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 10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 AIDS HEALTHCARE FOUNDATION,  
 13  
 14 Petitioner/Plaintiff,  
 15 v.  
 16 ROB BONTA, in his official capacity as  
 California Attorney General; STATE OF  
 17 CALIFORNIA; and DOES 1 to 100, inclusive,  
 18 Respondents/Defendants.

Case No.: **21STCP03149**

**VERIFIED PETITION FOR WRIT OF  
 MANDATE AND COMPLAINT FOR  
 INJUNCTIVE AND DECLARATORY RELIEF**

(Code Civ. Proc., §§ 525, 1060, 1085)

1 INTRODUCTION

2 1. Petitioner and Plaintiff AIDS Healthcare Foundation (“Petitioner” or “AHF”) brings this  
3 litigation to enforce the long-standing right of initiative that is a fundamental power reserved in the  
4 California Constitution to be exercised by the people of this State. The courts of this State have  
5 described the initiative power as “one of the most precious rights of our democratic process.” (See *City*  
6 *of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220, 227, citing *Associated*  
7 *Home Builders [Etc.], Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.) The initiative has long  
8 served as a bulwark against unresponsive government, providing an effective tool for the people to  
9 deploy when their elected officials fail to heed their concerns.

10 2. The California Constitution provides in article II, section 10, that the Legislature may  
11 amend an initiative statute only when approved by a vote of the electorate, unless the initiative expressly  
12 permits legislative amendment. The courts have made clear that a fundamental feature of the  
13 constitutional right to initiative is the power to maintain the vitality of the initiative measure against  
14 future, potentially hostile, legislative bodies. Since 1912, the same prohibition on amendments has been  
15 applied to local governments, in recognition of the constitutional commandment that an initiative has the  
16 power to bind both present and future governing legislative bodies.

17 3. In an unprecedented assault against the power of citizens to enact effective local  
18 initiatives, the Legislature and the Governor have enacted Government Code section 65913.5, otherwise  
19 known as Senate Bill 10 (“SB 10”), which allows local governments to disregard the provisions of duly-  
20 enacted initiative measures that affect planning and land use in local jurisdictions.

21 4. By enacting SB 10, the State has eviscerated the fundamental protection against  
22 subsequent legislative amendment of initiatives without a vote of the people. Under SB 10, a local  
23 government may ignore the land-use restrictions included in a local initiative and rezone real properties  
24 to increase their allowable residential density, regardless of express local procedures, prohibitions, or  
25 conditions that the people established via initiative ordinance.

26 5. Potentially scores of local initiatives across the State, reflecting the will of the voters in  
27 numerous cities and counties, could be cast aside by local government as a result of the enactment of SB  
28 10. The California Constitution and its reservation of the initiative power to the people mandates that

1 initiatives measures, once adopted by the people, remain in force according to their terms and may not  
2 be amended or ignored by local officials without a vote of the people.

3 6. What's more, SB 10 effectively will discourage future initiatives. Why would citizens  
4 put time, effort, and money into an initiative, if the measure can simply be disregarded once enacted?  
5 Without a judicial declaration regarding the unconstitutionality of SB 10, this statute could usher in a  
6 new legislative tactic permitting the disregard of any kind of local initiative, so long as the State deems  
7 it to touch upon a subject of a statewide concern. The voters who adopted local initiatives for years have  
8 been told that such measures (so long as they are valid) may not be altered except by a vote of the  
9 people, so the certainty and predictability in enacting such measures is grievously threatened by statutes  
10 like SB 10.

11 7. Petitioner brings this action to challenge the provisions of Government Code section  
12 65913.5 that specifically allow for local governments to disregard duly-enacted initiative measures  
13 without a vote of the people. This law, on its face, is unconstitutional because it allows the amendment  
14 of an initiative without requiring a vote of the people prior to this action. Petitioner therefore seeks a  
15 writ of mandate and injunctive relief, preventing the enforcement of this provision, and a declaration  
16 that Government Code section 65913.5 is unlawful and unenforceable.

### 17 **PARTIES**

18 8. PETITIONER and PLAINTIFF AIDS HEALTHCARE FOUNDATION is a California  
19 non-profit organization providing cutting-edge medicine to and advocacy for people living with HIV  
20 and AIDS. Since the late 1980s, AHF has been involved in providing affordable housing, initially in the  
21 form of hospice care, to people in need. In 2017, AHF launched the Healthy Housing Foundation  
22 ("HHF"), to provide decent housing units affordable to low-income people. HHF currently operates  
23 eight multi-unit housing complexes, housing many hundreds of people, in Los Angeles County.

24 9. Petitioner commented in opposition to SB10 and requested amendment of the measure to  
25 remove the provisions allowing local governments to override local initiative measures. Petitioner,  
26 through its Housing is a Human Right program, also expended financial resources to conduct polling on  
27 SB 10 as part of Petitioner's efforts to persuade the Legislature and the Governor not to enact SB 10.

28 10. From its earliest inception, Petitioner has been engaged in aspects of the initiative

1 process, both in California and in other jurisdictions. In 1986, AHF led the opposition to Proposition  
2 64, a statewide ballot measure that would have physically quarantined and detained people with HIV or  
3 AIDS. Petitioner has invested significant financial and other resources in initiative measures over the  
4 last 10 years in California. These include Measure B, a 2012 Los Angeles County initiative regarding  
5 the use of condoms in the adult film industry; San Francisco Measure D, a 2013 initiative regarding  
6 drug pricing; Proposition 60, a 2016 statewide initiative measure regarding the use of condoms in the  
7 adult film industry; Proposition 61, a 2016 statewide initiative regarding drug pricing; Measure S, a City  
8 of Los Angeles land-use planning initiative; Proposition 10, a 2018 statewide initiative regarding rent  
9 control; and Proposition 21, a 2020 statewide initiative regarding rent control. AHF has also worked  
10 with proponents of local ballot measures related to AHF's core missions including proponents of rent  
11 control initiatives in a number of California jurisdictions. Petitioner fully expects to continue to marshal  
12 the power of initiative at the state and local levels, either alone or in partnership with other  
13 organizations, to further objectives consistent with AHF's mission.

14 11. Petitioner is seriously concerned about how SB 10 empowers local officials to overturn  
15 local initiatives without a vote of the people.

16 12. Petitioner brings this action as a private attorney general, with no expectation of  
17 pecuniary gain as a result of any outcome in this litigation. Petitioner brings this action on behalf of the  
18 proponents of the numerous local initiatives across the State, whose proponent committees may have  
19 been long shuttered and whose funds are likely long depleted, to ensure that the constitutional right to  
20 initiative is respected. Petitioner brings this action also on behalf of the people who voted for those  
21 initiatives and all people who have expected to be able to exercise the franchise to vote on similar  
22 measures in the future.

23 13. RESPONDENT and DEFENDANT ROB BONTA is the Attorney General of the State  
24 of California. The Attorney General is the chief law officer of the State. The Attorney General has the  
25 duty to see that the laws of the State are uniformly and adequately enforced. The Attorney General is  
26 sued in his official capacity as Attorney General of the State of California.

27 14. RESPONDENT and DEFENDANT STATE OF CALIFORNIA (together with Attorney  
28 General Bonta, "Respondent") is a U.S. state. Suits may be brought against the State, under article III,

1 section 5 of the California Constitution. The State is named as Co-Respondent and Co-Defendant in an  
2 abundance of caution, in the event that the Attorney General disclaims responsibility for enforcing SB  
3 10.

4 15. Petitioner and Plaintiff is unaware of the true names and capacities of RESPONDENT  
5 and DEFENDANT DOES 1 through 100, inclusive, and they are therefore sued by fictitious names  
6 pursuant to Code of Civil Procedure section 474. Petitioner alleges on information and belief that each  
7 such fictitiously named Respondent is responsible or liable in some manner for the events and  
8 happenings referred to herein, and Petitioner will seek leave to amend this Petition to allege their true  
9 names and capacities after the same have been ascertained.

#### 10 JURISDICTION AND VENUE

11 16. This Court has original jurisdiction over this matter pursuant to article VI, section 10, of  
12 the California Constitution, and section 1085 of the Code of Civil Procedure.

13 17. Venue is proper in this Court pursuant to Code of Civil Procedure section 401,  
14 subdivision (1), because the Attorney General maintains an office in Los Angeles County.

#### 15 FACTUAL BACKGROUND

16 18. On September 16, 2020, Governor Gavin Newsom signed into law SB 10, which adds  
17 section 65913.5 to the Government Code.

18 19. Government Code section 65913.5, subdivision (a), allows a local government, including  
19 a charter city or a charter county, to adopt an ordinance to zone a land parcel for up to 10 units of  
20 residential density (per parcel), for a parcel located in a transit-rich area or an urban infill site, with  
21 limited exceptions for a parcel within a very high fire-hazard severity zone. A local government may  
22 approve such an ordinance “[n]otwithstanding any local restrictions on adopting zoning ordinances  
23 enacted by the jurisdiction that limit the legislative body’s ability to adopt zoning ordinances, including  
24 . . . restrictions enacted by local initiative” (emphasis added).

25 20. Government Code section 65913.5, subdivision (a)(4)(B), exempts only a “local  
26 restriction enacted or approved by a local initiative that designates publicly owned land as open-space  
27 land . . . or for park or recreational purposes.” Any other local initiative restriction not relating to  
28 publicly owned land for open-space or park or recreational purposes, including either procedural or

1 substantive requirements or restrictions on zone changes in urbanized or transit-rich areas, is subject to  
2 being cast aside by SB 10's grant of authority of local government to approve such zone changes  
3 "notwithstanding any local restrictions on adopting zoning ordinances."

4 21. Government Code section 65913.5, subdivision (b)(4), provides that "[i]f the ordinance  
5 supersedes any zoning restriction established by a local initiative, the ordinance shall only take effect if  
6 adopted by a two-thirds vote of the members of the legislative body."

7 22. Government Code section 65913.5 contains no severability clause.

8 23. While this new law requires a two-thirds majority vote of the relevant legislative body to  
9 override the intent of the voters in adopting an initiative, the law binds the hands of future legislative  
10 bodies once a zone change is approved, providing in subdivision (d)(2) that "a legislative body that  
11 adopts a zoning ordinance pursuant to this section shall not subsequently reduce the density of any  
12 parcel subject to the ordinance."

13 24. Numerous parties, including Petitioner, objected to the inclusion of these initiative-  
14 override provisions in SB 10. The objectors included local governments such as the City of Beverly  
15 Hills and the City of Santa Monica, whose comments were summarized in the legislative analysis of  
16 SB 10, and which comments focused exclusively on the measure's undermining of local initiatives. As  
17 stated in a June 30, 2021, report by the Assembly Committee on Local Government, the City of Santa  
18 Monica wrote, "[w]hile this measure seeks to address California's housing crisis by providing local  
19 governments with an additional tool to increase housing production in their jurisdictions it fails to  
20 ensure local governments are not able to overturn the democratic will of their residents. For example, in  
21 2014, voters in the City of Santa Monica approved Measure LC which was designed to require voter  
22 approval for any alternate or new developments on the site of the former Santa Monica Airport, except  
23 parks, open space and recreational areas. Such initiatives are one of the most direct means that voters  
24 have of expressing their will for their communities and allowing an elected body to overturn these  
25 initiatives would be an affront to the democratic process."

26 **FIRST CAUSE OF ACTION**  
27 **Writ of Mandate**  
28 **(Code Civ. Proc., § 1085)**

25 25. Petitioner hereby re-alleges and incorporates by reference herein the allegations in the

1 preceding paragraphs.

2 26. Article IV, section 1, of the California Constitution provides that “[t]he legislative power  
3 of this State is vested in the California Legislature . . . but the people reserve to themselves the powers  
4 of initiative and referendum.”

5 27. Article II, section 10, of the California Constitution provides that “[t]he Legislature may  
6 amend or repeal an initiative statute by another statute that becomes effective only when approved by  
7 the electors unless the initiative statute permits amendment or repeal without the electors’ approval.”

8 28. Article II, section 11, of the California Constitution provides that “[i]nitiative and  
9 referendum powers may be exercised by the electors of each city or county under procedures that the  
10 Legislature shall provide.”

11 29. As the California courts have explained (see, e.g., *Brookside Investments, Ltd. v. City of*  
12 *El Monte* (2016) 5 Cal.App.5th 540, 550-51) since these provisions were adopted in 1911, the same  
13 principle that initiative measures may not be repealed or amended absent a vote of the electorate has  
14 been applied to all local initiative measures.

15 30. Elections Code section 9125 provides that no County “ordinance proposed by initiative  
16 petition and adopted either by the board of supervisors without submissions to the voters or adopted by  
17 the voters shall be repealed or amended except by a vote of the people, unless provision is otherwise  
18 made in the original ordinance.”

19 31. Elections Code section 9217 establishes the same provisions for municipal initiatives,  
20 stating that “[n]o ordinance that is either proposed by initiative petition and adopted by the vote of the  
21 legislative body of the city without submission to the voters or adopted by the voters, shall be repealed  
22 or amended except by a vote of the people, unless provision is otherwise made in the original  
23 ordinance.”

24 32. As set forth above, as enacted by SB 10, Government Code section 65913.5, subdivision  
25 (a)(1), provides that local governments may adopt certain zoning ordinances for land parcels in transit-  
26 rich or urbanized areas, “notwithstanding any local restrictions on adopting zoning ordinances enacted  
27 by the jurisdiction . . . including . . . restrictions enacted by local initiative.”

28 33. Local initiatives affecting land-use planning are among the most common uses of the

1 initiative power. Examples of initiatives imposing restrictions on the ability to adopt zoning ordinances  
2 are found throughout the State. Some of these measures were adopted more than 20 years ago and serve  
3 important functions in guiding the locations of new developments in their communities.

4 34. In Los Angeles County, land use planning initiatives that impose limitations and  
5 restrictions on the local legislative body's enactment of zoning ordinances exist in, *inter alia*, the City of  
6 Los Angeles (Proposition U and Measure JJJ); the City of Santa Monica (Measure LC); the City of  
7 Redondo Beach (Charter Initiative Amendment DD; Measure C); the City of Monrovia (Measure A);  
8 and the City of Sierra Madre (Measure V). All of these initiative measures either require a vote of the  
9 people for amendment or repeal, or permit only limited amendments consistent with the purpose of the  
10 initiative measure.

11 35. SB 10 would allow any of these restrictions or procedures established by these Los  
12 Angeles County city-level initiatives to be disregarded in order to enact a zoning ordinance permitting  
13 up to 10 residential units per parcel for land parcels in transit-rich or urbanized areas, qualifications that  
14 are applicable to much of Los Angeles County.

15 36. Numerous commenters raised concerns to the Legislature regarding the constitutionality  
16 of the initiative provision in SB 10. Nevertheless, the Legislature insisted upon including the provisions  
17 in the law, and did not include a severability clause, raising the clear inference that the Legislature  
18 wanted to enact SB 10 only with the unconstitutional provisions relating to local initiative measures.

19 37. Petitioner has invested time, money, and effort into drafting, circulating, and promoting  
20 initiative measures at both the local and state levels. Petitioner has demonstrated a commitment to the  
21 use of the initiative power to address important social issues, including relating to housing and land use.  
22 Petitioner acts to preserve the important aspect of the initiative power that prevents the (valid) laws and  
23 policies established by initiative from being amended or repealed without a subsequent vote of the  
24 people. Petitioner has a direct and beneficial interest in the action herein and has exhausted all other  
25 available remedies.

26 38. Respondent has a clear, present, and ministerial duty to administer the California  
27 Constitution and the laws of the State of California without violating the right to initiative reserved to  
28 the people in Article IV, section 1, of the California Constitution. Unless restrained, the enforcement of



1 SB 10 will allow local governments to disregard the provisions of local initiative measures and enact  
2 zoning ordinances without compliance with the provisions of those initiative measures.

3 39. Petitioner has a beneficial right to Respondent's performance of those duties based on  
4 Petitioner's interest in exercising the constitutional right of initiative against amendment or repeal by  
5 local government without a subsequent vote of the people.

6 40. Petitioner has no plain, speedy, and adequate remedy at law, in that unless this Court  
7 enjoins Respondent, local governments may disregard the restrictions of local initiative measures when  
8 enacting zoning ordinances under SB 10. No amount of monetary damages or other legal remedy can  
9 adequately compensate Petitioner for the irreparable harm that Petitioner and the public at large will  
10 suffer from the violations of law described herein.

11 **SECOND CAUSE OF ACTION**  
12 **Declaratory Relief**  
13 **(Code Civ. Proc., § 1060)**

14 41. Petitioner hereby re-alleges and incorporates by reference herein the allegations in the  
15 preceding paragraphs.

16 42. A dispute has arisen between Petitioner and Respondents, in that Petitioner believes and  
17 contends, for the reasons set forth in the cause of action above, that SB 10's provisions regarding local  
18 initiatives violate the constitutional right of initiative. Petitioner is informed and believes, and on that  
19 basis contends, that Respondent, as the chief law enforcement official of the State of California,  
20 contends or will take public positions in all respects to the contrary.

21 43. A judicial declaration as to the legality of SB 10's provisions allowing local governments  
22 to disregard the restrictions of local initiative measures applicable to the adoption of zoning ordinances  
23 is therefore necessary and appropriate to determine the respective rights and duties of the parties.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Petitioner prays for judgment relief as follows:

26 1. That this Court issue a peremptory writ of mandate commanding Respondent to cease  
27 enforcement of SB 10, including those that permit local government to disregard restrictions of local  
28 initiative measures in order to adopt zoning ordinances free from such restrictions;

2. That this Court enjoin Respondent from enforcing SB 10, including permitting local

1 government to disregard the restrictions contained in local initiative measures, to adopt zoning  
2 ordinances free from such restrictions;

3 3. That this Court issue declaratory relief that the provisions of SB 10 that permit local  
4 government to disregard the substantive or procedural limitations of local initiative measures are in  
5 violation of the right to initiative that is reserved to the people in the California Constitution;

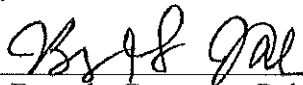
6 4. That this Court award Petitioner costs and attorneys' fees pursuant to Code of Civil  
7 Procedure section 1021.5 or other applicable law; and

8 5. That this Court grant Petitioner such other, different, or further relief as the Court may  
9 deem just and proper.

10 Dated: September 22, 2021

Respectfully submitted,

11 STRUMWASSER & WOOCHEER LLP  
12 Fredric D. Woocher  
13 Beverly Grossman Palmer

14 By:   
15 Beverly Grossman Palmer  
16 *Attorneys for Petitioner and Plaintiff*  
17 *AIDS Healthcare Foundation*

1 VERIFICATION

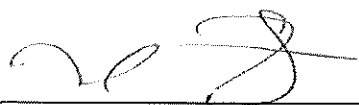
2 I, Michael Weinstein, declare:

3 I am President of Petitioner and Plaintiff AIDS Healthcare Foundation. I am authorized to make  
4 this verification for Petitioner and Plaintiff AIDS Healthcare Foundation.

5 I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Injunctive and  
6 Declaratory Relief and know the contents thereof. Said contents are known to me to be true except  
7 those matters alleged on information and belief, and as to those matters I believe them to be true.

8 I declare under penalty of perjury that the foregoing is true and correct.

9  
10 Executed this 22 day of September, 2021 at Los Angeles, California.

11  
12   
13

14 Michael Weinstein