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NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI ^{LLP}
Christopher E. Skinnell, Esq. (S.B. No. 227093)
Hilary J. Gibson, Esq. (S.B. No. 287862)
2350 Kerner Boulevard, Suite 250
San Rafael, California 94901
Telephone: (415) 389-6800
Facsimile: (415) 388-6874
Email: cskinnell@nmgovlaw.com
Email: hgibson@nmgovlaw.com

Attorneys for Plaintiff/Petitioners
CALIFORNIA APARTMENT
ASSOCIATION, AHNI DODGE, SIMON
GIBBONS, MARGARET MORGAN,
DANIELLE MOSKOWITZ, & TYLER
WERRIN

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CALIFORNIA APARTMENT ASSOCIATION,
AHNI DODGE, SIMON GIBBONS,
MARGARET MORGAN, DANIELLE
MOSKOWITZ, & TYLER WERRIN,

Plaintiffs and Petitioners,

vs.

CITY OF PASADENA, PASADENA CITY
COUNCIL, and DOES 1-10,

Defendants and Respondents.

MICHELLE WHITE, RYAN BELL, and
AFFORDABLE PASADENA,

Intervenor-Defendants/Respondents

Case No. 22STCP04376

**PLAINTIFFS' MOTION FOR
JUDGMENT ON THE WRIT AND
MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT
THEREOF**

Assigned for all purposes to Hon.
Mary H. Strobel, Dept. 82

Petition filed Dec. 16, 2022

DATE: March 28, 2023
TIME: 9:30 a.m.

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 NOTICE IS HEREBY GIVEN that on March 28, 2023, at 9:30 A.M., in
3 Department 82 of this Court located at 111 North Hill Street, Los Angeles, California
4 90012, Plaintiffs & Petitioners will move for the issuance of a peremptory writ of
5 mandate declaring Pasadena’s Measure H, approved by the voters at the November
6 2022 election, to be invalid. The motion is made on grounds that:

- 7 (1) Due to the breadth of its changes to Pasadena’s basic governmental
8 structure, Measure H proposes an unlawful *revision* to the Pasadena City
9 Charter, which may not be enacted by voter-circulated initiative, rather
10 than a lawful *amendment*, which may be enacted by voter initiative;
- 11 (2) Measure H conditions the right to hold the office of Rental Housing Board
12 member on a property qualification (and imposes such condition on a
13 supermajority of seats on the Rental Housing Board) in violation of the
14 California and United States Constitutions; and
- 15 (3) Various provisions of Measure H conflict with, and are therefore
16 preempted by, controlling state law, including the Costa-Hawkins Rental
17 Housing Act, Civ. Code § 1954.50 *et seq.* (“Costa-Hawkins”); the Ellis Act,
18 Govt. Code § 7060 *et seq.*; the State’s unlawful detainer statutes, Code Civ.
19 Proc. § 1159 *et seq.*; and various other state law provisions governing
20 rental housing.

21 This motion is based on this notice and motion, the accompanying memorandum
22 of points and authorities, Plaintiffs’ Record, filed herewith, and such further evidence
23 and briefing as may be filed in connection with this motion.

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Dated: February 24, 2023

NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP

By: 

Christopher E. Skinnell

Attorneys for Plaintiff/Petitioners
CALIFORNIA APARTMENT
ASSOCIATION, AHNI DODGE, SIMON
GIBBONS, MARGARET MORGAN,
DANIELLE MOSKOWITZ, & TYLER
WERRIN

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1 **I. INTRODUCTION.**

2 Initially adopted in 1900, Pasadena’s City Charter was comprehensively revised
3 in 1968¹ to establish the fundamental framework for the City’s government that
4 remains in effect today: a “council-manager” form of government, in which all of the
5 City’s legislative and quasi-judicial powers reside with a Mayor and seven
6 councilmembers (collectively acting as the City Council), and all the City’s executive
7 and administrative powers reside with the Mayor and City Manager. *See* Plaintiffs’
8 Record (hereafter “Rec.”), pp. 83, 85-86 & 88-90 (Charter §§ 401, 406-410, 601 & 604).²

9 The initiative entitled the “Pasadena Fair and Equitable Housing Charter
10 Amendment,” narrowly approved by the voters of Pasadena as Measure H at the
11 November 2022 election and challenged herein, seeks to fundamentally alter this basic
12 form of government.³ It creates a new “Rent Board” that would operate entirely
13 independently of the rest of the City government and would usurp the Council’s and
14 City Manager’s executive and legislative powers in a host of ways. Among the core
15 powers conferred upon the Rent Board (and thereby stripped away from the Council
16 and City Manager) are the powers to (1) enact law to administer and enforce the rent
17 control law; (2) establish its own budget, free from the normal City budgeting process
18 (in which the Mayor and City Manager propose a budget for consideration, revision and
19 adoption by the Council); (3) set fees, in its discretion, to support its budget and set
20 penalties for violations of its rules; (4) “request and receive funding... from any
21 available source including the City for its reasonable and necessary expenses”; (5) hire
22 and fire its own staff and consultants; (6) file or intervene in court actions; (7) retain its
23 own counsel. *See* Measure H at § 1811(e), (f), (l) & (n) (Rec. 43-46). In sum, Measure H
24

25 ¹ *See* Cal. Stats. 1968, Res. Ch. 167, pp. 3223-3264, available online at
26 https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1968/68Vol2_Chapters.pdf#page=1499 (last visited Feb. 14, 2022).

27 ² A true and correct copy of the pre-existing Pasadena Charter is included in the Rec. at pp.
78-125. *See also* Rec. 137 (Skinnell Decl., ¶ 6, certifying authenticity).

28 ³ A true and correct copy of the full text of Measure H is included in the Rec. at pp. 19-61.
See also Rec. 136 (Skinnell Decl., ¶ 3, certifying authenticity).

1 effectively sets up a new, independent “branch” of municipal government in Pasadena.

2 The U.S. and California Constitutions, state statutes, and judicial decisions all
3 dictate that Measure H is improper and invalid for the following reasons:

4 (1) Due to the breadth of its changes to Pasadena’s basic governmental
5 structure, Measure H proposes an unlawful *revision* to the Pasadena City
6 Charter, which may not be enacted by voter-circulated initiative, rather
7 than a lawful *amendment*, which may be enacted by voter initiative;

8 (2) Measure H guarantees that a supermajority of Rental Housing Board
9 members, who are then also given preferential voting status, be tenants
10 who do not hold—and whose extended family members do not hold—a
11 “material interest in rental properties” in Los Angeles County, in violation
12 of the California and United States Constitutions; and

13 (3) Various provisions of Measure H conflict with, and are preempted by,
14 controlling state law, including the Costa-Hawkins Rental Housing Act,
15 Civ. Code § 1954.50 *et seq.* (“Costa-Hawkins”); the Ellis Act, Govt. Code §
16 7060 *et seq.*; the State’s unlawful detainer statutes, Code Civ. Proc. § 1159
17 *et seq.*; and various other state law provisions governing rental housing.

18 Petitioners do not suggest that rent control boards are *per se* impermissible; that
19 other cities’ rent control boards are illegal; or even that the voters cannot approve a
20 ballot measure creating such a board, provided the revision is submitted to them by the
21 Council or by a charter commission as provided by the Constitution and state law. But
22 Measure H runs afoul of the requirements of the Constitution and state law in the key
23 respects outlined above and is therefore void. A writ of mandate should therefore issue,
24 declaring Measure H void and unenforceable.

25 **II. FACTUAL BACKGROUND.**

26 On November 8, 2022, the voters of Pasadena narrowly approved Measure H,
27 which, among other things, adopts rent control provisions, “just cause” eviction
28 protections, a tenant buyout program, a rental registry, and creates an 11-member

1 appointed Rental Housing Board (“Rent Board”) with broad powers to regulate on these
2 matters, wholly independent of the City Council, City Manager, City Attorney and the
3 rest of the City administration.⁴ The election results were certified by the City Council
4 on December 12, 2022.⁵ This action was filed on December 16, 2022, and the measure
5 was certified by the Secretary of State on or about December 19.⁶

6 Measure H was proposed via voter-circulated initiative petition pursuant to
7 California Elections Code § 9255 *et seq.* (Rec. 5 [Pet., ¶ 14]; Rec. 147 & 161 [Answers].)

8 Each of the individual Petitioners are residents and registered voters in
9 Pasadena who voted in the November 2022 election, and all have paid sales and
10 property taxes within Pasadena in the past year. (Rec. 126-41.) Petitioners Dodge,
11 Gibbons, Morgan, and Werrin have interests in rental properties within the City of
12 Pasadena that would be subject to Measure H’s provisions. (Rec. 126-32, 141.) All five
13 of the individual Petitioners would be interested in serving on the Rent Board (*id.*; Rec.
14 133-34), but all have interests in rental properties in Los Angeles County that would
15 bar them from serving as “district” representatives on the Rent Board, who are
16 guaranteed a supermajority and who are given preferential status. (*Id.*; *see also* Rec.
17 25-26, 42-43 [Measure H at § 1811(a) & § 1803(i) & (g)].) Petitioner California
18 Apartment Association is the largest statewide rental housing trade association in the
19 country, representing more than 50,000 rental property owners and operators who are
20 responsible for nearly two million rental housing units throughout California. It has
21 many members in Pasadena who are subject to Measure H. (Rec. [Bannon Decl.])⁷

22 **III. STANDARD OF REVIEW.**

23 When a writ of mandate presents only questions of law, the Court may determine
24

25 ⁴ Rec. 19-61 (Measure H text), Rec. 62-66 (resolution calling election), Rec. 67-68 (ballot
26 label), Rec. 69-77 (election results) and Rec. 136-37 (Skinnell Decl., ¶¶ 3-5, re authenticity).

27 ⁵ Rec. 69-77, 137.

28 ⁶ Rec. 137 (Skinnell Decl., ¶ 7).

⁷ In their answers, neither Respondents nor Intervenors challenge Petitioners’ standing to
bring this action, so Petitioners do not address that issue at length here but instead incorporate
their briefing on this issue from the January 5 application for temporary restraining order.

1 the matter upon a noticed motion. Code. Civ. Proc. § 1094. That is the case here. *See*
2 *Mission Springs Water Dist. v. Verjil*, 218 Cal. App. 4th 892, 908 & 910 (2013) (whether
3 initiative is an amendment or a revision is a question of law); *Socialist Party v. Uhl*,
4 155 Cal. 776, 789 (1909) (application of prohibition on property qualifications in voting
5 and office-holding decided as a matter of law on petition for writ of mandate); *Tri Cty.*
6 *Apartment Ass’n v. City of Mountain View*, 196 Cal. App. 3d 1283, 1287 (1987) (whether
7 state law preempts local enactment is a question of law).

8 **IV. THE INITIATIVE POWER CAN ONLY BE USED TO “AMEND” CITY**
9 **CHARTERS, NOT “REVISE” THEM.**

10 California Constitution article XI, § 3(b), permits a city’s voters to propose an
11 *amendment* to the city charter, but provides that only the city council or a charter
12 commission can propose a *revision* to the city charter: “[T]he governing body or charter
13 commission of a county or city may propose a charter or revision. Amendment or repeal
14 may be proposed by initiative or by the governing body.” *See also* Elec. Code § 9255(c)(1)
15 (same); *Rossi v. Brown*, 9 Cal. 4th 688, 698 (1995) (state law controls process of altering
16 city charters). The California Supreme Court has explained the reason for this
17 dichotomy (which also applies to proposals to alter the State’s constitution as well): “the
18 revision provision is based on the principle that ‘comprehensive changes’ to the
19 Constitution require more formality, discussion and deliberation than is available
20 through the initiative process.” *Legislature v. Eu*, 54 Cal. 3d 492, 506 (1991). That same
21 principle is equally applicable to a city charter, which is often referred to as the city’s
22 “constitution.” *See Woo v. Superior Court*, 83 Cal. App. 4th 967, 974 (2000).

23 Whether a given proposal constitutes a “revision” (as opposed to an amendment)
24 can be measured either quantitatively—by its length and/or the number of sections it
25 affects—or qualitatively—by the degree of impact on the “nature of our basic
26 governmental plan,” regardless of length. *Legislature v. Eu*, 54 Cal. 3d at 506 (quoting
27 *Amador Valley Jt. Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208,
28 223 (1978)). Substantial changes to either may constitute a revision. *Raven v.*

1 *Deukmejian*, 52 Cal. 3d 336, 350 (1990). Measure H is a “revision” by either metric.

2 **A. Quantitative Revision: Measure H Nearly Doubles the Length of**
3 **the Existing Charter.**

4 Quantitatively, Measure H adds 42 pages to the Pasadena Charter, which was
5 previously only 47 pages, thereby almost doubling the length. Measure H consists of
6 18,362 words, compared to the pre-existing 24,213 words, increasing the total word
7 count by approximately 75%. It adds 24 new sections, consisting of hundreds of new
8 subsections; the existing charter consists of approximately 166 sections, meaning
9 Measure H increases the total number of sections by about 15%. *Compare* Rec. 19-61
10 (Measure H) *with* Rec. 78-125 (existing charter).

11 On this score, *McFadden v. Jordan*, 32 Cal. 2d 330 (1948), is instructive. In that
12 case, a proposed measure sought to add a new article to the Constitution “to consist of
13 12 separate sections (actually in the nature of separate articles) divided into some 208
14 subsections (actually in the nature of sections) set forth in more than 21,000 words.” 32
15 Cal. 2d at 334. In comparison, the Constitution at that time “contain[ed] 25 articles
16 divided into some 347 sections expressed in approximately 55,000 words.” *Id.* In other
17 words, the proposal in that case only increased the word count by about 38% (compared
18 to 75%) and Measure H’s increase of 15% in the number of sections exceeds that at issue
19 in *McFadden* (12 / 347 = 3.5%). The *McFadden* court found the proposed change to
20 constitute an invalid constitutional revision, and by essentially any quantitative
21 measure the changes wrought by Measure H are more quantitatively substantial.

22 **B. Qualitative Revisions: Altering the Basic Structure of Pasadena**
23 **City Government.**

24 Perhaps even more important are the qualitative impacts. Measure H also
25 fundamentally alters the basic structure of the City’s government in a variety of ways.

26 **1. Measure H confers sweeping powers on the Rent Board that**
27 **usurp essential legislative and executive functions from the**
28 **City Council, Mayor, and City Manager.**

First, it creates a new, unelected body that is “an integral part of the government

1 of the City,” that that “shall exercise its powers and duties under [Measure H]
2 *independent from the City Council, City Manager, and City Attorney*, except by request
3 of the Rental Board.” Measure H § 1811(m). And it vests that Board with exclusive
4 powers over one of the most fundamental policy issues in California—housing—which
5 would otherwise be the exclusive purview of the City Council exercising its legislative
6 powers and the City Manager exercising the City’s executive function.⁸

7 Not only is the Board vested with the authority to, in relevant part, set rents,
8 provide for adjustment of rental rates, adjudicate petitions seeking relief from rates,
9 and hold quasi-judicial hearings, Measure H also empowers the Board to: (1) enact law
10 to administer and enforce the rent control law; (2) establish its own budget, free from
11 the normal City budgeting process, in which the Mayor and City Manager propose a
12 budget for consideration, revision and adoption by the Council;⁹ (3) set fees, in its
13 discretion, to support its budget and set penalties for violations of its rules; (4) “request
14 and receive funding... from any available source including the City for its reasonable
15 and necessary expenses”; (5) hire and fire its own staff and consultants; (6) file or
16 intervene in court actions; and (7) retain its own counsel. § 1811(e), (f), (l) & (n).

17 Here again, *McFadden* is instructive. In that case, one of the most significant
18 elements of the proposal that the Court held to be an impermissible revision was the
19 creation of a state “pension commission” with comprehensive governmental powers to
20

21 ⁸ Compare, e.g., Pasadena City Charter §§ 408 (vesting powers of the City in the City Council
22 and providing that the “City Council is empowered to carry into effect the provisions of this
23 Charter, to execute the powers vested in the City, and to perform all duties and obligations
24 imposed upon the City by State law”), 409 (City Council has power over all City departments,
25 agencies, boards, committees, and commissions), 410 (Council is given the complete power to
26 “provide for the organization of all city operations and activities,” including by creating and
27 abolishing departments, commissions, boards, etc., and specifying their powers and duties), 604
28 (delegating the City’s executive and administrative powers to the City Manager, including the
powers to “supervise, coordinate and administer the various functions of the City”; enforce city
laws; hire, fire, and supervise employees; prepare the annual budget) *with, e.g.*, Measure H §
1811(e) (specifying powers and duties of Rental Housing Board); § 1811(m) (Rental Housing
Board is entirely independent from City Council and Council has no authority over same); §
1811(n) (Rental Housing Board authority to obtain independent legal counsel).

⁹ See Pasadena City Charter §§ 901-913.

1 be exercised by five commissioners. The Court held that “[t]he delegation of far reaching
2 and mixed powers to the commission, largely, if not almost entirely in effect, unchecked,
3 places such commission substantially beyond the system of checks and balances which
4 heretofore has characterized our governmental plan.” *McFadden*, 32 Cal. 2d at 348.
5 Likewise, here, the Rent Board operates entirely “independent from” the rest of
6 Pasadena municipal government, *see* § 1811(m), with “far reaching and mixed powers”
7 that are “largely, if not almost entirely in effect, unchecked.”

8 **2. Measure H interferes with the Council’s essential**
9 **governmental functions regarding budgeting and fiscal**
10 **planning.**

11 For evidence that the Rent Board is given powers that are largely unchecked,
12 one need look no further than Measure H’s fiscal provisions. The Board is given
13 unfettered power to set its own expenditures and raise its own revenues. *See* Measure
14 H at § 1811(e)(10), (l) & (n).

15 Indeed, it is even given the power to demand funds from the General Fund and
16 has no obligation to restore them. Section 1811(l)(2) provides that the City “*shall*
17 advance all necessary funds to ensure the effective implementation of this Article, until
18 the Rental Board has collected Rental Housing Fees sufficient to support the
19 implementation of this Article. The City *may* seek reimbursement of any advanced
20 funds from the Rental Board after the Rental Housing Fee has been collected.”
21 (Emphasis added.) These initial start-up funds have been estimated at approximately
22 \$6 million dollars (Rec. 173), and the City Manager and City Attorney have advised the
23 Council that while it “*may*” seek reimbursement of those outlays, the Rent Board is
24 under no obligation to agree to return that expenditure:

25 Mayor (Victor Gordo): Well, in terms of the budget, the anticipated cost for
26 standing this up and then operating the rental board?

27 City Manager (Miguel Marquez): Well, my understanding is that when it went
28 through the process, there was an impartial analysis. I wasn’t here at the time,
but I understand it was, and I can’t remember the exact number, somewhere
between five and six million dollars.

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Mayor: And will staff come back with a recommendation to allocate and appropriate those dollars? And where do we anticipate the dollars coming from?

City Manager: Yes, we will come back with that. Recommend that appropriation that’s required by the charter, and it is the charter amendment that’s under law.

Mayor: Okay.

City Manager: *The Charter Amendment does say that the city may seek reimbursement, but it’s not something that is guaranteed within the Charter Amendment itself. And we’ll have to give some thought to exactly where the dollars come from, in light of the upcoming more broad budget process that we are starting to think about for this next fiscal year.*

Mayor: *I do think we should give some thought to where the 5.2 million or so dollars come from, and whether the... so the initiative says, the city may seek reimbursement, but ultimately it’s not in the city’s hands. It’s in the board’s hands to make the determination whether or not the city receives reimbursement?*

City Manager: *That’s my understanding, yes.*

Mayor: *Okay, Madam City Attorney?*

City Attorney (Michele Beal Bagneris): **Yes.** And remember we’re just talking in this agenda item, about the process for... I’m sorry, for selecting the board members. We shouldn’t deviate too much from that.

Mayor: Okay, fine. I just think that part of the budget process staff should factoring that issue, and frankly, the community should start factoring that issue as well.

(Rec. 172-74 [emphasis added].)

All of the changes discussed above are substantial usurpations of the Council’s core legislative and City Manager’s core executive powers, but the fact that the Board is given independent authority to raise its own revenues, appropriate its own expenditures, and even demand money from the General Fund is particularly significant, because “neither the initiative nor the referendum may be used in a manner which interferes with a local legislative body’s responsibility for fiscal management.” Carlson v. Cory, 139 Cal. App. 3d 724, 731 (1983). Currently, the City’s budget is proposed by the City Manager and Mayor and approved by the Council. See Charter §§ 604(H), 901-908. Measure H sets up an independent, competing center of fiscal power.

1 This is no small matter, because all California local governments, including the
2 City of Pasadena, are subject to a constitutional spending limit, known as the “Gann
3 Limit.” CAL. CONST. art. XIII B. The Gann Limit operates to control government
4 spending by prohibiting State and local governments from spending certain “proceeds
5 of taxes” (*i.e.*, revenues received) beyond their annually adjusted spending limit. CAL.
6 CONST. art. XIII B, §§ 1 & 8(h). Excess revenue (the amount that exceeds the spending
7 limit), must be refunded to taxpayers in the form of tax credits and fee reductions. *Id.*
8 at § 2(a)(2), (b). Here, the Rent Board has the power to unilaterally set revenue for its
9 operations. Thus, it would be possible for the Board to unilaterally increase overall City
10 revenue by an amount that would trigger automatic tax refunds.

11 Of course, revenue is only half of the equation relative to the Gann Limit. Here,
12 the independent Rent Board will also have complete authority to determine its own
13 expenditures. It has complete authority to hire its own staff, establish their
14 compensation, maintain offices and equipment, and enforce its actions, at whatever cost
15 the Board deems appropriate. Those expenditures will also become part of the Gann
16 Limit formula, thereby affecting the City in a manner over which it has *no control*.

17 The Gann Limit is more easily managed when the Council can control both sides
18 of the budget equation—revenues and expenditures. Measure H deprives the Council
19 of that power. It thus threatens essential government functions and exceeds the power
20 of initiative. *See Carlson*, 139 Cal. App. 3d at 731; *Citizens for Jobs & the Econ. v. Cty.*
21 *of Orange*, 94 Cal. App. 4th 1311, 1327-31 (2002) (striking down initiative as beyond
22 the power of the electorate because it impermissibly “interfere[d] with the essential
23 government functions of *fiscal planning* and land use planning” (emphasis added));
24 *Totten v. Bd. of Supervisors*, 139 Cal. App. 4th 826, 840 (2006) (initiative exceeded the
25 powers of the electorate because it “would seriously impair the board of supervisors’
26 essential governmental function of managing the county’s financial affairs”).

1 **3. Measure H authorizes greater compensation for Rent Board**
2 **members, by far, than for the Mayor, Council, or any other**
3 **appointed Board.**

4 Another significant, related change: members of the Rent Board will be entitled
5 to compensation at a rate (2.5 x the minimum wage, up to 1,040 hours per year) that
6 *far* outstrips any other appointed body in the City and could even result in
7 compensation (up to \$48,981 per year) that is double the maximum permitted to a
8 member of the Council (maximum of \$20,911 per year) and one-third higher than the
9 maximum permitted the Mayor (\$31,365 per year). (Rec. 175-87.) The only city
10 appointed body that was previously compensated at all was the Planning Commission,
11 and its members only receive a \$50/meeting stipend. (*See* Pas. Muni. Code § 2.105.125.)

12 **4. Measure H alters the essential powers of recall and removal**
13 **and allows a small minority of residents to remove Board**
14 **members *without a vote of the people.***

15 With respect to every other appointed board or commission, the Charter permits
16 the City Council to remove members at will, *see* Charter § 410. With respect to the Rent
17 Board, however, Measure H deprives the City Council of that authority (and, indeed, it
18 appears to prevent the Council from removing Board members at all, even for cause).
19 Measure H also expands the right of recall, which pursuant to state and City law has
20 heretofore been available only for the removal of *elected* officials, to *appointed* Rental
21 Housing Board members. § 1811(d). And it further alters that power by providing that
22 the successful circulation of a recall petition by a small minority of the Board members'
23 constituency (10% for a district member; 5% for an at-large member) is alone sufficient
24 to remove the member, *and it doesn't even require a vote of the people to do it. Id.*

25 In sum, Measure H would effectively set up an independent “branch” of
26 municipal government in Pasadena usurping substantial legislative, quasi-judicial and
27 budgetary powers from the Mayor and City Council and executive powers from the City
28 Manager. Thus, the Measure dramatically alters the City of Pasadena’s basic
 government plan. Because it changes the City’s “fundamental structure or the
 foundational powers of its branches,” Measure H impermissibly seeks to revise the

1 City's charter. *Strauss v. Horton*, 46 Cal. 4th 364, 441 (2009).

2 **V. THE REQUIREMENTS THAT “DISTRICT” MEMBERS OF THE RENT**
3 **BOARD (1) BE TENANTS AND (2) NOT HAVE ANY “MATERIAL**
4 **INTEREST IN RENTAL PROPERTY” IN LOS ANGELES COUNTY**
5 **VIOLATE THE UNITED STATES AND CALIFORNIA CONSTITUTIONS.**

6 Measure H also specifies the required qualifications for members of the Rental
7 Housing Board. Among other things, it provides that of the 11 members, *at least*
8 seven—the “district” representatives, who are given highly preferential status, as
9 discussed below—must be “Tenants” (*i.e.*, must have a leasehold interest in a Pasadena
10 rental property), and they must also have no other “material interest in rental property”
11 during the three years preceding appointment or during their service. *See* Measure H
12 at § 1811(a) & § 1803(i) & (aa). “Material interest in rental property” is defined *very*
13 broadly, as where the applicant “or any member of their Extended Family,¹⁰ own,
14 manage, or have a 5% or greater ownership stake in Rental Units in the county of Los
15 Angeles [*i.e.*, not just in Pasadena], or if they or any member of their Extended Family
16 owned, managed, or had a 5% or greater ownership stake in Rental Units in the county
17 of Los Angeles in the past three (3) years.” Measure H at § 1803(i) (emphasis added).

18 On the other hand, there are no guaranteed slots for those who *do* have material
19 interest in rental properties, like the five individual Petitioners herein; all eleven of the
20 rent board members, and both alternates, could be tenants without such interests. *Id.*
21 at § 1811(a). At most four of the members could have a 5% or greater ownership stake
22 in rental property or manage such properties anywhere in Los Angeles County, or even
23 have extended family members who have a 5% ownership stake or manage LA County
24 properties, meaning that tenants are guaranteed a supermajority on the Board.

25 Any action of the Rent Board requires the support of at least six Board members,

26 ¹⁰ “Extended family” is also *very* broadly defined to include even grandparents, aunts and
27 uncles, nieces and nephews, grandchildren or cousins. *See* Measure H at § 1803(g). At its most
28 extreme, a Pasadena resident is excluded from serving as a preferred “district” member if (for
example) a grown niece manages or has a 5% ownership stake in a single-family home in Long
Beach that was rented out two years ago, even if not now.

1 § 1811(i), and for there to be a quorum to take action, at least four “tenant” members
2 must attend the meeting (*see* § 1811(h)). There is no requirement that *any* “at-large”
3 members be present for a quorum. In sum, no vote can even take place unless at least
4 half of the members present are tenants with no material interest in rental property.

5 **A. Article I, § 22, of the California Constitution.**

6 Article I, § 22, of the California Constitution provides that “[t]he right to vote or
7 hold office may not be conditioned by a property qualification.” Measure H plainly
8 violates this proscription. By the express terms of Measure H, a mandatory
9 qualification for holding any of the seven preferred “tenant” seats on the Rent Board is
10 holding a specific property interest—that of a “Tenant,” *i.e.*, a “tenant, subtenant,
11 lessee, sublessee or any other person entitled under the terms of a Rental Housing
12 Agreement or this Article to the use or occupancy of any Rental Unit.” *See* Measure H
13 at §§ 1803(aa) and 1811(a). An additional qualification for holding those offices is *not*
14 possessing another specific property interest—a “Material Interest in Rental Property”
15 within Los Angeles County. § 1811(a). This plainly violates Article I, § 22.

16 **B. Equal Protection.**

17 “[T]he right to hold public office, either by election or appointment, is one of the
18 valuable rights of citizenship,” *Carter v. Comm’n on Qualifications of Jud.*
19 *Appointments*, 14 Cal. 2d 179, 182 (1939), and “disqualification from office [is] a
20 significant civil disability,” *Helena Rubenstein Int’l v. Younger*, 71 Cal. App. 3d 406, 418
21 (1977). Measure H places a severe restriction on these valuable rights of Petitioners
22 and violates the Equal Protection clauses of the California and U.S. Constitutions, by
23 conferring a guaranteed supermajority with preferential voting rights on tenants and
24 by placing severe restrictions on the rights of property owners to serve.

25 While supermajority requirements are not *per se* unconstitutional, when they
26 discriminate against an “identifiable class”—specifically including those based on
27 property ownership—they have been held to violate equal protection. *See, e.g., Curtis*
28 *v. Bd. of Supervisors*, 7 Cal. 3d 942, 958 (1972) (statute that gave large property owners

1 the ability to block an election on annexation violated equal protection). As the U.S.
2 Supreme Court has held, in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), “it is especially
3 difficult for the State to justify a restriction that limits political participation by an
4 identifiable political group whose members share a particular viewpoint, associational
5 preference, *or economic status*.” *Id.* at 793 (emphasis added). Property owners and
6 tenants alike are affected by the Rent Board’s decision-making, so there is no legitimate
7 justification for guaranteeing one side the power to unilaterally control the Board.

8 Relatedly, Measure H also burdens would-be landlord members’ ability to serve
9 by forcing them to comprehensively disclose the rental property interests of not just
10 themselves but also “extended family” members in Los Angeles County (not just
11 Pasadena, *i.e.*, not just rental properties that will be subject to regulation by the Rent
12 Board, but the ownership interests of their extended family anywhere in Los Angeles
13 County) § 1811(b). Though narrowly tailored financial disclosure requirements have
14 been upheld in the past, overly-broad disclosure requirements that are not rationally
15 related to potential conflicts of interest are unconstitutional. *See, e.g., Carmel-by-the-*
16 *Sea v. Young*, 2 Cal. 3d 259, 268-69 (1970) (striking down a statute requiring disclosure
17 of financial interests owned by public officials and their family members). And since
18 such ownership interests are not disqualifying for the “at-large” positions, the only
19 reasonable conclusion is that the purpose of this requirement is to further discourage
20 persons whose interests may deviate from tenants’ from seeking to serve on the Board.

21 **VI. STATE LAW PREEMPTS VARIOUS PROVISIONS OF MEASURE H.**

22 California Constitution article XI, § 7, provides that a county or city may make
23 and enforce within its limits all local, police, sanitary, and other ordinances and
24 regulations *not in conflict with general laws*.” (Emphasis added.)

25 **A. Measure H’s “Relocation Assistance” Requirement Is Preempted** 26 **by the Costa-Hawkins Rental Housing Act Insofar as It Applies to** 27 **Tenants Who Voluntarily Vacate a Rental Unit Rather Than Pay a** 28 **Rent Increase Authorized by That Act.**

The Costa-Hawkins Rental Housing Act exempts certain units—primarily

1 single-family homes, condominiums and new construction—from local rent control. Civ.
2 Code § 1954.52(a). As to these “exempt” units, property owners may “adjust the rent on
3 such property at will, [n]otwithstanding any other provision of law.” *DeZerega v.*
4 *Meggs*, 83 Cal. App. 4th 28, 41 (2000). However, Measure H seeks to impose a penalty
5 on property owners who seek to exercise their state law rights. Section 1806(b)(C) of
6 Measure H would require landlords subject to the Measure’s “just cause” provisions—
7 which is almost all of them, and includes units exempt from rent control under Costa-
8 Hawkins—to pay “relocation assistance” to tenants who vacate a unit after being
9 notified of a rent increase of 5 percent plus the annual increase allowed under the
10 measure’s rent control provisions (75% of CPI). Furthermore, the Rent Board is
11 authorized to lower the threshold to trigger this penalty “if it determines that the lower
12 threshold is necessary to further the purposes of this Article.” Measure H at §
13 1806(b)(C). In this manner, Measure H seeks to indirectly impose rent control on
14 exempt units, by penalizing rent increases that exceed a specified amount.

15 This it may not do. Costa-Hawkins wholly occupies the field of municipal rent
16 control, and thereby prohibits local jurisdictions from enacting rent control measures
17 that conflict with its provisions. *Bullard v. S.F. Rent Stabilization Bd.*, 106 Cal. App.
18 4th 488, 489 (2003). It is well-established that local governments may not frustrate the
19 purposes of Costa-Hawkins by imposing a penalty on the exercise of rights conferred
20 thereunder. *See, e.g., id.; Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*,
21 175 Cal. App. 4th 1396 (2009) (city’s affordable housing requirement preempted by
22 Costa-Hawkins and it could not charge “in lieu” fee for failure to provide such housing).

23 **B. Several of Measure H’s Notice Provisions Are Preempted Too.**

24 The notice provisions contained in § 1806(a)(9), 1806(a)(10), and 1803(cc) of
25 Measure H are similarly inconsistent with, and preempted by, state law.

26 Sections 1806(a)(9) and 1806(a)(10) specify a six-month minimum notice
27 requirement for the termination of a tenancy, which is significantly longer than the
28 notice required by state law. *See* Civ. Code § 1946.1 & Govt. Code § 7060.4(b) (Ellis Act)

1 (specifying notice period of 30 to 120 days, depending on circumstances, subject to
2 limited exceptions). “[S]tate laws preempt the field of the timing of landlord-tenant
3 transactions, *S.F. Apt. Ass’n v. City & Cty. of S.F.*, 20 Cal. App. 5th 510, 519 (2018), and
4 “where a statute has set the amount of notice required, the municipality may not
5 impose further requirements of additional notice.” *Mobilepark W. Homeowners Ass’n v.*
6 *Escondido Mobilepark W.*, 35 Cal. App. 4th 32, 47 (1995) (striking down notice
7 requirement contrary to state laws governing mobilehome rent control). *See also Tri*
8 *County Apartment Assn. v. City of Mountain View*, 196 Cal. App. 3d 1283 (1987) (city
9 could not require 60 days’ notice to increase the rent on a month-to-month tenancy
10 when state law prescribed 30 days’ notice); *Channing Properties v. City of Berkeley*, 11
11 Cal. App. 4th 88 (1992) (ordinance requiring landlords to provide six months’ notice to
12 tenants before withdrawing units from the rental market preempted by the Ellis Act).

13 Section 1803(cc)’s “notice to cease” requirements are also inconsistent with, and
14 therefore preempted by, state law. Measure H defines “notice to cease” as a written
15 notice that gives a tenant an opportunity to cure a violation of their lease—including
16 nonpayment of rent—prior to initiating proceedings to terminate the tenancy. The
17 Measure specifies six items that must be included in the written notice, including a
18 cure period. *Id.* This too is inconsistent with preemptive state law. Code of Civil
19 Procedure § 1161(2) is controlling with respect to the requirements to begin legal
20 proceedings against a tenant for nonpayment of rent, and it provides that the process
21 is to be initiated via a 3-day notice to pay rent or quit. Measure H layers on additional
22 procedural requirements, which are preempted and therefore illegal and unenforceable.
23 *See Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 152 (1976) (Code of Civil Procedure §
24 1161 fully occupies the field with respect to landlord’s possessory remedies).

25 **VII. CONCLUSION.**


26 For the foregoing reasons Petitioners are entitled to a writ of mandate declaring
27 Measure H void and unenforceable.

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Respectfully submitted,
NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP

By: 
Christopher E. Skinnell
Attorneys for Plaintiffs and Petitioners