they "contain one unrelated provision inserted within a lengthy proposition addressing a separate subject." *Id.* at 1159 (discussing *California Trial Lawyers Association v. Eu*, 200 Cal. App. 3d 351 (1988)). By contrast, other measures may be vulnerable to a single-subject challenge because they "contain[] a series of diverse provisions that ostensibly were related" to a subject of "excessive generality." *Id.* at 1159-60 (discussing *Chemical Specialties Manufacturers Association v. Deukmejian*, 227 Cal. App. 3d 663 (1991)). Measure R, which asked the voters to approve four charter amendments and eight revisions to the city code, is of the latter type. Consequently, we focus on the decisions addressing the excessive generality problem.

That phrase first appeared in *Brosnahan v. Brown*, in which the California Supreme Court opined that the single-subject rule "obviously forbids joining disparate provisions which appear germane only to topics of excessive generality such as 'government' or 'public welfare.'" 32 Cal. 3d at 253. The court applied this standard in *Harbor v. Deukmejian* to strike down a bill that had "fiscal affairs" as its asserted subject and "statutory adjustments" to the budget as its asserted object. 43 Cal. 3d at 1100. The court reasoned that

this subject and object "are too broad in scope," for the "number and scope of topics germane to 'fiscal affairs' . . . is virtually unlimited." *Id.* at 1100-01. More generally, to accept an excessively general subject of this kind "would effectively read the single subject rule out of the Constitution." *Id.* at 1101.

The Court of Appeal further applied the excessive generality standard in *Chemical Specialties*. Supporters of the challenged ballot measure argued that its various provisions embraced the single subject of "public disclosure, i.e., truth-in-advertising." 227 Cal. App. 3d at 670-71. The court concluded that this was a subject of excessive generality that could not satisfy the single-subject rule: "providing the public with accurate information in advertising is so broad that a virtually unlimited array of provisions could be considered germane thereto and joined in this proposition, essentially obliterating the constitutional requirement." *Id.* at 671; *see also Senate v. Jones*, 21 Cal. 4th at 1159-60 (approving this conclusion).

Finally, in *Senate v. Jones*, the supreme court again faced the problem. The proponents of the ballot measure sought to justify the joinder of disparate subjects—changing the compensation of legislators and other state officers, and transferring the power of reapportionment from the Legislature to the supreme court—"on the theory that because each of the substantive sections of [the measure] contains a provision for voter approval, 'voter approval' properly may be viewed as the single subject to which all of the measure's provisions are reasonably germane." 21 Cal. 4th at 1162. The court rejected this

theory, finding "voter approval" (or even "voter approval of political issues") to be excessively general, such that treating it as a proper subject for purposes of the single-subject rule would "essentially obliterat[e] the constitutional requirement." *Id.* (quoting *Chemical Specialties*, 227 Cal. App. 3d at 671).

In sum, the single-subject rule forbids a legislative body to submit to the voters a measure containing diverse or extensive provisions that are not reasonably germane to one another. Such a measure cannot be saved by identifying as its "subject" a topic of excessive generality.

B. Measure R's Varied Provisions Fail this Test.

In the present case, the City Council asserts "[r]educing the influence of lobbyists and special interests in City government" as the unifying theme tying together Measure R's many and varied provisions. 1 J.A. 111. The superior court ruled both unequivocally and emphatically that this assertion had "no merit," such that the measure "fails to comply with the single subject requirement." 2 J.A. 556.

Before explaining why the superior court's ruling was right, we pause to observe that the City Attorney was (prior to this litigation at least) in full agreement. Thus, in his report to the City Council, the City Attorney acknowledged that "the municipal ordinance that [the] Council seeks to place before the voters *is not directly related* to the Charter Amendment to lengthen term limits." 1 J.A. 33 (emphasis added). He further acknowledged that the "proposed ballot measure consists of Charter amendments on *four* subject-areas,"

plus an ordinance that would address no fewer than *six* additional subjects. 1 J.A. 34 (emphasis added).

Combining amendments to the Los Angeles City Charter with amendments and additions to the Los Angeles City Code, Measure R asked voters to approve legislation that would (in the City Council's own words) do all of the following:

> change Councilmember term limits to three terms;
>
> restrict lobbyists from making campaign contributions [or] gifts and [from] becoming commissioners;
>
> revise lobbyist registration thresholds;
>
> require contractors [to] certify compliance with lobbying laws;
>
> extend elected officials' post-employment restrictions;
>
> require ethics training; and
>
> revise requirements for independent expenditures and campaign contributions.

1 J.A. 9 (City Council's ballot title). In twelve separate sections, the measure proposed to amend or add to Section 208 of the Charter; Section 470(c) of the Charter; Section 470(*l*) of the Charter; Section 501(d) of the Charter; Section 48.02 of the Code (two separate amendments); Section 48.09(H) of the Code; Section 49.5.10(A)(4) of the Code; Section 49.5.11(D) of the Code; Section 49.5.18 of the Code; Section 49.7.26 of the Code; and Section 49.7.26.3 of the Code. *See* 1 J.A. 13-23.

While several of these provisions deal with lobbyists, other provisions deal with campaign finance and communication. Still others concern the distinctly separate subject of term limits for City Council members. The various provisions can be said "reasonably germane" to one another only at the level of *excessive generality*, which fairly describes the City's proffered "subject" of "reducing the influence of lobbyists and special interests in City government." Indeed, if a provision weakening term limits by increasing the limit from two terms to three terms can really be included within this subject—on the theory that "extending term limits for City Council members allows them more time to develop expertise and commensurately decreases the power of entrenched lobbyists," 1 J.A. 111—then it can only be said that the "number and scope of topics germane to ['reducing the influence'] in this sense is virtually unlimited." *Harbor*, 43 Cal. 3d at 1100-01.

The City Council tries to analogize Measure R to Proposition 140, the measure that was upheld against a single-subject challenge in *Legislature v. Eu*, 54 Cal. 3d 492, 512-14 (1991). But that measure introduced only "three separate reforms," *id.* at 500, each of which "relate[d] to the furtherance of a common purpose," namely, limiting the powers of incumbency, *id.* at 514. In addition, there was no suggestion that Proposition 140 was an attempt to entice the voters to approve provisions distasteful to them by bundling such provisions with more palatable ones. Here, by contrast, the superior court found that the City Council manipulated the electoral "process by bundling together

measures to force voters to accept all or none of them," cynically aware that "many voters would vote one way on the anti-lobbying and ethics provisions of Measure R, and the opposite way on the term limits provisions, if they were given an opportunity" to do so. 2 J.A. 556.

Nor is Measure R akin to the Political Reform Act of 1974, which was upheld against a single-subject challenge in *Fair Political Practices Commission v. Superior Court*, 25 Cal. 3d 33, 37-43 (1979) ("*FPPC*"). In adding a single new major division to the California Government Code (Title 9, starting with § 81000), the Act "deal[t] comprehensively and in detail with an area of law." 25 Cal. 3d at 41. Measure R, by contrast, dealt with numerous specific items scattered over numerous provisions of both the Los Angeles City Charter and the Los Angeles City Code. Provisions as disparate and narrowly focused as "term limits," "lobbyist registration thresholds," and "ethics training," 1 J.A. 9, cannot be said to constitute "*an* area" of law.

In *Senate v. Jones*, the California Supreme Court emphasized that its decisions in *FPPC*, *Legislature v. Eu*, and other cases sustaining ballot measures against single-subject challenges should not be read to suggest that proponents "are given blank checks to draft measures containing unduly diverse or extensive provisions bearing no reasonable relationship to each other or to the general object which is sought to be promoted." 21 Cal. 4th at 1157-58 (quoting *Brosnahan v. Brown*, 32 Cal. 3d at 253).

The superior court was correct to conclude that upholding Measure R against Petitioners' single-subject challenge would be to give the Los Angeles City Council that blank check. For the reasons forth above, this Court should affirm the superior court on this point and hold that Measure R does indeed violate the single-subject rule.

III. Having Been Submitted to Voters in Violation of the Single-Subject Rule, Measure R Must Be Invalidated.

Although the various single-subject rules in the California Constitution are analyzed in the same manner, *see, e.g., Open Primary*, 38 Cal. 4th at 777, the remedies for violations of the rules are not all the same. Thus, when the Legislature fails to abide by the restriction on its power to enact statutes, the remedy is severance: "If a statute embraces a subject not expressed in its title, only the part not expressed is void." Cal. Const. art. IV, § 9.

But the remedy is different for ballot measures. For initiatives in particular, the constitution decrees: "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." Art. II, § 8(d). Courts have enforced this restriction both by barring measures from the ballot, *see, e.g., Senate v. Jones*, 21 Cal. 4th at 1168, and by striking them after the election as void, *see, e.g., Chemical Specialties*, 227 Cal. App. 3d at 673. For legislatively sponsored ballot measures the constitution does not expressly specify a remedy. Nonetheless, after a thorough review of the issue, the California Supreme Court recently concluded that severance (or its twin,

bifurcation) was *not* an appropriate remedy for violation of the single-subject rule in that context. Rather, the only appropriate remedy is invalidation. *See Open Primary*, 38 Cal. 4th at 781-82.[2]

Under this rule, Measure R must be invalidated. As in *Senate v. Jones*, if the supporters of the measure's various provisions "wish to place such unrelated proposals before the voters, the constitutionally permissible means to do so is through the submission . . . separate [ballot] measures, rather than the 'take it or leave it' approach embodied in [Measure R]" as it was submitted to the voters. 21 Cal. 4th at 1168.

CONCLUSION

"[T]he single-subject requirement serves an important role in preserving the integrity and efficacy of the initiative process. In this regard, it bears emphasis that proper application and enforcement of the single-subject rule . . . constitutes an integral safeguard against improper manipulation or abuse of that process." *Senate v. Jones*, 21 Cal. 4th at 1158. These safeguards are equally important whether the manipulative ballot measure is submitted to the voters by the statewide electorate, the local electorate, the state Legislature, or (as here) the Los Angeles City Council.

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[2] In *Open Primary* itself, the court ruled that invalidation would be inappropriate "under the unusual circumstances of this case," namely, that there were "two approved measures, each of which . . . was separately approved by the voters after this court, in the face of the then impending election, declined to stay the Court of Appeal's bifurcation order." *Id.* at 782. Obviously, those "unusual circumstances" are not present here.

For these reasons, the judgment of the superior court must be reversed, and the case remanded to that court with instructions to grant appellants' petition for writ of mandate to invalidate Measure R.

Dated: March 27, 2008.

Respectfully submitted,

Eric Grant
Anthony T. Caso
Sterling E. Norris

By ________________________
Eric Grant

Attorneys for Appellants DAVID HERNANDEZ and TED HAYES

CERTIFICATE OF LENGTH

I, Eric Grant, certify that the foregoing brief contains 6,393 words, as calculated pursuant to Rules of Court 8.204(c).

____
Eric Grant

CERTIFICATE OF SERVICE

I, Eric Grant, hereby certify as follows:

I am an active member of the State Bar of California, and I am not a party to this case. My business address is Eric Grant, Attorney at Law, 8001 Folsom Boulevard, Suite 100, Sacramento, California 95826.

On March 27, 2008, I served the foregoing document, namely:

APPELLANTS' OPENING BRIEF

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Clerk
Appellate Division
Los Angeles Superior Court
Stanley Mosk Courthouse
111 North Hill Street, Room 111A
Los Angeles, California 90012
For delivery to the trial judge

Ms. Judy W. Whitehurst
Principal Deputy County Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012
Telephone: (213) 974-1845
Facsimile: (213) 617-7182
Attorneys for Respondent County of Los Angeles

Mr. Rockard J. Delgadillo, City Attorney
Ms. Valerie L. Flores, Managing Assistant City Attorney
Mr. Harit U. Trivedi, Deputy City Attorney
Office of the Los Angeles City Attorney
200 North Main Street, Room 800, City Hall East
Los Angeles, California 90012
Telephone: (213) 978-7100
Facsimile: (213) 978-8787
*Attorneys for Respondents City of Los Angeles
and Los Angeles City Council*

____

Eric Grant