Case No.

IN THE CALIFORNIA COURT OF APPEAL
THIRD APPELLATE DISTRICT

AIDS HEALTHCARE FOUNDATION,
Petitioner,

v.

SHIRLEY N. WEBER, IN HER CAPACITY AS CALIFORNIA SECRETARY OF STATE,
Respondent,

THOMAS BANNON; AND PROTECT PATIENTS NOW SPONSORED BY CALIFORNIA APARTMENT ASSOCIATION,

Real Parties in Interest.

EMERGENCY PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF LAURA BOUDREAU; LYLE HONIG MOJICA, CPA; AND DONNA STIDHAM, RN

ELECTION MATTER: EXPEDITED REVIEW REQUESTED

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 234004 NAME: Beverly Grossman Palmer FIRM NAME: Strumwasser & Woocher LLP STREET ADDRESS: 1250 6th Street, Suite 205 CITY: Santa Monica STATE: CA ZIP CODE: 90401 TELEPHONE NO.: 310-576-1233 FAX NO.: 310-319-0156 E-MAIL ADDRESS: bpalmer@strumwooch.com ATTORNEY FOR (*name*): Petitioner AIDS Healthcare Foundation	SUPERIOR COURT CASE NUMBER:
APPELLANT/ PETITIONER: AIDS Healthcare Foundation RESPONDENT/ REAL PARTY IN INTEREST: Shirley N. Weber,in her capacity as CA Secretary of State ; Thomas Bannon; and Protect Patients Now	

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INTRODUCTION

Dueling initiative campaigns in which competing interests sponsor conflicting ballot measures are familiar and often messy, but never before has one side sponsored a measure explicitly intending to destroy its adversary by stripping it of business and professional licenses, revoking its tax-exempt status, rendering it ineligible to receive federal or state funds, and banning its executives from engaging in their professions, all on the basis of the adversary's activities that were wholly legal when undertaken but that the initiative purports to retroactively outlaw.

Petitioner AIDS Healthcare Foundation (AHF) is a nonprofit corporation that operates 15 HIV/AIDS outpatient medical clinics in California, serving approximately 10,500 patients, providing over 10 percent of all HIV/AIDS medical care for people living with the disease. Nationally, it operates 69 clinics and 62 pharmacies in 17 states plus Washington, D.C., and Puerto Rico—providing about 10 percent of all HIV/AIDS medical care in the United States. (Declaration of Donna Stidham (Stidham Decl.), ¶¶ 4–5.)

AHF's integrated approach to HIV/AIDS care provides direct medical services but also retains patients in care by giving them access to specialists, managing their comorbid conditions, and helping them to adhere to their medical regimen. (*Id.*, ¶ 6.)

This approach "is extremely effective at securing good health outcomes," enabling "approximately 85 to 90 percent of AHF's patients [to] achieve[] viral suppression, in contrast with the national average of approximately 50 percent." (*Id.*, ¶ 7.)

Because it "has been well documented that the loss of housing contributes to AIDS/HIV patients having greater difficulty adhering to their prescription regimen and greater risks of complications," and because "housing insecurity is closely correlated with poor health outcomes in general" and "is a primary determinant of health . . . AHF has actively advocated for rent control and other laws that contribute to housing affordability and reduce the incidence of homelessness." (*Id.*, ¶ 8.)

And that brings us to the present case. Real Party Thomas Bannon is Chief Executive Officer of the California Apartment Association (CAA), which bills itself as the largest statewide trade association in the country for apartment professionals and owners. (https://caanet.org/staff/tom-bannon/.) AHF and CAA have for years sponsored competing legislation, both in the Capitol and on the ballot, respectively supporting and opposing rent control measures. AHF has placed a measure on the November 5, 2024, statewide ballot that expands local governments' authority to enact rent control on residential property. (Declaration of Laura Boudreau (Boudreau Decl.), ¶ 33 & Exh. 5.) CAA has already announced its campaign to oppose

that measure.

But in addition, CAA is collecting signatures for a competing measure (the Measure), which is the subject of this petition. Bannon is the sponsor of the Measure, which the Attorney General's title says "Restricts Spending by Health Care Providers Meeting Specified Criteria." As demonstrated below, the Measure does not restrict "health care provider***s***," it restricts exactly one health care provider, AHF. The Measure coins a new term, "prescription drug price manipulator," which it defines in terms that describe solely AHF.[1] It then requires that this lone "manipulator" spend no less that 98 percent of the funds it receives from insurance payors under the federal "340B program" on what the Measure defines with another novel term as "direct patient care." That definition provides no allowance for overhead costs like rent, utilities, billing and collections, and myriad other costs not classified as "direct" costs under customary accounting principles. (Declaration of Lyle Honig Mojica (Mojica Decl.), ¶ 9.) The Measure then specifies that this 98-percent standard goes into effect on January 1, *2024*—over 10 months before the Measure is voted on.

And what are the consequences of failing to meet the

---

[1] CAA admitted to its members that its aim with the Measure is to "defeat [AHF CEO Michael] Weinstein's current rent control measure and prevent him from . . . fund[ing] rent control campaigns in the future." (Boudreau Decl., Exh. 5, p. 2.)

standard? A parade of penalties. AHF loses its nonprofit status. Its licenses to operate pharmacies, clinics, and health plans are revoked and it is prohibited for 10 years from reapplying. AHF loses its ability to obtain new or renewed California state or local contracts, including those for federal funds and programs. Its executives are barred from ownership or employment in a California pharmacy, health care service plan, or clinic for 10 years. None of these consequences are moderated by anything resembling due process.

And beyond the consequences for AHF and its officers and employees, the HIV/AIDS patient community it serves will be harmed, leading to more illness and more infections.

These are not perils that can wait to be adjudicated, perhaps in the hope that the voters will reject the Measure. These perils begin in less than six weeks, when AHF must either drastically change its clinical activities, adversely affecting employees and patients, or continue them and face the ex post facto penalties that may follow. The Constitutions, statutes, and case law decree that such bills of attainder, ex post facto laws, initiatives that single out an identifiable target, and measures that improperly embrace more than a single subject cannot be presented to the voters and cannot be adopted in the first instance. AHF therefore brings this petition to obtain this Court's writ preventing Respondent Secretary of State from placing the

Measure on the ballot.

PETITION FOR WRIT OF MANDATE

JURISDICTION

1. This Court has original jurisdiction pursuant to article VI, section 10 of the California Constitution, Code of Civil Procedure sections 1085 and 1086, California Rule of Court 8.485, and Elections Code section 13314. Particularly where vital health services to thousands of Californians are implicated, prompt final resolution of this matter is critical.

2. Adjudication of this type of petition by this Court in the first instance is proper. (See *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1027.) Requiring the filing of the petition in the Superior Court would delay the resolution of an important statewide election matter, thereby risking the possibility that relief could not be granted in time to prevent this obviously invalid initiative from being placed on the ballot, moreover the Measure threatens immediate harm to Petitioner as detailed herein. (Cal. Rules of Court, rule 8.486, subd. (a)(1).) Original relief is appropriate in this Court because the constitutionality of the Measure can be determined without development of a factual record in a trial court.

3. Petitioner is entitled to a writ of mandate because it has no other "plain, speedy, and adequate remedy" available to it in the ordinary course of law. (Code Civ. Proc., § 1086.) There are no other proceedings available to timely prevent the placement of

the invalid Measure on the ballot.

NEED FOR EMERGENCY RELIEF

4. Preelection review is necessary and appropriate for three reasons. *First*, the electorate lacks the power to adopt the Measure in the first place; allowing an invalid measure onto the ballot "steals attention, time, and money from the numerous valid propositions on the same ballot." (*Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1154 (*Jones*), quoting *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 697 (*AFL*). The Measure violates express constitutional prohibitions on measures that may be adopted by initiative (Cal. Const., art. II, secs. 8 & 12) as well as state and federal constitutional provisions intended to protect against punitive and retroactive laws, including prohibitions against bills of attainder and ex post facto laws.

5. *Second*, the Measure itself contains false and misleading statements regarding its impact on taxpayers. Preelection review is the only appropriate means of addressing these falsehoods, which go directly to the purported justification for the Measure and the information being provided to voters who are considering whether to sign the petitions to put the Measure on the ballot. (*San Francisco Forty-Niners v. Nishioka* (1999) 75 Cal.App.4th 637, 644-645 (*Nishioka*).)

6. *Third,* Petitioner will be irreparably harmed absent pre-election review of the Measure's constitutionality because the

Measure applies retroactively, threatening to revoke Petitioner's ability to operate a pharmacy or clinic, along with its tax-exempt status, and places severe restrictions on Petitioner's constitutional rights of speech, petition, and association. Petitioner, a nonprofit healthcare provider, must know as soon as possible whether this retroactive law could apply to conduct starting January 1.

PARTIES

7. Petitioner AIDS HEALTHCARE FOUNDATION (AHF) is a California nonprofit organization. Incorporated in 1987, AHF began as a network of hospices committed to "fighting for the living and caring for the dying." Since then, AHF's mission has expanded, turning hospices into healthcare centers where it provides cutting-edge medicine to people living with HIV and AIDS, regardless of their ability to pay. In addition, AHF is engaged in scientific research, patient advocacy, and the provision of affordable housing.

8. Respondent SHIRLEY N. WEBER, Ph.D., is the Secretary of State for the State of California. As the State's chief elections officer, she is responsible for certifying statewide initiative measure for the ballot. (Elec. Code, §§ 10, 9033.) Elections Code section 13314 requires that the Secretary of State be named as a respondent in proceedings concerning statewide ballot measures. Respondent WEBER is sued solely in her official

capacity.

9. Real Party in Interest THOMAS BANNON is the official proponent of the Measure.

10. Real Party in Interest PROTECT PATIENTS NOW SPONSORED BY CALIFORNIA APARTMENT ASSOCIATION is the primarily formed ballot measure committee promoting the Measure. The committee is financially sponsored by the California Apartment Association (CAA) through its political action committee. Real Party in Interest BANNON is the Chief Executive Officer of the CAA.

FACTUAL BACKGROUND

The Measure

11. The Measure[2] has two separate components. It authorizes the California Department of Health Care Services to "provide and administer Medi-Cal pharmacy services under a single statewide fee-for-service delivery system," making permanent Executive Order N-01-19. (§ 14124.42.) That order transitioned all Medi-Cal managed-care pharmacy services to a fee-for-service program and centralized the program's pharmacy purchases.

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[2] A true and correct copy of the October 4, 2023 version of A.G. # 23-0021 is attached as Exhibit 1 to this Petition. All citations beginning with "section" or "§," when not otherwise specified, refer to the proposed Measure.

12. The Measure primarily seeks to regulate expenditures by a single California healthcare provider—AHF. It imposes a punitive spending rule on revenues AHF receives from dispensing drugs to its patients. These revenues are derived from the federal 340B program, a voluntary program that uses no taxpayer funds.[3]

13. The Measure creates a term, "prescription drug price manipulator," and defines so it could apply only to AHF, out of over 800 California entities participating in the 340B program. It does this with targeted and retroactive criteria:

a. The entity participates in the 340B program;
b. During *any* 10-year period in the entity's existence, it spent "more than one hundred million dollars" on "purposes that do not qualify as direct patient care;"
c. The entity is or was at one time, an owner or operator of "highly dangerous properties," which are defined as multifamily dwellings that have been inspected and received notices or reports identifying violations "affecting the health and safety of occupants," and there must be a combined total of "at least five hundred

[3] The 340B program is discussed in detail in the Boudreau Declaration, paragraphs 4-14.

(500) violations which were categorized in violation severity level 'high;'" and

d. The entity must also have, or have had, either a license to operate as a health care service plan, as a pharmacy, or as a clinic; contract as a primary care case management organization; or contract as a Medicare special needs plan. (§ 14124.48(l) & (h).)

14. This highly specific and unrelated list of requirements is tailored and intended to capture a class of one: AHF. There is no other entity in California that comes close to satisfying this combination of criteria.

15. Section 14124.44 provides that, effective January 1, 2025, a "prescription drug price manipulator" (i.e., AHF) cannot maintain tax-exempt status or a license to operate a pharmacy, a health care service plan, or a clinic unless it demonstrates that in the *prior year* it spent 98 percent of its 340B revenues on defined "direct patient care" which includes *only* care directly provided to patients, and excludes even basic overhead costs necessary to operating a healthcare facility. (§ 14124.48(b).)

16. Further, the Measure commands that a "prescription drug price manipulator" (i.e., AHF) submit, on an annual basis, "detailed accounting" for the prior calendar year of its revenues and expenditures, both in California and throughout the United

States, to four separate state agencies, for each agency to make findings whether the healthcare provider complied with the Measure's restrictions. (§ 14124.45.) The determination of each agency on this issue is final, pending limited judicial review. (§ 14124.46.)

17. Once a determination of noncompliance is final, all licenses are "permanently revoked," and the provider and its owners, officers, and directors are prohibited from engaging in pharmacy, health care services, or clinical services for 10 years. (§ 14124.47.) The entity's tax-exempt status is also revoked for 10 years. It is also ineligible for "any new or renewed California state or local grants or contracts" for 10 years. (*Ibid.*)

18. Outside of the "final determination," if a healthcare provider does not spend 98 percent of its *nationwide* net revenues on "direct patient care," the provider is ineligible for new or renewed state or local grants in California. (§ 14124.50(b).)

The AIDS Healthcare Foundation

19. Founded at the height of the AIDS epidemic, when there were no effective treatments and AIDS patients were shunned and isolated, AHF erected three hospices and helped thousands of people spend their final days in peace, support, love, and dignity during the darkest days of the epidemic.

20. Today, effective medication treatments for AIDS allow patients to manage their disease and live a normal lifespan.

People who are adherent to their medication and thereby achieve "viral suppression" are non-infectious. Treatment not only saves lives, it prevents new infections. AHF has one of the highest rates of patients with an undetectable viral load in the State.

21. AHF today provides prevention, testing, and treatment services, and operates medical clinics, specialty pharmacies, and managed-care insurance plans. It is the largest HIV/AIDS organization in the United States, operating a network of healthcare centers and co-located specialty pharmacies where it serves many indigent, uninsured, and underinsured Californians, regardless of ability to pay.

22. AHF advocates for housing affordability because secure and stable housing is vital to positive health outcomes. The AHF-sponsored Justice for Renters Act, designed to eliminate anti-rent control provisions in state law, has qualified for the November 2024 ballot. By empowering cities and counties to impose rent control on apartments and single-family homes, the Measure would give local governments another tool to fight the affordability crisis in California's housing, and keep more tenants in their homes. AHF had proposed similar statewide initiatives in 2018 and 2020.

23. The CAA opposed AHF's previous efforts to modify California's rent control laws and is opposing the Justice for Renters Act. The Measure is part of CAA's "dual approach" to

defeating rent control, and its purpose is to prevent AHF from spending "on future rent control campaigns or other political ventures unrelated to the core mission of AHF." (Boudreau Decl., Exh. 5.) Indeed, "CAA's dual campaigns aim to defeat both Weinstein's current rent control measure and prevent him from . . . fund[ing] rent control campaigns in the future." (*Id.*, p. 2.)

24. AHF participates in the federal 340B Discount Drug Program, in which drug manufacturers sell discounted outpatient drugs to eligible nonprofit healthcare providers like AHF as a condition of Medicaid covering their drugs. The program *costs taxpayers nothing*, as drug manufacturers voluntarily participate in the program through federal agreements.

25. Because covered entities access their drugs at a discount and are reimbursed by private insurers at the non-discounted price of the drug, they are able generate revenue through the 340B program. The generation of these revenues is an express purpose of the program, which does not dictate how covered entities should use the revenues.

CAUSE OF ACTION

26. Petitioner incorporates by reference all of the previous paragraphs as though fully set forth here.

27. The Measure is an unconstitutional bill of attainder and ex post facto law (U.S. Const., art. I, § 10; Cal. Const., art. I, § 9); violates the prohibition on naming a corporation (Cal.

Const., art. II, § 12; U.S. Const., equal protection clause); contains false and misleading representations (Elec. Code, § 18600); unconstitutionally embraces more than one subject (Cal. Const., art. II, § 8(d)); confiscates Petitioner's property without just compensation (U.S. Const., 5th Amend.; Cal. Const., art. I, § 15); unconstitutionally interferes with interstate commerce and commerce in other states (U.S. Const., commerce clause); and is preempted by federal law (U.S. Const., supremacy clause).

28. Pursuant to article VI, section 10 of the California Constitution, Code of Civil Procedure sections 1085 and 1086, California Rule of Court 8.485, and Elections Code section 13314, this Court should exercise its original jurisdiction and issue a writ of mandate to enjoin Respondent WEBER and local election officials from certifying the Measure for inclusion on the November 5, 2024 ballot.

29. The writ should issue because the Measure is invalid, respondent has a ministerial duty to refrain from placing the measure on the ballot, and Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law.

PRAYER FOR RELIEF

Wherefore, Petitioner prays for relief as follows:

1. That this Court issue a peremptory writ of mandate in the first instance prohibiting Respondent and all persons

acting pursuant to her direction, including all county registrars of voters, from taking any steps to place the proposed initiative measure designated by the Attorney General as Initiative 23-0021 (the Measure) on any statewide election ballot or submitting the initiative to the voters for approval;

2. That this Court grant such other, different, or further relief as the Court may deem just and proper.

November 22, 2023

Respectfully submitted,

STRUMWASSER & WOOCHER LLP

By: 

Beverly Grossman Palmer

Attorneys for Petitioner
AIDS Healthcare Foundation

VERIFICATION

I, Tom Myers, declare:

I am the Chief of Public Affairs and General Counsel of the AIDS Healthcare Foundation. My responsibilities include compliance with third-party payors, including Medicaid, Medicare, and state, local and federal governments. I supervise both in-house legal staff and work on AHF matters by outside law firms.

The facts alleged in this Petition are within my own knowledge, and I know these facts to be true.

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

Dated: November 22, 2023

Tom Myers

MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I. Preelection Review Is Warranted and Necessary Because the Act Is Fatally Flawed.

A. Preelection Is Warranted Where, As Here, the Measure Is Beyond the Power of the People to Adopt.

This Court should promptly review Petitioner's challenges to the Measure, as ordinary presumptions regarding preelection review do not apply when a measure is outside the power of the people to adopt by initiative, nor to challenges related to the circulation of an initiative. The Measure is irredeemably defective and cannot be allowed to be placed on the ballot. Preelection review of an initiative is appropriate when: (1) the electorate lacks the power to adopt the proposal in the first place (*AFL*, 36 Cal.3d at pp. 695–696; see also *Jones*, 21 Cal.4th at p. 1153); or (2) a pre-election challenge is based on noncompliance with procedural requirements, such as the circulation of an initiative petition containing false statements intended to mislead voters and induce them to sign the petition (*Nishioka,* (1999) 75 Cal.App.4th at p. 639).

First, a proposed initiative may not be submitted to the voters—and is thus subject to preelection review—when it violates an explicit constitutional or statutory limitation on the type of measure that may be placed on the ballot in the first instance, including the single-subject rule and the restriction on

identifying a private corporation to have a function or duty. (Cal. Const., art. II, secs. 8(d) [initiative "embracing more than one subject may not be submitted to the electors"] & 12 [no initiative statute that "names or identifies any private corporation to perform any function or have any power or duty, may be submitted to the electors"].) Given the express constitutional bar on submission of such measures to the voters, "it is clear from the text of the relevant constitutional provision itself that, in an appropriate instance, preelection relief not only is permissible but is expressly contemplated." (*Jones*, 21 Cal.4th at p. 1153–1154.) Likewise, the Measure violates California Constitution, article I, section 9, and the U.S. Constitution, article 1, section 10, which both provide that no bill of attainder or ex post facto law may be passed by the State. Preelection review in these instances is proper and avoids voter confusion and frustration from having been presented an invalid measure, which "tends to denigrate the legitimate use of the initiative procedure." (*AFL*, 36 Cal.3d at p. 697.) "The presence of an invalid measure on the ballot steals attention, time and money from the numerous valid propositions on the same ballot." (*Id.* at p. 697.)

Second, preelection review is also proper when it concerns a procedural challenge relating to the petition-circulation process because a measure that is procedurally improper may not be submitted to the voters. (*Costa v. Superior Court* (2006) 37

Cal.4th 986, 1006.) Postponing review is not an option in light of "well-established remedial limitation[s] regarding postelection challenges" because "after the election the procedural claim may well be considered moot." (*Id.* at p. 1007.)

This is especially the case for challenges like this one that relate specifically to the "quality of information provided to the voters" and thus strikes at the heart of the "integrity of the process." (*Nishioka*, 75 Cal.App.4th at p. 644.) When presented with "objective untruths calculated to mislead and misinform a reasonable voter," a writ may issue to prevent the circulation of the falsehoods. (*Id.* at pp. 649–650.) Judicial intervention under such circumstances "enhances the initiative process and promotes the confidence of the voters by preventing fraud on the electorate." (*Id.* at p. 649.)

B. Immediate Review Is Necessary to Avoid Irreparable Harm.

Judicial review is urgent because the initiative seeks to (improperly) regulate conduct beginning on January 1, 2024, before the proposed law is possibly enacted or has even qualified for the ballot. As set forth in the Declarations of Donna Stidham (Stidham Decl.) and Lyle Honig Mojica (Mojica Decl.), the retroactive effect of the Measure will have an extraordinary chilling effect on Petitioner's operations and its delivery of healthcare services to patients throughout 2024. (Stidham Decl., ¶ 10; Mojica Decl., ¶¶ 11–13.) These patients are among the most

vulnerable and medically fragile populations in California, all living with HIV or AIDS, and require stability and continuity of care to ensure their disease remains in control. (Stidham Decl., ¶ 10.) If this Measure were to be placed on the ballot, AHF would be forced to abide by its arbitrarily imposed 98-percent direct patient care requirement, which would prevent AHF from using much of its funds for rent, utilities, repairs, janitorial service, medical supplies, and human resources. (Mojica Decl., ¶ 9.) Significant restructuring would be required, calling into question whether AHF will be able to maintain its current services. (*Id.*, ¶ 11.) The impact of this uncertainty on the thousands of patients of AHF's pharmacies and clinics in California will cause irreparable harm with appreciable societal impact. This Court's timely action is critical.

II. The Measure May Not Be Presented to the Voters Because It is a Bill of Attainder and an Ex Post Facto Law, Which "May Not Be Passed."

This Court should not permit the Measure to be placed on the ballot because it is a bill of attainder and an ex post facto law, both prohibited under the California Constitution, article I, section 9 and U.S. Constitution, article I, section 10. Because such a law may *never* be enacted under either the state or federal constitutions, it thus should not be presented to the voters. (*AFL,* 36 Cal.3d at pp. 697 & 706 [removing from ballot initiative measure that violated federal constitutional provisions].)

A. The Measure Is a Bill of Attainder Because It Identifies a Single Healthcare Provider and Subjects It to Legislatively Determined Punishment Without Judicial Review.

The Measure, which singles out an entity for the application of legislative punishment without a trial, constitutes an illegal bill of attainder. (*United States v. Lovett* (1946) 328 U.S. 303, 315; *Nixon v. Adm'r of Gen. Servs.* (1977) 433 U.S. 425, 468.)

The prohibition against bills of attainder is not "narrow [or] technical," but a "general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature." (*U.S. v. Brown* (1965) 381 U.S. 437, 442.) This broad application of separation of powers principles was precisely what the Framers intended; bills of attainder were considered "contrary to the first principles of the social compact and to every principle of sound legislation." (*Matter of Extradition of McMullen* (2d Cir. 1993) 989 F.2d 603, 606.) Real Parties' campaign for the Measure, and its inflammatory rhetoric and persistent direct targeting of AHF's president, Michael Weinstein, raises the exact concerns that led the Founders to forever prohibit bills of attainder in the Constitution.

A law is a bill of attainder if it "determines guilt and inflicts punishment" "upon an identifiable individual" "without

provision of the protections of a judicial trial." (*Nixon*, 433 U.S. at p. 468.[4]) The Measure readily meets all elements of this test.

1. The Measure Targets "An Identifiable Individual."

The Measure's proponents make no effort to disguise it identifies AHF, both in its findings describing the so-called "offenders" it regulates, and in its carefully crafted list of qualifications for a "prescription drug price manipulator," which are laser-focused to capture AHF alone. What's more, the campaign for the Measure is single-mindedly focused on AHF and its president Michael Weinstein.

To determine "whether legislation singles out a person or class within the meaning of the Bill of Attainder Clause" courts consider whether the statute "explicitly names the individual" or whether it uses generally applicable terms, as well as "whether the identity of the individual or class was 'easily ascertainable' when the legislation was passed." (*SeaRiver Maritime Financial Holdings, Inc. v. Mineta* (9th Cir. 2002) 309 F.3d 662, 669.) Courts also consider "whether the legislation defines the individual or class by 'past conduct [that] operates only as a designation of particular persons,'" and whether such past conduct "consists of 'irrevocable acts committed'" by the targeted

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[4] California courts apply federal law in their analysis of bills of attainder. (*Armijo v. Miles* (2005) 127 Cal.App.4th 1405, 1419.)

entity. (*Ibid.*, quoting *Selective Service System v. Minnesota Public Interest Research Group* (*Selective Serv. Sys.*) (1984) 468 U.S. 841, 847-848.)

The proponents admit that the Measure targets AHF[5] and Weinstein, naming them specifically and explicitly in their campaign materials. (See Boudreau Decl., Exhs. 1-5.) Moreover, in both the Measure's definition of "prescription drug price manipulator" and "owner or operator of highly dangerous properties" the precise requirements make it "easily ascertainable" that AHF is the target. Indeed, the D.C. Circuit considered an analogous statute and found the party affected to be "easily ascertainable" when the statute was only applicable in "such a narrow set of circumstances that it applies to no known cases other than [a specific] custody dispute." (*Foretich v. U.S.* (D.C. Cir. 2003) 351 F.3d 1198, 1217.)

Like *Foretich*, which contained a five-part definition to determine applicability of the act, the definition of "prescription drug price manipulator," contains four criteria, all of which must be met for an entity to qualify as a manipulator, including the requirement that the entity must have spent more than $100,000,000 over ten calendar years on purposes that do not

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[5] It is of no legal significance that AHF is a corporation. (*Consolidated Edison Co. of New York, Inc. v. Pataki* ("*ConEd*") (2d Cir. 2002) 292 F.3d 338, 347-349.)

qualify as "direct patient care" (which is separately defined) and that the entity is an "owner-operator of highly dangerous properties" (also separately defined). (See § 14124.48(b), (i), (l).) Only a large 340B health care provider could hope to meet the spending requirement; this number dwindles to one when factoring the extremely narrow definition of "owner-operator of highly-dangerous properties." (See Mojica Decl., ¶ 8; Boudreau Decl., ¶ 26.) The Measure is designed to capture only an operator of a large number of housing units (§ 14124.48(i)), such as AHF, which has over 1,400 units of affordable housing in and around Los Angeles (Boudreau Decl., ¶¶ 25–27). It is the *combination* of large housing provider with participation in the 340B program that makes AHF the only possible target of the Measure. That is, the Measure's combination of requirements is "so exceedingly narrow and unlikely to coincide" to make AHF the "easily ascertainable" target of the law. (*Foretich,* 351 F.3d at p. 1271.)

The entire premise of the Measure is to target past acts and impose new punishment for them, embodying the "retrospective focus" that is an important element of a bill of attainder. (*ConEd*, 292 F.3d at p. 349 [internal citations omitted].) The definition of "prescription drug price manipulator" relies largely on past conduct: an entity who has *previously* spent more than its threshold amount, who "is or has previously been" an owner of

certain residential properties, and who "has, or previously had," a variety of state healthcare licenses. (§ 14124.48 (h) & (l).)

The Measure also allows AHF no opportunity to "correct[]" any past conduct to avoid applicability of the Measure and "exit[] the targeted class." (*SeaRiver*, 309 F.3d at p. 671 [quoting *Selective Serv. Sys.*, 468 U.S. at p. 848].) For instance, AHF cannot avoid applicability of the Measure by selling its properties, for the Measure applies to current *and* previous owners. (§ 14124.48(i).)

2. The Measure's Requirements Are Clearly Punitive

The punitive intent of the Measure is plain on its face, making it extremely difficult for AHF to serve its patients in California (Stidham Decl., ¶¶ 9–10; Mojica Decl., ¶¶ 9–14) and to continue its activities related to housing, including the provision of shelter, which AHF undertakes as a part of its mission to improve health outcomes of its low income and marginalized patients (Stidham Decl., ¶ 8). Such a punitive law clearly satisfies the standard as an improper bill of attainder.

Courts consider three factors to determine whether a statute is "punitive": "(1) whether the challenged statute falls within the historical meaning of legislative punishment; (2) whether the statute, 'viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes'; and (3) whether the legislative record

'evinces a [legislative] intent to punish.'" (*Selective Serv. Sys.*, 468 U.S. at p. 852.) A statute need not satisfy all factors to be deemed an illegal bill of attainder. (*ConEd*, 292 F.3d at p. 350.)

(a) The Measure Imposes the Historical Punishments of Confiscation of Property and Banning Individuals From Employment, and Subjects AHF and Its President to a Note of Infamy.

The Measure imposes requirements and consequences that are modern-day equivalents of the historical punishments of confiscation and banning from employment, and it deploys rhetoric and consequences that impart a "note of infamy," both on the organization and its operators. The "historical" punishment factor includes measures that are "punitive per se" such as "imprisonment, banishment," "the punitive confiscation of property,[and prohibition of] designated individuals or groups from participation in specified employments or vocations." (*Nixon*, 433 U.S. at pp. at 473–74.)

The Measure includes several such punitive features. The effective date in January 2025 triggers the requirement that all expenditures *in the prior year* conform to an impossible restriction on spending that threatens to require AHF to reduce its existing patient treatment operations (Mojica Decl., ¶ 11, Stidham Decl., ¶ 10) effectively confiscating AHF's business operations. If AHF did not comply with the spending rule (again,

a rule applied *retroactively*), it would lose *all* state healthcare licenses, which are protected property interests. (*Endler v. Schutzbank* (1968) 68 Cal.2d 162, 170.) Moreover, if AHF did not comply with the retroactive spending limits, its key employees would be barred from employment at pharmacies and clinics in California for 10 years. (§ 14124.47(c); Stidham Decl., ¶ 11; Mojica Decl., ¶ 15; Boudreau Decl. ¶ 28.) The Measure's likely impact on AHF is so substantial that the consequences both on the organization and on its individual key employees singled out in the Measure are akin to being "barred from participation in specified employments or vocations." (*Nixon*, 433 U.S. at p. 474.[6])

Courts evaluating measures designed to punish organizations or corporations by reducing or eliminating their funding or operations consider how sweeping the impact is on an entity's business operations in determining whether these restrictions are equivalent to the kind of historical punishment barred by the Bill of Attainder Clause. For instance, in *Planned Parenthood of Central North Carolina v. Cansler* (M.D.N.C. 2012) 877 F.Supp.2d. 310, a federal district court found that a statute that excluded Planned Parenthood and its affiliates from

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[6] Moreover, as discussed above, the design of the Measure leaves AHF no way to escape its restrictions, as it is based on past irrevocable acts. (See *Selective Serv. Sys.*, 468 U.S. at p. 853.)

applying for or receiving state-administered grants or contracts that the organization had previously been awarded was a "categorical exclusion" akin to "put[ting] plaintiff out of business" and "analogous to legislation that prohibits a person or entity from engaging in certain employment," meeting the "historical" definition of punishment. (*Id.* at p. 324; *Florida Youth Conservation Corps. v. Stutler* (N.D.Fla. June 30, 2006.) No. 4:06CV275, 2006 WL 1835967, at *1–2; *Kaspersky Lab, Inc. v. United States Department of Homeland Security* (D.C. 2018) 311 F.Supp.3d 187, 207–208, *aff'd* (D.C. Cir. 2018) 909 F.3d 446.) Indeed, imposing restrictions on the use of funds or participating in activities that would supply further funds is consistent with the earliest bills of attainder in American and English history, which involved legislative punishments "based largely on past acts and associations." (See *Brown*, 381 U.S. at pp. 458–459.) The Measure leaves AHF with an impossible choice: continue to spend its funds in ways that are legal and which are effectively serving its patients, and risk losing *all* of its California licenses and contracts; or conform its spending now with the attendant loss of services and possible risks to employees.

Lastly, both the text of the Measure and its campaign reflect its proponent's efforts to "mark specified persons with a brand of infamy." (*Foretich*, 351 F.3d at p. 1219; see also *Brown,* 381 U.S. at p. 453–454.) The Measure is replete with unnecessary

pejorative expressions and terminology conveying wrong-doing and criminality on legal activity. The regulated healthcare provider is a "manipulator," housing is "slums," net revenues are "abused," low-income patients are "cheated," taxpayers are "scammed." (§§ 14124.40(b); 14124.41(b) & (d).)

Compounding the defamatory rhetoric, Real Parties' campaign for the Measure is focused exclusively on AHF, and more specifically, its president Michael Weinstein. (See Boudreau Decl., Exhs. 1-5.) The CAA's statement that it seeks to "prevent [Weinstein] from misusing taxpayer dollars to fund rent control campaigns in the future," evidences how perfectly the Measure functions as a modern analogue to the traditional punishments—precisely the kind of interference with individual liberties and orderly lawmaking and adjudication processes that the Bill of Attainder Clause is intended to prevent. (*Brown*, 381 U.S. at pp. 458–459.) The constant aspersions brand Weinstein with "infamy," a punitive consequence to a "flesh and blood" individual. (*Kaspersky Lab*, 909 F.3d at p. 461.)

Considering the full panoply of consequences imposed, the obvious intent to disable AHF's ability to continue providing adequate patient care and to muzzle it from exercising its First Amendment rights, and the drumbeat of derogatory and inflammatory rhetoric branding both AHF and Weinstein, the Measure clearly meets the "historic" standard for punishment

under the Bill of Attainder Clause.

(b) The Measure Fails the Functional Test Because Its Penalties Are Grossly Disproportionate to Any Legitimate Legislative Purpose

The lack of any *legitimate* state interest confirms that the Measure flunks the "functional" inquiry of a bill of attainder, as well. The "functional" test considers whether the challenged law "reasonably can be said to further nonpunitive legislative purposes" because "[w]here such legitimate legislative purposes do not appear, it is reasonable to conclude that punishment of individuals disadvantaged by the enactment was the purpose of the decisionmakers." (*Nixon*, 433 U.S. at p. 475.) A statute that burdens a "particular person or class of persons" must also be "rational and fair," and contain "a nexus between the legislative means and *legitimate* nonpunitive ends." (*Foretich*, 351 F.3d at p. 1222 [emphasis added].) Courts do not simply defer to a plausible legitimate purpose; they inquire whether there are no "less burdensome alternatives by which [the] legislature ... could have achieved its legitimate nonpunitive objectives.'" (*Nixon*, 433 U.S. at p. 482].)

There is *no* legitimate legislative purpose to the restrictions and burdens imposed on a single 340B provider, AHF, by the Measure. Proponents feign concern about the use of 340B funds. 340B is a *federal* program, not a state program, fully regulated by

the federal government, with federal law governing how AHF may participate in the program and with the federal government enforcing statutory requirements. (42 U.S.C. § 256b, subds. (a)(5), (d)(2); Boudreau Decl., ¶¶ 10–15.) California has no legitimate non-punitive reason to regulate AHF's 340B spending. (See *ConEd*, 292 F.3d at pp. 352–353 [because "regulation of nuclear power generation has been occupied by Congress" court "cannot consider public health and safety as a valid, non-punitive justification for Chapter 190."].) Moreover, ***these funds do not come from taxpayers or government funds (either state or federal)***, as the Measure falsely represents. (Boudreau Decl., ¶¶ 8–9, 11.) Since this is not taxpayer funds, controlling this spending to conserve taxpayer funds cannot be not a legitimate legislative objective.[7]

The Measure also identifies supposedly improper non-direct patient care spending, such as providing shelter to low-income Californians and engaging in political activity, and seeks to prevent it. Restricting the First Amendment speech rights of a single entity cannot be a legitimate legislative purpose. And

[7] Concern for taxpayer funds is also belied by the requirement in proposed section 14124.50 that, to be eligible for any new state or local contracts, the "manipulator" must have spent 98 percent of net revenues *nationwide* on direct patient care. California does not have a legitimate legislative purpose in regulating expenditures by a health care provider in *other* states.

while the State may regulate the provision of shelter, ensuring safe housing is already a part of the State Building Code and local inspection process. There is no legitimate basis for the State to impose punitive and impossible restrictions on only a large healthcare provider that also provides housing.

What's more, any "protection of patients" rationale is entirely vitiated by the impossible 98-percent direct patient care spending restriction. No healthcare provider could operate under such restrictions, where it can use only two percent of funds for rent, utilities, maintenance, medical billing, and other routine expenses (Mojica Decl., ¶ 10), and such restriction would also prevent AHF from providing important support services to its patients (Stidham Decl., ¶ 9). All of this is plainly contrary to the Congressional intent of the 340B program, to stretch scarce resources (Boudreau Decl., ¶ 8), and clearly does not serve the very patients the Measure pretends to "protect." The only intent of imposing such an arbitrary and impossible restriction is to end AHF's operations (which is the actual result of noncompliance: loss of all California healthcare licenses).

"[I]f there exists an extraordinary imbalance between the burden imposed and the alleged nonpunitive purpose, and if the legislative means do not appear rationally to further that alleged purpose, then the statute in question does not escape unconstitutionality merely because the Government can assert

purposes that superficially appear to be nonpunitive." (*Foretich*, 351 F.3d at p. 1223.) The burdens imposed on a "manipulator"—crippling spending restrictions, permanent loss of licensure and contracts, ten-year bar on future employment—are "gravely imbalanced" against the non-existent legitimate state interests, particularly in light of the numerous, existing mechanisms to ensure patient safety and proper use of tax-exempt funds. The Measure "creates a vilified class of one with no attendant nonpunitive purposes," and therefore "imposes 'punishment' under the functional test because it cannot reasonably be said to further nonpunitive purposes." (*Foretich*, 315 F.3d at pp. 1224–1225.)

(c) The Legislative History of the Measure Leaves No Doubt of Its Intent to Punish AHF and Its President

Finally, the text of the Measure and the campaign materials Real Party has issued leave no question whatsoever that the purpose of the Measure is to punish AHF. "The third hallmark of a punitive statute is a legislative record that 'evinces a congressional intent to punish.'" (*SeaRiver*, 309 F.3d at p. 676.) Statements of legislative sponsors that a law would "punish" an entity are "unquestionably" sufficient indicia of legislative intent to punish. (*ConEd*, 292 F.3d at p. 355.) The record here goes well beyond these kinds of statements to consist of outright attacks

only focused on AHF and its president.

The Measure's text contains numerous terms that cast moral blameworthiness: manipulator, scam, slums, exploit, and perpetrate. The Measure also reflects court-like condemnation: concluding that a healthcare provider has "a track record of scamming the discount prescription drug program" and imposing punitive consequence on it, including loss of licensure and tax-exempt status. (§ 14124.41(d).) The voters are serving as judge, jury, and executioner to AHF in this Measure.

The Measure has been promoted to the public by repeatedly invoking punitive and judgmental concepts. The webpage and all social media pages refer to Michael Weinstein as a "predatory pharmaceutical middleman" and "slumlord." (Boudreau Decl. ¶¶ 29–32 & Exhs. 1–4.) They post an old op-ed listing "The 10 Worst Offenses of Michael Weinstein," and question how "Weinstein been misusing our tax dollars?" (*Ibid.*) The judgment, blame, and accusation leap off the page. This is an unbridled attack on one organization and one individual with no masking of the intent to punish it into oblivion.

3. The Measure Lacks Judicial Review As to AHF's Status as a "Prescription Drug Price Manipulator" and Does Not Allow Judicial Review of the Imposition of Punitive Consequences On a So-Called "Manipulator"

The Measure fails the final test of the bill attainder

analysis: it lacks meaningful judicial review of its punishment. Judicial review is essential because of the retrospective focus of a bill of attainder, which defines past conduct as wrongdoing and then imposes punishment on that past conduct. (*ConEd*, 292 F.3d at p. 349.)

First, the structure of the Measure allows for the imposition of punitive measures without any review whatsoever, even by an administrative entity. The Measure lacks any mechanism by which it is determined that one is a "manipulator," yet it imposes the requirement that any "manipulator" must have "spent at least ninety-eight percent (98%) of the net revenues it generated in California from participation [in the 340B program] on direct patient care" in the prior year. Any "manipulator" is required to submit information on its prior year spending to four agencies, but not documentation that would allow for a determination whether a healthcare provider is a "manipulator" in the first instance. There is no opportunity to contest that determination or provide facts establishing that it does not apply, yet the "manipulator" must comply with highly punitive spending restriction, which puts AHF in a straitjacket that no other 340B provider is forced into. (Mojica Decl., ¶¶ 8–9; Boudreau Decl., ¶¶ 26–27.)

A second failing is the lack of judicial review following a final determination by any of the four agencies that the health

care provider is not in compliance with standards of proposed section 14124.44. While the Measure provides for an administrative hearing, and judicial review of the hearing decision (see § 14124.46(d) & (f)), the review is limited to what the four agencies are tasked with determining: "whether or not the prescription drug price manipulator is in compliance with the requirements of section 14124.44" (§ 14124.46(a)(i)).

What is not included as part of the administrative hearing or in judicial review are the consequences of a "final determination," which is ***permanent revocation*** of "[a]ny and all California pharmacy licenses, health care service plan licenses, or clinic licenses;" prohibition on future license applications for 10 years; employment bar for 10 years for top personnel; loss of tax exempt status for 10 years; and loss of eligibility for state and local grants for 10 years. (§ 14124.47.)[8]

As set forth above, this array of consequences constitutes additional punishment imposed without trial or adequate process. (See *Reynolds v. Quiros* (2d Cir. 2021) 990 F.3d 286, 299–300 & fn. 58 [punishment may only be imposed "after a judicial trial at which the punished individual had an opportunity to challenge the punishment"].)

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[8] In fact, licenses and state tax exemption are revoked upon conclusion of the administrative hearing process and must remain suspended pending judicial review. (§ 14124.46(d)(3)(B).)

Because a determination that a law is a bill of attainder means that the law is imposes punishment like a criminal statute, the absence of any review of the punishment imposed is fatal to the Measure's validity. The Measure's drafters have committed the cardinal sin under the Bill of Attainder Clause by functioning as judge and jury, imposing the business equivalent of capital punishment, and not providing the existing state administrative agencies who oversee licensing or the State's numerous judicial officers with any role in determining the propriety of the punishment. (*ConEd*, 292 F.3d at p. 349.) The Measure is an unconstitutional bill of attainder that cannot be passed, and should not be placed before the voters.

B. The Measure Is an Illegal Ex Post Facto Law Because It Creates a Retroactive New Offense and Subjects Violators to Punitive Consequences.

The Measure is an illegal ex post facto law because it creates a new offense, applies it retroactively to past conduct, and imposes penalties clearly intended to punish the violating corporation and the individuals that operate it, which is unconstitutional under both the federal and state Constitutions. (U.S. Const., art. I, § 10; Cal. Const., art. I, § 9[9].) To determine whether a law violates the ex post facto clause, courts consider

[9] California courts interpret the state ex post facto clause identically to its federal counterpart. (*People v. Snook* (1997) 16 Cal.4th 1210, 1220.)

two components: (1) "a law must be retrospective—that is, 'it must apply to events occurring before its enactment' and (2) it punish conduct that was innocent when done or increases punishment after the conduct was already committed (*Lynce v. Mathis* (1997) 519 U.S. 433, 441 [internal citations omitted]; *Beazell v. Ohio* (1925) 269 U.S. 167, 169–170.) Such laws implicate the twin concerns of the Ex Post Facto Clause: to "assure that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed" and to "restrain arbitrary and potentially vindictive legislation." (*Weaver v. Graham* (1981) 450 U.S. 24, 28–29.)

California and federal courts apply the ex post facto doctrine to civil statutes when a retroactive civil statute clearly functions as a punitive measure, as the Measure does.

1. The Measure Is Retroactive.

It cannot be disputed that the Measure is retroactive in nature. Section 14124.44 establishes the standards that a "prescription drug price manipulator" must comply with, effective January 1, 2025. As of that date, a "manipulator" is eligible for tax exempt status or to be licensed to operate as a pharmacy, a healthcare service plan, or a clinic *only* if "***[i]n the prior calendar year***, the prescription price drug manipulator spent at least ninety-eight percent (98%) of the net revenues it generated in California from participation in the [federal 340B program] on

direct patient care." (See § 14124.44.) For any health care provider to comply with this spending restriction, it would have to conform its spending in 2024, ***before the Measure becomes law, or is even voted upon***—even before it has qualified for the ballot. The retroactive application of the 98 percent standard "appl[ies] to events occurring before [the] enactment" of the Measure, one of the key characteristics of an illegal ex post facto law. (*Weaver v. Graham*, 450 U.S. at p. 29.)

2. The Measure Punishes Conduct that Was Not Illegal or Improper and Vastly Increases Punishment for Other Conduct.

The Measure both punishes conduct that was not subject to punishment before its enactment and increases the punishment for already existing offenses. Currently, a tax-exempt organization *may* spend funds on activities within the scope of its tax-exempt status; activities outside the permissible scope is a possible ground for revocation. (Rev. & Tax Code, § 23777, subd. (c).) Moreover, under current law, health care providers are not currently required to spend their income on specific items to avoid the loss of a pharmacy, health care service plan, or clinic license. (See Health & Saf. Code, § 1386 [grounds for suspension or revocation of health care service plan license]; *id.*, § 1240 [clinic license]; Bus. & Prof. Code, § 4301 [defining "unprofessional conduct" for pharmacy license].) The Measure creates entirely new requirements for a specific class of license

holders: a healthcare provider that has spent over $100 million in any *prior* ten year period and *previously* owned multifamily properties with 500 violations identified in housing inspection reports (§ 14124.48(i) & (l)), and *only* such a provider, will now permanently lose its licenses for failure to have complied with a spending limitation, *before that limitation was even a law.*

The Measure *also* dramatically alters the consequences of license revocation for a so-called "manipulator," apart from all other tax-exempt organizations and similar licensees. Section 14124.44 provides that, effective January 1, 2025, a "manipulator" will lose its tax-exempt status, as well as its pharmacy, clinic, and health care service plan licenses if *in the prior calendar year*, the "manipulator" was "engaged in any unprofessional conduct, dishonest dealing, or conduct inimical to the public health, welfare or safety of the People of the State of California." Under current law, a health care service plan license may be suspended or revoked for "dishonest dealing," *inter alia* (Health & Saf. Code, § 1386, subd. (b)(7)); a pharmacy may have its license suspended or revoked for "unprofessional conduct" (Bus. & Prof. Code, § 4301); and a clinic may have its license suspended or revoked for "conduct inimical to the public health, welfare or safety of the people of the State of California." (Health & Saf. Code, § 1240, subd. (c).) What the Measure changes, however, is that, upon a determination that a "manipulator" has

violated section 14124.44, "***[a]ny and all*** California pharmacy licenses, health care service plan licenses, or clinic licenses held by the prescription drug price manipulator shall be permanently revoked." (§ 14124.47.) This turns a violation of *any one* of the licensing statutory schemes *in the year before the law would even go into effect* into a super-violation revoking *all* licenses under *different* statutory schemes. Even if conduct were identified in 2024 as, for instance, "dishonest dealing," but the administrative agency determined not to revoke any license, in 2025, the determination *in the prior year* would require the invalidation of *all* licenses.[10] The Measure on its face creates substantial new punishment applied retroactively to conduct that would not have received such punishment under current law.

What's more, the Measure also dramatically alters the length of punishment compared to the existing statutory scheme. Section 14124.47 permanently revokes all licenses, and prohibits the manipulator from applying for any new license for a period of *ten years*. Under current law, the holder of a pharmacy license that has been revoked may petition for reinstatement after at

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[10] The Measure would also make any determination during calendar year 2024 that any finding of "unprofessional conduct, dishonest dealing, or conduct inimical . . ." would bar top executives at the licensee from employment in the healthcare field in California for 10 years, which is also a new punishment for these offenses applied to conduct in the past.

least three years (Bus. & Prof. Code, § 4309, subd. (a)(1)); and the holder of a revoked clinic or health care service plan license may seek reinstatement after just one year pursuant to the provisions of Government Code section 11522 (Health & Saf. Code, §§ 1389 [health care service plan]; 1244 [clinic]). Likewise, the 10-year bar on granting new tax-exempt status is a dramatic increase from existing law, which contains no limit on how soon an organization may apply to reinstate its tax exempt status. (Compare § 14124.47(d) with Rev. & Tax Code § 23778.) Lengthening a penalty is a hallmark of an ex post facto law. (See, e.g. *Lynce*, 519 U.S. at pp. 441-443.)

3. The Measure Is Penal and Punitive in Nature.

The prohibition against ex post facto legislation can apply to civil legislation, and its label is not dispositive. (*Roman Catholic Bishop of Oakland v. Superior Court* (2005) 128 Cal.App.4th 1155, 1162; *Hipsher v. Los Angeles County Employees Retirement Association* (2020) 58 Cal.App.5th 671, 697.) The inquiry centers on "*intent*[] to punish" (*Roman Catholic Bishop*, 128 Cal.App.4th at p. 1170 [quoting *Smith v. Doe* (2002) 538 U.S. 84, 92-93] [emphasis added]) and whether the *effect* of the challenged measure is retributive and penal (*Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144, 168–169).

(a) The Measure Was Intended to Punish AHF and Its President.

As explained *supra*, the text, structure, and statements of the Measure's proponents and sponsors all make abundantly clear that the purpose of the Measure is to punish AHF, or perhaps to fatally terminate it in California. While cloaked in statements regarding its intent to aid patients and save taxpayer funds, its retroactive application and the extreme manner in which its penalties are applied reveals punitive intent.

The retroactivity of the Measure reflects its retributive goals: what legitimate *prospective* purpose can be served by penalizing expenditures that were legal when made? The extreme punishment ensures that the only organization in the state that appears remotely likely to be subject to Measure's spending rules would lose its licenses to operate in California on the basis of its conduct before the Measure was even a law. Punishment is the only evident purpose of such a retroactive approach.

The class of organizations regulated by the Measure is irrational because of the inclusion of housing ownership as a mandatory criteria: If the goal is to protect patients and "save taxpayer funds," why are only organizations who operate shelter included in the regulatory class? Why aren't all 340B providers required to abide by the 98 percent spending rule if the concern is taxpayer resources? Why does a healthcare provider who operates shelter have to abide by a distinct and different set of

rules, more onerous than any other healthcare provider?

The materials promoting the Measure make clear that the intent is to punish AHF, and in particular, its president Weinstein, for spending funds in a manner that is not only entirely legal, but as a result of its protected petitioning activity which the Measure's proponent wishes to eliminate. (Boudreau Decl., Exh. 5.)

This singular focus on Weinstein as an "offender"—a traditionally criminal concept—coupled with the statutory scheme that would deprive AHF of every one of its licenses, its tax-exempt status, prevent any reinstatement, and deprive all top executives of even the right to be employed in the industry for simply filing paperwork a day late[11] or missing the 98 percent cutoff by a fraction, reveals that this measure is about retribution for AHF's political activity, and about deterring AHF from engaging in such activities—before the law is even effective. The Measure lacks hallmarks of a regulatory regime—such as evaluation of the severity of a violation when determining application of a penalty and procedures for reinstatement—and

[11] See section 14124.49, defining failure to submit "timely, accurate information" as "dishonest dealing," "unprofessional conduct," or "conduct inimical to the public health, welfare or safety" of Californians, and proposed section 14124.44, subdivision (b), making "manipulator" ineligible for licenses if it engaged in aforelisted conduct.

replaces them with what is akin to a criminal conviction for this organization and its executives.

(b) The Effect of the Measure Is Punitive and Penal.

If the patent punitive intent were not enough to condemn the Measure as an improper ex post facto law, the effect of the Measure establishes beyond doubt that it is punitive.

First, the sanction involves an "affirmative disability or restraint" (*Mendoza-Martinez*, 372 U.S. at pp. 168–169) due to the Measure's prohibition on employment—in any capacity—for individuals in supervisory positions at a so-called "manipulator" on the basis of retroactive liability, barring them from an extended period for any kind of employment in the field in which they have developed expertise. (See *Cummings v. Missouri* (1866) 71 U.S. 277, 319-320; Stidham Decl., ¶ 11, Mojica Decl., ¶ 15, Boudreau Decl., ¶ 28.) Due to the Measure's definition of a "manipulator," which depends upon the fixed characteristics, the supervisory employees of a "manipulator" are subject to a punishment, disqualified for future employment by "past action . . . [such that] nothing that those persons proscribed by its terms could ever do would change the result." (*American Communications Ass'n, C.I.O. v. Douds* (1950) 339 U.S. 382, 414.) "To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any condition, and such denial, enforced for a past act, is nothing

less than punishment imposed for that act." (*Cummings v. Missouri*, 71 U.S. at p. 327.)

The Measure also features "historical" punishment. Supreme Court precedent dictates that barring employment has "historically been regarded as a punishment." (*Mendoza-Martinez*, 372 U.S. at pp. 168–169; *Cummings v. Missouri*, 71 U.S. at p. 320-321; see also *Ex Parte Garland* (1866) 71 U.S. 333, 366-367.)

Next, as discussed above, the Measure reflects a punitive effort to seek retribution against AHF and its president. (See *Mendoza-Martinez*, 372 U.S. at pp. 168–169.) The retroactive focus of the Measure, and in particular the retroactive qualifications to even fall within the scope of the Measure, reveal the punitive nature of the law. It leaves no way for anyone to exit the targeted class. Coupled with the extreme consequences for violations of even such technical components as submission deadlines, the law clearly serves punitive aims and only masquerades as a regulatory measure.

The lack of any rational alternative purpose (*Mendoza-Martinez*, 372 U.S. at pp. 168–169) also confirms that the Measure is punitive. The entire basis of the Measure is falsehood: that by spending money earned through participation in the 340B program, a "manipulator" is improperly using taxpayer funds. The 340B program is *not* taxpayer funded, and thus the premise

of misusing taxpayer funds is entirely invalid. (Boudreau Decl., ¶ 8.) Moreover, requiring a "manipulator" to spend 98 percent of its funds on "direct patient care," which includes no administrative or overhead costs or ancillary services necessary for patient health, is an impossible standard that would compromise patient outcomes. (Stidham Decl., ¶ 10; Mojica Decl., ¶¶ 11–13.) The purpose is not to improve care, but to terminate it entirely. Where there is no connection between the qualifications regulated and the punishment imposed—as in a ban on those avoiding the draft and future service as a preacher—there is no evident rational purpose to a law. (*Cummings v. Missouri*, 71 U.S at pp. 319-320.)

Even if there were any legitimate purpose, the consequences imposed by the Measure are drastically "excessive." (*Mendoza-Martinez*, 372 U.S. at pp. 168–169.) The loss of all licenses would result in thousands of Californians with HIV/AIDS losing their pharmacy and medical care. (Stidham Decl., ¶¶ 4–5.) The gravamen of the supposed problem addressed by the law is a spending issue, not a quality of care or patient safety issue. Immediate revocation of all licenses for issues unrelated to the quality of medical care or pharmacy services is an extreme penalty. Penalties that are excessive in comparison to the "normal and ordinary" approach are punitive. (*U.S. v. Constantine* (1935) 296 U.S. 287, 295–296.)

"The principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal." (*Kaiser Aluminum & Chem. Corp. v. Bonjorno* (1990) 494 U.S. 827, 855 (Scalia, J., concurring).) The Measure not only violates this important principle of fundamental fairness, but does so in a way that retroactively imposes *new* punishments and changes the consequences of actions taken before the law is adopted. It is an invalid ex post facto law and beyond the power of voters to adopt.

III. The Measure Violates Article II, Section 12 of the California Constitution Because It Identifies AHF, and Only AHF, to Perform a Function or Duty.

Article II, section 12, of the state Constitution mandates that "no statute proposed to the electors by the Legislature or by initiative, that . . . names or identifies any private corporation to perform any function or to have any power or duty, may be submitted to the electors or have any effect." The Measure does precisely that, identifying characteristics unique to AHF and imposing duties on it not imposed on any other entity.

In *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805 (*Calfarm*), the Court held that article II, section 12 "bars naming or identifying a private corporation to perform any function." (*Id.*, at p. 832.) Invalidating a provision of the 1988 insurance-reform initiative Proposition 103 that would have established an independent, nonprofit corporation to represent the interests of

insurance consumers, the Court could "see no escape from the clear and explicit language of the state Constitution." (*Id.* at p. 832.) The Court found that Proposition 103 impermissibly "identified," without "naming," a corporation to perform its consumer-protection "function." (*Ibid.*)

Likewise here, the Measure "identifies" a single corporation—AHF—and requires it to perform certain "functions" and imposes certain "duties"—namely, to spend at least 98 percent of its net revenue generated in California from the 340B program on a narrow set of activities defined as "direct patient care" ostensibly to benefit low-income Californians—and to produce and submit unique reporting to the Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health. (See §§ 14124.44 & 14124.45; cf. *Pala Band of Mission Indians v. Board of Supervisors* (1997) 54 Cal.App.4th 565, 584-585.)

It is of no consequence that the Measure does not explicitly "name" AHF. In 1966, the Constitution Revision Commission made two significant changes: It added a prohibition against "identifying" as well as "naming" persons or corporations and it extended the prohibition on naming or identifying corporations (which under the 1964 enactment applied only to constitutional amendments) to encompass initiative legislation. The voters approved the 1966 revision, adopted as article IV, section 26, and

since renumbered as article II, section 12. (*Id*. at p. 833.) The Supreme Court made clear that article II, section 12's intent is to prohibit initiatives that either name *or identify* (without necessarily naming) a corporation to perform any function or to have any power or duty. Indeed, the provision in Proposition 103 that *Calfarm* invalidated did not "name" or refer to any existing corporation, but merely authorized the formation of a new nonprofit corporation and imposed duties on it.

Here, the Measure clearly identifies a single nonprofit corporation—AHF—and requires AHF to perform unique duties and functions. It defines "prescription drug price manipulator" narrowly, in a way that only applies to AHF. (Boudreau Decl., ¶¶ 25–27.) While the first part of the definition applies to an entity that "purchases, negotiates, authorizes, or obtains prescription drugs through the discount prescription drug program," (§ 14124.48(l)(1)), which would encompass hundreds of private entities in California (Boudreau Decl., ¶ 26), the definition's remaining components are constructed to snare only AHF. The second part limits the term to only a subset of these entities that, during any ten-calendar year period of its existence, spent more than $100,000,000—which would include spending outside of California—on purposes that do not meet the Measure's unique definition of "direct patient care." (§ 14124.48(l)(2).) Most private 340B entities are small operations

with a single location and are unlikely to have spent $100,000,000 outside of patient care in a ten-year period. (Boudreau Decl., ¶ 26; Mojica Decl., ¶ 8.) AHF is the largest provider of AIDS/HIV care in California (and in the United States) and is known to have expended over this amount of money nationally on non-direct patient care items such as public service advertising and awareness campaigns, food services, affordable housing, and advocacy campaigns to support affordable housing, a project that is related to AHF's mission to ensure that low-income patients have access to shelter which is correlated with better health outcomes. (Stidham Decl., ¶¶ 4–5, 8.)

Any possible ambiguity about the Measure's identification of AHF is removed by the next part of the definition, which applies to any entity that "currently is, or has previously been, an owner-operator of highly dangerous properties," which the Measure defines as an entity "that, either currently or previously, owns, operates, or is the responsible party for one or more multifamily dwellings that meet or met" certain conditions. This can refer only to AHF, particularly in combination with the requirement that the entity participate in the 340B program. No 340B entities provide housing on the scale that AHF does, such that they might possibly satisfy the Measure's specific requirements. (Boudreau Decl., ¶ 27.)

The Measure's text provides additional context that identifies AHF specifically. Its "findings and declarations" describe an entity that has purchased "luxury coastal condominiums," funded "failed political campaigns," and operates "low-income multifamily housing complexes . . .as slums." (§ 14124.40(b).) These are misleading or outright false characterizations of public reporting about AHF and that could not, when taken together, apply to any other similar provider.

Proponents of the Measure do not even pretend that it would apply to any other entity in their campaign materials. Their media makes scores of inflammatory charges against AHF and its president Weinstein in an attempt to generate support for the Measure with no hint that it could address a single other entity. (Boudreau Decl., ¶¶ 29–33, Exhs. 1–4.) The CAA candidly admitted its targeting of AHF in a public statement to its members on release of the Measure, confirming that it is part of a "dual approach to fight Weinstein's crusade for radical rent control" by "sponsoring a separate ballot measure aimed at preventing Weinstein from misusing taxpayer dollars on future rent control campaigns." (*Id.*, ¶ 33, Exh. 5.)

Notably, the requirements for a "manipulator" are designed to apply to AHF itself and not to its assets or property, and the duties and functions it attempts to place on AHF are non-transferrable. In *Hernandez v. Town of Apple Valley* (2017)

7 Cal.App.5th 194, voters passed an initiative allowing development on land owned by Walmart. The initiative did not specifically "name" Walmart, referring instead only to the "owner" and "developer" of the property, and the Court of Appeal concluded that the initiative did not "name" or "identify" Walmart. (*Id.* at p. 211) While acknowledging that Walmart as the current owner and developer of the property would likely be responsible for the acts under the initiative, it noted that "since Walmart could sell the property, it would have no superior right over the subsequent owner or developer of the property. . . ." (*Ibid.*) In other words, it "does not identify a specific entity that is not capable of being changed." (*Id.* at p. 206.) Rather, the power was assigned to the "owner" and "developer" of the parcel, whose identity might change over time.

In the present case, by contrast, to the extent the Measure identifies AHF, that identification is immutable and there is nothing AHF can do to rid itself of the identification as Walmart could do in *Hernandez*. The Measure attempts to identify AHF based on AHF's historical attributes that apply only to AHF and to no others: The definition of a "manipulator" examines a "ten-year period of its existence," which locks in spending that has already happened, and that "currently is, or has previously been" an owner of certain properties. (§ 14124.48(l).) Further, the functions and duties required of AHF by the Measure are non-

transferrable and therefore cannot be given to another corporation or person. (*Hernandez,* 7 Cal.App.5th at p. 211.)

The Measure improperly identifies AHF and obligates it to perform certain duties and functions in violation of article II, section 12, and must not be submitted to the electors.

IV. The Measure Contains False and Misleading Representations that Cannot Be Put Before Voters.

The Measure's findings and purposes are premised on the false and materially misleading statement that AHF's use of 340B revenues increases costs to taxpayers. Because this falsehood is so central to how the Measure is "sold" to the voters, the Measure should not be presented to the voters. Elections Code section 18600 prohibits false statements or misrepresentations "concerning the contents, purport or effect" of an initiative petition. Any initiative that violates this section may be disqualified from the ballot. (*Nishioka*, 75 Cal.App.4th at pp. 643–644 [].) "[S]tatutes designed to protect the elector from confusing or misleading information should be enforced so as to guarantee the integrity of the process." (*Chase v. Brooks* (1986) 187 Cal.App.3d 657, 663.)

In *Nishioka*, the Court of Appeal affirmed a writ of mandate—issued while an initiative was circulating for signatures—prohibiting the election official from placing the initiative on the ballot. (75 Cal.App.4th at p. 649.) The initiative would have repealed two previously adopted measures, but the

initiative misleadingly stated that those previous measures had been improperly passed and would actually cost taxpayers more than the cost ceilings in the measures. (*Id.* at pp. 646–647 [proponents "misled voters" about their initiative by claiming it was justified by facts which were materially false"].) The Court found that the people's right to accurate information—and "the integrity of the initiative process"—necessitated keeping the misleading measure off the ballot. (*Id.* at p. 649.)

Just as in *Nishioka*, the Measure contains verifiable untruths that mislead potential signers regarding its potential impact on taxpayers. The Measure states repeatedly that taxpayers are stuck with extra costs because of the "manipulators." (See, e.g., § 14124.40(b) ["health care providers have manipulated the program to receive enormous markups on the discounted prescription drugs they receive and *then stick taxpayers with the added cost*."] (emphasis added); (*ibid.*) ["Instead, it cheats low-income patients out of the care they deserve and *scams taxpayers who end up footing the bill*."] (emphasis added), (c) ["Furthermore, additional *reforms are necessary to protect taxpayer dollars*. . . ."] (emphasis added); § 14124.41(b) ["To *protect patients and taxpayers* by putting an end to other prescription drug pricing scams . . . ."] (emphasis added).)

These statements are both false and objectively misleading,

as taxpayer money is not used to create savings in the 340B program. The program's prescription drug price discounts are voluntarily provided by private drug companies—the reimbursements are provided by insurers. (Boudreau Decl., ¶ 8, 10–11.) The program operates at fully private expense when patients are insured. Further, guidance from the Centers for Medicare and Medicaid Services expressly prohibits, for purchases at the 340B discount for drugs that are reimbursed by the Medicaid, reimbursement above that 340B discount price. (*Id*., ¶ 10.) In other words, there are no 340B savings for Medicaid drugs. In the Medicare program, a 340B pharmacy is reimbursed for drugs at the same rate for a given drug regardless of the price paid by the pharmacy dispensing the drug. (*Id*., ¶ 11.) These reimbursement rates are set by statute and are uniform regardless of purchase price. (*Ibid*.) There is, therefore, no "added cost" for taxpayers, and taxpayers are not "stuck with" any costs. These statements about taxpayers, and the supposed need to "protect taxpayers" are without any basis in fact.

These false and misleading statements can only confuse potential petition signers and potential voters. As such, the Measure must not be permitted to appear on a ballot. (*Nishioka*, 75 Cal.App.4th at p. 649.)

V. The Measure Violates Article 2, Section 8 of the California Constitution Because It Pertains to Two Unrelated Subjects.

Because the Measure attempts to regulate both prescription drugs and multi-family housing, it is fatally inconsistent with the single-subject rule—a key constitutional restriction on the initiative power which provides that "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect." (Art. II, § 8, subd. (d).) While "an initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, all of its parts are 'reasonably germane' to each other," and to the general purpose or object of the initiative, (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 230; *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 245), the restriction is not toothless. The Constitution does not grant initiative proponents "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." (*Brosnahan*, 32 Cal.3d at p. 253.) The single-subject rule is "an integral safeguard against improper manipulation or abuse of [the initiative] process." (*Jones* 21 Cal.4th at p. 1158.)

The Measure's title, its introductory provisions, and its substantive provisions all reflect a general object and purpose of

regulating prescription drugs ostensibly to "protect taxpayer dollars and help the neediest patients." (See § 14124.40(d).) The Measure's findings and declarations, and its statement of intent, all expressly underscore this aim. (§§ 14124.40 & 14124.41.) The Measure purports to "permanently authorize the Medi-Cal Rx program so that its expanded patient access and cost-savings can be continued in perpetuity," and attempts to regulate the expenditure of certain 340B funds by a single healthcare provider. (§ 14124.41.)

But prescription drug regulation is not the only subject of the Measure, as the Attorney General's title and summary of its "chief purpose and points" makes clear. (See Exh. 2.) The Measure, the Attorney General notes, imposes an expenditure restriction that requires "certain health care providers to spend 98% of revenues from federal discount prescription drug program on direct patient care." (Exh. 2; see also § 14124.44.) As the Attorney General explains, however, this restriction applies only to healthcare providers that "spent over $100,000,000 in any ten-year period on anything other than direct patient care[] *and* operated multifamily housing with over 500 high-severity health and safety violations." (Exh. 2; see also § 14124.48(l).) It is this latter concern for multifamily housing that represents a second subject of the Measure, and a clear violation of the single-subject rule.

By defining a "prescription drug price manipulator" (the target of the Measure's restrictions and penalties) as an entity that is or previously has been an owner-operator of multifamily housing, the Measure intentionally enters the field of housing regulation, adding penalties for housing health and safety violations by subjecting this healthcare provider to strict expenditure restrictions and penalizing noncompliance with the revocation of healthcare licenses and tax-exempt status. While one purpose is prescription drug regulation, the Measure will also undoubtedly impact the provision of housing. Indeed, the Measure will not only influence the conduct of property owners who are also healthcare providers; its severe restrictions and penalties will discourage healthcare providers from acquiring or operating multifamily housing.

The Measure's violation of the single-subject rule is further evidenced by its references to housing violation in the reporting process it establishes. (§ 14124.51.) The public is invited to submit information about *any* housing provider, "includ[ing], but [] not limited to . . . written notices or inspection reports identifying violations affecting the health and safety of occupants at multifamily dwelling(s)." (*Ibid.*) In short, the so-called "Protect Patients Now Act of 2024" calls for the creation of public input portals for complaints regarding the condition and operation of multifamily housing throughout the State.

An initiative that relates both to prescription drugs and the operation of multifamily housing violates the single-subject rule. (See *Chemical Specialties Manufacturers Assn., Inc. v. Deukmejian* (1991) 227 Cal.App.3d 663, 671 (*CSM*).) There is simply no reasonably discernable nexus between the former (the stated object of the Measure) and the latter. (See *California Trial Lawyers Assn. v. Eu* (1988) 200 Cal.App.3d 351, 359.) Acceptance of a manufactured and strained connection would "essentially obliterat[e] the constitutional requirement." (*CSM*, 227 Cal.App.3d at p. 671.) Enforcing the rule against the Measure, on the other hand, as the decisional authority instructs, would not "preclude the use of the initiative process to accomplish comprehensive, broad-based reform in a particular area of public concern." (*Jones*, 21 Cal.4th at p. 1157.)

VI. The Measure Violates the Commerce Clause by Purporting to Regulate Commerce in Other States.

A state may not enact a law the "practical effect" of which "'is to control [conduct] beyond the boundaries of the state.'" (*Edgar v. MITE Corp.* (1982) 457 U.S. 624, 643, quoting *Southern Pac. Co. v. State of Ariz. ex rel. Sullivan* (1945) 325 U.S. 761, 775, brackets in *Edgar*). "The 'Commerce Clause ... precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State.'" (*Healy v. Beer Institute, Inc.* (1989) 491 U.S. 324, 336, quoting *Edgar*.)

The Measure explicitly presumes to regulate the conduct of covered entities in other states. Section 14124.50(a), which imposes the requirement that 98 percent of net revenues be spent on so-called "direct patient care," specifies that the percentage be calculated on the basis "of the net revenues it generated *nationwide* from participation in the" 340B program. (Emphasis added.) Thus, even if AHF's California operations were to be 98 percent of its California net revenue, AHF would still lose its ability to obtain new or renewed California state or local contracts, including those for federal funds and programs, if AHF's operations in *other* states fail to meet the 98-percent requirement, bringing its nationwide expenditures on "direct patient care" below 98 percent. (§ 14124.50.) This would require AHF to alter its business practices to make its spending in other jurisdictions meet the California 98-percent requirement or else lose its ability to participate in California. (Mojica Decl., ¶¶ 8-9; Boudreau Decl., ¶¶ 26-27.) Such extraterritorial effects are prohibited by the Commerce Clause.

VII. The Measure Is Preempted by Federal Law.

Congress enacted the 340B program for the express purpose of encouraging covered entities providing healthcare services "access to price reductions" from pharmaceutical manufacturers "to enable these entities to stretch scarce Federal resources as far as possible, reaching more eligible patients and

providing more comprehensive services." (H.R. Rep. No. 102-384, p. 12 (1992).) The covered entity acquires the drug at a discounted price, dispenses it to the insurer's member, and receives from the insurer payment at the standard reimbursement amount for pharmacy services. The covered entity uses the savings to provide "more comprehensive services" to its clients. (*Ibid.*) The federal government has laid out detailed regulations governing the program. (42 C.F.R. part 10 (2017).)

The Measure would effectively eliminate AHF from the federal program by application of the 98 percent direct patient care requirement that neither reflects the federal government's criteria for eligibility nor has been approved by the federal government. Such encroachment on federal activities is not permitted under the Supremacy Clause. (U.S. Const., art. VI, cl. 2.) It has long been the law that "the activities of the Federal Government are free from regulation by any state." (*Mayo v. U.S.* (1943) 319 U.S. 441, 445.) Thus, for example, a state may not enact special workers' compensation rules for employees of a contractor working at a federal facility (*United States v. Washington* (2022) 596 U.S. 832, 835) or arrest a postal delivery employee for lacking a state's driver's license (*Johnson v. State of Maryland* (1920) 254 U.S. 51, 56). In the same way, a state may not exclude persons or corporations from participation in a federal program in which they qualify to participate under

federal law.

A state law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" exceeds the State's powers under the Supremacy Clause. (*Hines v. Davidowitz* (1941) 312 U.S. 52, 67.) The Measure's removal of a participant in the 340B program—indeed, a participant that has been among the most successful in the country at meeting the Congressional aim of "stretch[ing] scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services" (H.R. Rep. No. 102-384, p. 12; see Boudreau Decl., ¶¶ 6–7)—would, if enacted, stand "as an obstacle to the accomplishment and execution" of Congress's full objectives.

This is not a case where a state is exercising its traditional jurisdiction over an industry regulated by the federal government for purposes other than those historically reserved to the states. (E.g., *Pacific Gas and Elec. Co. v. State Energy Resources Conservation & Development Comm'n* (1983) 461 U.S. 190.) The Measure seeks to eliminate a "covered entity" that is not alleged to be in violation of federal law by applying to that entity a state definition of "comprehensive services" that excludes services permitted by federal law. The Measure plainly stands as an "obstacle to accomplishment and execution of the full purposes of Congress" (*Hines*, 312 U.S. at p. 67) and is preempted by federal

law.

In addition, the Measure's prohibition on further local and State contracts impermissibly interferes with the implementation of the federal Ryan White program. The purpose of this program is in part "to make financial assistance available to . . . private nonprofit entities to provide for the development, organization, coordination and operation of more effective and cost-efficient systems for the delivery of essential services to individuals and families with HIV disease." (42 U.S.C. § 300ff.) Entities like AHF receive this financial assistance via pass-through agreements with local governments, promising to undertake services specified by the CARE Act, for which the local government reimburses AHF with federal funds. Under the Measure, the criterion for entities like AHF to receive funds is not whether AHF is suited for the "operation of more effective and cost-efficient systems for the delivery of essential services to individuals and families with HIV disease" (42 U.S.C. § 300ff) but instead whether AHF is in compliance with a state law. This is an obvious obstacle to the accomplishment and execution of the full purpose of the CARE Act, and also is prohibited by federal regulation. (45 C.F.R. § 75.328(a)(1) (placing unreasonable requirements on firms in order for them to qualify to do business) and (a)(7) (any arbitrary action in the procurement process).)

CONCLUSION

The Court should issue the peremptory writ prohibiting placement of the Measure on the ballot.

November 22, 2023 Respectfully submitted,

STRUMWASSER & WOOCHER LLP

By: _____
Beverly Grossman Palmer

Attorneys for Petitioner
AIDS Healthcare Foundation

CERTIFICATE OF COMPLIANCE WITH RULE 8.204(C)(1)

I certify that, pursuant to California Rules of Court, rule 8.204(c)(1), the attached **PETITION FOR WRIT OF MANDATE** is proportionally spaced, has a typeface of 13 points or more, and contains 13,790 words, as determined by a computer word count.

November 22, 2023

Respectfully submitted,

STRUMWASSER & WOOCHER LLP

By: _____

Beverly Grossman Palmer

Attorneys for Petitioner
AIDS Healthcare Foundation

EXHIBIT 1

NIELSEN MERKSAMER
NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP

POLITICAL & GOVERNMENT | LAW ADVOCACY LITIGATION

October 4, 2023

Initiative 23-0021 Amdt. 1

Hon. Rob Bonta
Attorney General of California
1300 I Street, 17th Floor
Sacramento, CA 95814

RECEIVED

Oct 04 2023

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Anabel Renteria, Initiative Coordinator

Re: Request for Title and Summary for Proposed Initiative Statute – *Amended Language*

Dear Mr. Bonta:

We serve as counsel for the proponent of the Protect Patient Now Act of 2024 (A.G. # 23-0021). On the proponent's behalf, enclosed are amendments to this measure submitted pursuant to subdivision (b) of Section 9002 of the Elections Code. The $2,000 filing fee and required proponent affidavits were included with the original submission.

All legal inquires or correspondence relative to this amended initiative language should be directed to:

Kurt R. Oneto
Nielsen Merksamer LLP
1415 L Street, Suite 1200
Sacramento, CA 95814
(916) 446-6752
koneto@nmgovlaw.com

Sincerely,

Kurt R. Oneto
Enclosures

October 4, 2023

VIA PERSONAL DELIVERY

Hon. Rob Bonta
Attorney General of California
1300 I Street, 17th Floor
Sacramento, CA 95814

Attention: Ms. Anabel Renteria, Initiative Coordinator

Re: Request for Title and Summary for Proposed Initiative Statute (A.G. No. 23-0021) – *Amended Language*

Dear Mr. Bonta:

Pursuant to Section 9002(b) of the California Elections Code, please find attached hereto amendments to the above-captioned initiative measure. I hereby request that a title and summary be prepared for the initiative measure using the attached amended language. The required proponent affidavits pursuant to Sections 9001 and 9608 of the California Elections Code, and a check for $2,000.00, were included with the original submission.

All inquires or correspondence relative to this initiative should be directed to Kurt R. Oneto at koneto@nmgovlaw.com or 916-446-6752.

Thank you for your assistance.

Sincerely,

Thomas Bannon, Proponent

Enclosure: Proposed Initiative Statute – *Amended Language*

SECTION 1. ***Article 3.3 (commencing with Section 14124.39) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:***

ARTICLE 3.3. Protect Patients Now Act of 2024.

Section 14124.39. Title.

This article shall be known and may be cited as the Protect Patients Now Act of 2024.

Section 14124.40. Findings and declarations.

(a) In 1992, the federal government established a program giving safety net health care providers access to discounted prescription drugs. The intent of the law was for safety net health care providers to use the discounted drugs to treat patients who are "medically uninsured, on marginal incomes and have no other sources to turn to for preventive and primary care services" and to "reach[] more eligible patients and provide[] more comprehensive services" to "low-income and most vulnerable patients." (H.R. Rep. No. 102-384 (Part 2), at 12 (1992)(Conf. Rep.).) The program was NOT intended to be used by safety net health care providers to accumulate massive fortunes running into the hundreds of millions of dollars or more.

(b) Unfortunately, some safety net health care providers have manipulated the program to receive enormous markups on the discounted prescription drugs they receive and then stick taxpayers with the added cost. Instead of using this massive windfall to help patients, the worst offenders have used their fortunes to purchase luxury coastal condominiums, wasted hundreds of millions of dollars on failed political campaigns, put elected politicians on their payrolls, and acquired low-income multifamily housing complexes that are operated as slums. Abusing net revenues generated through the discount prescription drug program in this manner does not result in better health care for low-income patients. Instead, it cheats low-income patients out of the care they deserve and scams taxpayers who end up footing the bill.

(c) Governor Newsom has already ended this type of prescription drug scamming in the Medi-Cal program through Executive Order N-01-19, which requires the Department of Health Care Services to transition Medi-Cal pharmacy services away from arrangements that are susceptible to price scams. Known as the Medi-Cal Rx program, it achieves cost-savings for prescription drug purchases made by the State, standardizes the pharmacy benefit statewide for

all Medi-Cal patients, increases overall access, and eliminates the ability of prescription drug price manipulators to game the system through Medi-Cal. However, other vulnerabilities in taxpayer-funded drug programs that price manipulators still exploit have not yet been addressed.

(d) California needs to make the cost-savings achieved through the Medi-Cal Rx program permanent. Furthermore, additional reforms are necessary to protect taxpayer dollars and help the neediest patients by ensuring that prescription drug price manipulators are required to end other scams in order to continue operating in our State.

Section 14124.41. Statement of intent.

In enacting this article, the purpose and intent of the People of the State of California is to do all of the following:

(a) To permanently authorize the Medi-Cal Rx program so that its expanded patient access and cost-savings can be continued in perpetuity.

(b) To protect patients and taxpayers by putting an end to other prescription drug pricing scams that are still being perpetrated in our State through the discount prescription drug program.

(c) To impose strict accountability on prescription drug price manipulators by requiring them to spend at least ninety-eight percent (98%) of their net revenues generated in this State through the discount prescription drug program on direct patient care.

(d) To ensure that health care providers that have a track record of scamming the discount prescription drug program refocus on providing direct patient care or lose their state-provided privileges and benefits including suspension and revocation of licenses, loss of state and local grant funding, and elimination of California tax-exempt status.

Section 14124.42. Permanent authorization for the Medi-Cal Rx program.

The Department of Health Care Services is authorized to provide and administer Medi-Cal pharmacy services under a single statewide fee-for-service delivery system.

Section 14124.43. Limitation on pharmacy sales agreements involving prescription drug price manipulators.

(a) On and after January 1, 2025, a prescription drug price manipulator shall not enter into, or participate in, a pharmacy sales agreement that applies to, operates in, or intends or proposes to operate in or apply to, this State unless the prescription drug price manipulator is in compliance with Section 14124.44.

(b) Any pharmacy sales agreement which involves a prescription drug price manipulator not in compliance with Section 14124.44 is, as of January 1, 2025, contrary to public policy and is void and unenforceable to the extent that the pharmacy sales agreement applies to, operates in, or intends or proposes to operate in or apply to, this State.

Section 14124.44. Patient protection requirements imposed on prescription drug price manipulators.

Notwithstanding any other provision of law, on and after January 1, 2025, a prescription drug price manipulator shall only be eligible for tax-exempt status in this State or to be licensed to operate as a pharmacy, a health care service plan, or a clinic in this State if it complies with all of the following requirements:

(a) In the prior calendar year, the prescription drug price manipulator spent at least ninety-eight percent (98%) of the net revenues it generated in California from participation in the discount prescription drug program on direct patient care.

(b) In the prior calendar year, the prescription drug price manipulator was not engaged in any unprofessional conduct, dishonest dealing, or conduct inimical to the public health, welfare, or safety of the People of the State of California.

Section 14124.45. Oversight of prescription drug price manipulators.

(a)(1) In order to determine compliance with Section 14124.44, on and after January 1, 2025:

(A) A prescription drug price manipulator that holds tax-exempt status in this State shall annually submit to the Attorney General a detailed accounting for the prior calendar year of both its California statewide and nationwide gross and net revenues generated from participation in the discount prescription drug program as well as how those net revenues were spent.

(B) A prescription drug price manipulator that holds a pharmacy license in this State shall annually submit to the Board of Pharmacy a detailed accounting for the prior calendar year of both its California statewide and nationwide gross and net revenues generated from participation in the discount prescription drug program as well as how those net revenues were spent.

(C) A prescription drug price manipulator that holds a health care service plan license in this State shall annually submit to the Department of Managed Health Care a detailed accounting for the prior calendar year of both its California statewide and nationwide gross and net revenues generated from participation in the discount prescription drug program as well as how those net revenues were spent.

(D) A prescription drug price manipulator that holds a clinic license in this State shall annually submit to the Department of Public Health a detailed accounting for the prior calendar year of both its California statewide and nationwide gross and net revenues generated from participation in the discount prescription drug program as well as how those net revenues were spent.

(2) The People of California hereby find and declare that, similar to the need for out-of-state information under Chapter 17 of Part 11 of Division 2 of the Revenue and Taxation Code, it is necessary for prescription drug price manipulators to provide information on both California statewide and nationwide gross and net revenues in order to ensure proper allocation of in-state and out-of-state revenues.

(b) In addition to any other authority granted by this article, the Attorney General, the Board of Pharmacy, the Department of Managed Health Care, or the Department of Public Health may do either of the following:

(1) Standardize the necessary contents of the detailed accounting(s) required to be submitted pursuant to this section.

(2) Request from a prescription drug price manipulator any other information deemed necessary or convenient to determine compliance with the requirements set forth in Section 14124.44.

(c) All information submitted pursuant to this section shall be submitted under penalty of perjury.

(d)(1) All financial information submitted to the Attorney General, Board of Pharmacy, Department of Managed Health Care, or Department of Public Health pertaining to either of the

following shall be treated as confidential and sensitive business information exempt from public disclosure:

(A) Specific prices or amounts paid by, or charged to, a prescription drug price manipulator for specific prescription drugs acquired by the prescription drug price manipulator through the discount prescription drug program.

(B) Specific prices or amounts charged by, or paid to, a prescription drug price manipulator for specific prescription drugs it obtained through the discount prescription drug program.

(2)(A) Total aggregated gross and net revenues generated by a prescription drug price manipulator through the discount prescription drug program are not covered by this subdivision so long as the figures do not reveal the specific information described in subparagraphs (A) or (B) of paragraph (1).

(B) After removing or anonymizing the specific information described in subparagraphs (A) and (B) of paragraph (1), the Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health shall make total aggregated statewide and nationwide gross and net revenues figures publicly available upon request.

(e)(1) The Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health shall cooperatively establish the deadline each year for a prescription drug price manipulator to submit the information required by this section.

(2) For calendar year 2025, the deadline shall not be later than December 31, 2025.

(3) A prescription drug price manipulator that fails to submit required information by the deadline established pursuant to this subdivision shall be deemed to be out of compliance with the requirements of Section 14124.44 for the applicable calendar year, according to the procedures set forth in subdivision (b) of Section 14124.46.

(f) The Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health may each impose a fee on a prescription drug price manipulator for the costs associated with concluding whether the prescription drug price manipulator was in compliance with the requirements of Section 14124.44 during the prior calendar year. The charges shall not exceed the reasonable regulatory costs to the respective agency incident to performing the investigations, inspections, and audits required by this article, including any administrative enforcement and adjudication thereof.

(g)(1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health may implement this article by means of bulletins, notices, or other similar instructions, without taking further regulatory action.

(2) Actions taken pursuant to an inter-agency agreement entered into pursuant to subdivision (c) of section 14124.46 shall be covered by paragraph (1).

Section 14124.46. Conclusions regarding compliance.

(a)(1) Within 60 calendar days of the deadline established pursuant to subdivision (e) of Section 14124.45, the Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health shall each separately issue an independent written conclusion regarding whether or not the prescription drug price manipulator is in compliance with the requirements of Section 14124.44. Failure to reach a conclusion within 60 calendar days shall not excuse noncompliance with Section 14124.44.

(2) The Attorney General, Board of Pharmacy, Department of Managed Health Care, or Department of Public Health shall only be required to issue an independent written conclusion pursuant to this subdivision if the prescription drug price manipulator was required to submit information to the relevant official, board, or department pursuant to subdivision (a) of Section 14124.45.

(b)(1) If, within the 60-calendar day period set forth in paragraph (1) of subdivision (a), the information submitted by a prescription drug price manipulator is found to be incomplete or insufficient by the Attorney General, Board of Pharmacy, Department of Managed Health Care, or Department of Public Health for issuance of a written conclusion required by this section, then the relevant official, board, or department shall issue to the prescription drug price manipulator a written notice to correct. The notice to correct shall contain a description of the additional information required.

(2) The prescription drug price manipulator shall have 10 calendar days from the date of the notice to correct to provide complete and/or sufficient information. If the prescription drug price manipulator fails to remedy the incompleteness and/or insufficiency within 10 calendar days, then the prescription drug price manipulator shall be deemed to be out of compliance with

the requirements of Section 14124.44 for the applicable calendar year and the relevant official, board, or department shall issue a written conclusion to that effect immediately upon the expiration of the 10-calendar day period.

(c) The Attorney General, Board of Pharmacy, Department of Managed Health Care, or Department of Public Health may, either collectively or separately, enter into an inter-agency agreement with the California State Auditor's Office for assistance in reaching a conclusion about a prescription drug price manipulator's compliance with the requirements of Section 14124.44. Costs incurred pursuant to an inter-agency agreement under this subdivision may be recovered pursuant to subdivision (f) of Section 14124.45.

(d)(1) If the Attorney General, Board of Pharmacy, Department of Managed Health Care, or Department of Public Health concludes a prescription drug price manipulator is not in compliance with the requirements of Section 14124.44, then a written notice of noncompliance shall be provided to the prescription drug price manipulator notifying it of that conclusion. The written notice of noncompliance shall provide instructions on requesting a hearing pursuant to subdivision (e).

(2) If a hearing is not requested pursuant to subdivision (e), then a conclusion issued pursuant to this section shall become a final determination.

(e)(1)(A) A prescription drug price manipulator may request a hearing in response to a written notice of noncompliance issued pursuant to paragraph (1) of subdivision (d).

(B) The request shall be submitted in writing and must made be within 30 calendar days of the date of the written notice of noncompliance.

(2)(A) Except as otherwise provided in this article, hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) The Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health may consolidate hearings on written notices of noncompliance pertaining to the same prescription drug price manipulator for the same calendar year and may mutually appoint a single hearing officer therefor. The hearing may be conducted by a hearing officer appointed by an official, board, or department that issued a written notice of noncompliance.

(C) The prescription drug price manipulator may, but need not, be represented by counsel at any of the stages of the proceedings.

(3)(A) If judicial review is not sought pursuant to subdivision (f), then the decision of the hearing officer shall become a final determination.

(B) If the hearing officer's decision is that the prescription drug price manipulator is not in compliance with the requirements of Section 14124.44, then any exemption from California state taxation and any licenses described in subdivision (a) of Section 14124.45 held by the prescription drug price manipulator shall be immediately suspended. If judicial review is thereafter sought pursuant to subdivision (f), the state tax exemption and license(s) shall remain suspended pending judicial review pursuant to subdivision (f).

(f)(1) Any party aggrieved by the decision of the hearing officer may seek review pursuant to Section 1094.5 of the Code of Civil Procedure within 30 calendar days of issuance of the hearing officer's decision.

(2) If review is sought pursuant to Section 1094.5 of the Code of Civil Procedure, the final determination shall be based upon the outcome of that review.

Section 14124.47. Final determinations.

Notwithstanding any other provision of law, if a prescription drug price manipulator is finally determined pursuant to the procedures set forth in this article to have violated the requirements of Section 14124.44, then all of the following shall apply:

(a) Any and all California pharmacy licenses, health care service plan licenses, or clinic licenses held by the prescription drug price manipulator shall be permanently revoked.

(b) The prescription drug price manipulator shall be prohibited from applying for, or obtaining or possessing, a California pharmacy license, health care service plan license, or clinic license for a period of 10 years.

(c) Any person serving as an owner, chief executive officer, chief financial officer, chief administrative officer, chief operating officer, president, or any other similar position exercising significant influence or control over the prescription drug price manipulator at the time the violation of Section 14124.44 occurred shall be prohibited from serving as an owner, officer, director, or employee of a California licensed pharmacy, health care service plan, or clinic for a period of 10 years.

(d) The prescription drug price manipulator shall lose, and no longer be eligible for, tax-exempt status in the State of California, including under Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code, and shall instead be subject to the Revenue and Taxation Code and other state laws as a taxable organization. The prescription drug price manipulator shall be prohibited from reapplying for, or again being granted, tax-exempt status in this State for a period of 10 years.

(e) The prescription drug price manipulator shall be ineligible to receive any new or renewed California state or local grants or contracts for a period of 10 years.

Section 14124.48. Definitions.

For purposes of this article, as used in both the singular and plural form, the following definitions shall apply:

(a) "Clinic" means an entity operating as one or more of the clinics described in Section 1204 of the Health and Safety Code.

(b) "Direct patient care" means the provision of medical services, dental services, pharmaceutical services, or behavioral health services directly administered to individual patients being treated for, or suspected of having, medical or behavioral health conditions. Direct patient care includes preventive care that is directly administered to patients. Further, in order to qualify as "direct patient care," the services must be health care services that are regularly provided by other health care providers in the community or nonprofit community-based organizations that are also receiving reimbursements or payments from the Medi-Cal, Medicaid, or Medicare programs.

(c) "Discount prescription drug program" means the program established by the Veterans Health Care Act of 1992, P.L. 102-585 § 602, within section 340B of the Public Health Service Act (§ 340B; 42 U.S.C § 256b) that is administered by the Office of Pharmacy Affairs in the Health Resources and Services Administration within the United States Department of Health and Human Services.

(d) "Enforcement agency" means any department of a state, county, or city agency within California that has the authority to inspect a multifamily dwelling and enforce health, safety, or building codes including, but not limited to, a building department or building division,

a housing department, a housing and community investment department, a fire department or fire district, and a health department.

(e) "Entity" means a natural person, corporation, or other legal or corporate organization of any kind, whether non-profit or for-profit, and includes any parent, subsidiary, or affiliate of the entity.

(f) "Health care service plan" means an entity operating as a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(g) "Medi-Cal Rx Program" means the program initially established pursuant to Paragraph (1) of Executive Order N-01-19 and permanently authorized by Section 14124.42.

(h) "Multifamily dwelling" means any structure located in this State designed or used for human habitation or occupancy that has been divided into two or more independent living quarters.

(i) "Owner-operator of highly dangerous properties" means an entity, including any parent, subsidiary, or affiliate of that entity, that, either currently or previously, owns, operates, or is the responsible party for one or more multifamily dwellings that meet or met the following conditions during the time of the entity's ownership, operation, or responsibility:

(1) One or more of the multifamily dwellings was inspected on one or more occasions by an enforcement agency or officer thereof.

(2) The enforcement agencies or officers issued one or more notices or inspection reports identifying violations affecting the health and safety of occupants of the multifamily dwelling(s).

(3) Cumulatively across all of the multifamily dwellings, the notices and/or inspection reports described in paragraph (2) identified a combined total of at least five hundred (500) violations which were categorized in violation severity level "high."

(j) "Pharmacy" means an entity operating pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(k)(1) "Pharmacy sales agreement" means any agreement involving a pharmacy and another entity that purchases, authorizes, or obtains prescription drugs through the discount prescription drug program where both of the following conditions exist:

(A) The pharmacy dispenses drugs negotiated by the other entity through or pursuant to the discount prescription drug program.

(B) The price charged by the pharmacy for the drugs described in subparagraph (A), excluding dispensing fees, exceeds the purchase price negotiated and/or paid by the other entity pursuant to or through the discount prescription drug program.

(2) A pharmacy sales agreement can exist between unrelated entities, or between related entities that are parents, subsidiaries, or affiliates of one another or otherwise under common ownership or control.

(l) "Prescription drug price manipulator" means an entity, including any parent, subsidiary, or affiliate of that entity, that individually or collectively with one or more of its parents, subsidiaries, or affiliates meets all of the following requirements:

(1) The entity purchases, negotiates, authorizes, or obtains prescription drugs through the discount prescription drug program.

(2) During any ten calendar year period of its existence, the entity spent more than one hundred million dollars ($100,000,000) on purposes that do not qualify as direct patient care.

(3) The entity currently is, or has previously been, an owner-operator of highly dangerous properties.

(4) The entity meets at least one of the following conditions:

(A) The entity currently has, or previously had, one or more licenses to operate as a health care service plan.

(B) The entity currently contracts, or has previously contracted, with the Department of Health Care Services as a primary care case management organization pursuant to Article 2.9 (commencing with Section 14088) of Chapter 7 of Part 3 of Division 9.

(C) The entity currently contracts, or has previously contracted, with the federal Centers for Medicare and Medicaid Services to provide services in the Medicare Program as a Medicare special needs plan.

(D) The entity currently has, or previously had, one or more licenses to operate as a pharmacy.

(E) The entity currently has, or previously had, one or more licenses to operate as a clinic.

14124.49. Unprofessional conduct, dishonest dealing, and conduct inimical to public health, welfare, or safety.

(a) In addition to any other conduct, standard, or requirement described in Article 7 (commencing with Section 1386) of Chapter 2.2 of Division 2 of the Health and Safety Code or any other statute or regulation, it shall constitute dishonest dealing for a health care service plan that qualifies as a prescription drug price manipulator to fail to submit timely, accurate information required or requested pursuant to Section 14124.45.

(b) In addition to any other conduct, standard, or requirement described in Article 19 (commencing with Section 4300) of Chapter 9 of Division 2 of the Business and Professions Code, Section 1762 of Title 16 of the California Code of Regulations, or any other statute or regulation, it shall constitute unprofessional conduct for a pharmacy that qualifies as a prescription drug price manipulator to fail to submit timely, accurate information required or requested pursuant to Section 14124.45.

(c) In addition to any other conduct, standard, or requirement described Article 5 (commencing with Section 1240) of Chapter 1 of Division 2 of the Health and Safety Code or any other statute or regulation, it shall constitute conduct inimical to the public health, welfare, or safety of the people of the State of California for a clinic that qualifies as a prescription drug price manipulator to fail to submit timely, accurate information required or requested pursuant to Section 14124.45.

Section 14124.50. California state and local grants and contracts eligibility.

(a)(1) The People of California hereby find and declare that their state and local tax dollars should not be awarded to prescription drug price manipulators that violate the discount prescription drug program's intent to treat patients who are "medically uninsured, on marginal incomes and have no other sources to turn to for preventive and primary care services" and to "reach[] more eligible patients and provide[] more comprehensive services" to "low-income and most vulnerable patients."

(2) The People of California further find and declare that protecting their state and local tax dollars in this manner is a matter of statewide concern.

(b) Therefore, in addition to the requirements of subdivision (e) of Section 14124.47, a prescription drug price manipulator shall only be eligible to receive any new or renewed

California state or local grants or contracts if, in the prior calendar year, the prescription drug price manipulator spent at least ninety-eight percent (98%) of the net revenues it generated nationwide from participation in the discount prescription drug program on direct patient care.

Section 14124.51. Public input.

The Attorney General, Board of Pharmacy, Department of Managed Health Care, and Department of Public Health shall invite, and provide a process for submission of, public comments and information relating to entities that qualify as a prescription drug price manipulator and/or an owner-operator of highly dangerous properties. Information that can be submitted pursuant to this section includes, but is not limited to, records of expenditures and written notices or inspection reports identifying violations affecting the health and safety of occupants at multifamily dwelling(s).

Section 14124.52. Effective date and severability.

(a) This article shall take effect on the next January 1 following its adoption by the voters.

(b) The provisions of this article are severable. If any portion, section, subdivision, paragraph, subparagraph, clause, subclause, sentence, phrase, word, or application of this article is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this article. The People of the State of California hereby declare that they would have adopted this article and each and every portion, section, subdivision, paragraph, subparagraph, clause, subclause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any part of this article or application thereof would be subsequently declared invalid.

(c) To the extent a court of competent jurisdiction determines it is legally impossible to comply with any date or deadline set forth in this article during the first calendar year after this article takes effect, the People of the State of California hereby declare their intent for this article to be implemented and applied at the earliest possible date consistent with state and federal law.

SECTION 2. ***Conflicting Measures.***

(a) In the event that this initiative measure and another initiative measure or measures dealing with pharmacy sales agreements or prescription drug price manipulators, as defined in this initiative, shall appear on the same statewide election ballot, the other initiative measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other initiative measure or measures shall be null and void.

(b) Notwithstanding subdivision (a), the People hereby find and declare that this initiative measure does *not* conflict with the Protect Access to Healthcare Act of 2024 (Atty. Gen. # 23-0024) or any other initiative measure that provides additional or extended funding for the Medi-Cal program.

SECTION 3. ***Liberal Construction.***

This Act shall be liberally construed to give effect to its intent and purposes, which are expressed in Sections 14124.40 and 14124.41.

SECTION 4. ***Legal Defense.***

The purpose of this section is to ensure that the people's precious right of initiative cannot be improperly annulled by state politicians who refuse to defend the will of the voters. Therefore, if this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge which attempts to limit the scope or application of this Act in any way, or alleges this Act violates any state or federal law in whole or in part, and both the Governor and Attorney General refuse to defend this Act to the fullest extent possible on behalf of the State of California, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 (commencing with Section 12500) of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act to the fullest extent possible on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act to the fullest extent possible. The written affirmation shall be made publicly available upon request.

(c) In order to support the defense of this Act in instances where the Governor and Attorney General fail to do so despite the will of the voters, a continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California to the fullest extent possible.

EXHIBIT 2

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

RESTRICTS SPENDING BY HEALTH CARE PROVIDERS MEETING SPECIFIED CRITERIA. INITIATIVE STATUTE. Requires certain health care providers to spend 98% of revenues from federal discount prescription drug program on direct patient care. Applies only to health care providers that: spent over $100,000,000 in any ten-year period on anything other than direct patient care; and operated multifamily housing with over 500 high-severity health and safety violations. Penalizes noncompliance by revoking health care licenses and tax-exempt status. Permanently authorizes state to negotiate Medi-Cal drug prices on statewide basis.

Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: **Increased costs to state government, potentially up to the millions of dollars annually, to review entities' compliance with the measure and enforce the measure's provisions. These costs would be paid for by fees created under the measure. Uncertain fiscal impacts to state and local government health programs, depending on how the affected entities respond to the measure's requirements.** (23-0021A1.)

DECLARATION OF LAURA BOUDREAU

I, Laura Boudreau, declare:

1. I am the Chief of Operations/Risk Management and Quality Improvement of the AIDS Healthcare Foundation (AHF), a position I have held since 2018. I make this Declaration in Support of AHF's Petition for Writ of Mandate in this proceeding. I am familiar with the matters stated here and, if called as a witness, could and would competently testify to them.

2. I am a lawyer by training and education. I worked at AHF as an in-house attorney from 2006 to 2015, and as General Counsel at International Medical Corps from 2016 to summer of 2018, when I returned to AHF as Chief of Operations.

3. During my employment at AHF I have become very familiar with the statutory, regulatory, and other operational requirements of numerous federal laws governing AHF's healthcare and pharmacy work, including the 340B program, the Ryan White CARE Act, Medicare, and Medicaid. This declaration provides background on the operation of programs under these laws and how AHF's activities under the laws interrelate.

How the 340B Program Works to Generate Savings for Covered Entities, Which They Use to Advance their Missions

4. The 340B statute lists the entities that may participate in the 340B program, which are known as "covered entities." 2 U.S.C. Section 256b(a)(4)(A)-(O). They include entities like AHF, which qualifies as a recipient of Ryan White CARE Act

grants. They also include federally qualified health centers, urban Indian organizations, public hospitals, critical access hospitals, and rural referral centers. Covered entities are all nonprofits or government agencies.

5. The 340B program works by allowing these covered entities to purchase drugs from drug manufacturers at a statutory discount. The program is *voluntary* – drug manufacturers are not required to participate in the program, but agree to participate as a condition to gaining access for their products in the Medicaid program. Likewise, covered entities need not participate in the program, although the entire purpose of the program is to incentivize them to do so to access the discounted drugs.

6. Under the 340B program, covered entities purchase drugs at the 340B discount price, provide them to patients, and bill the patient's insurer and are reimbursed at the regular, non-discount amount. This difference in the lowered cost of the drug, and the regular reimbursement rate, provides additional revenue for the covered entity. This revenue offsets the impact of higher drug prices that could limit services provided by covered entities having to pay those higher prices. The revenue allows covered entities to "stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services." (H.R. Rep. 102-384, 12.)

7. Recently, the federal district of South Carolina issued a decision, *Genesis Health Care, Inc. v. Becerra* (*Genesis*) (D. S.C. 2023) 2023 WL 7549156, *1, which describes how the 340B program works and is consistent with my understanding of how it works at AHF. "340B entities [like AHF] are able to stretch these scarce Federal resources because they receive their drugs at a discount and are reimbursed by insurers at

the non-discounted price of the drug, thereby increasing the 340B entity's profit margin [on the drug transaction]. This allows 340B entities to provide more services to a larger population of under-served patients." (*Genesis*, *1.)

8. It needs to be made clear that the 340B program does not involve the use of taxpayer money – it is a program to stretch *existing* scarce federal resources, not to provide additional federal funding. The price discounts are voluntarily provided by private drug companies. The reimbursements are provided by insurers.

9. In practice, a 340B covered entity contracts with an insurance plan to provide pharmacy dispensing services for patients insured by that plan. Typically, the contracted reimbursement rate consists of: (1) a pre-negotiated fee for the cost of the drug; and (2) a dispensing fee for costs associated with operating the pharmacy and dispensing the drug. The reimbursement amount is predetermined, contractually agreed upon, and is generally uniform for pharmacies regardless of what price they originally paid when they purchased the drug. Accordingly, the reimbursements received from insurers by covered entities do not burden taxpayers in any way. Covered entities are simply reimbursed the same as any other pharmacy provider for the same services pursuant to the terms of their private contracts. As explained in *Genesis*, covered entities may be able to realize a margin on drugs paid for by insurers due to the low cost of their drugs, but that does not amount to "prescription drug price manipulation" or a taxpayer burden. It is simply the way markets work and what Congress intended.

340B and the Medicare Program

10. In the Medicare program, the reimbursement rates are set by the federal Centers for Medicare and Medicaid Services (CMS) and are uniform regardless of purchase price – that is, regardless of whether a provider received a discount from the 340B program or any other means (such as a bulk wholesale discount for large providers). In fact, the U.S. Supreme Court recognized that Congress "did not see fit to differentiate 340B hospitals from other hospitals when requiring that the reimbursement rates be uniform" under Medicare law. Rather, Congress was "well aware that 340B hospitals paid less for covered prescription drugs." (*American Hospital Association v. Becerra* (2022) 596 U.S. 724, 738.)

11. The Supreme Court's statement is consistent with my own experience based on working with Medicare prescription drug claims at AHF. AHF is reimbursed by Medicare plans at each plan's contracted rate, which allows for covered entities to obtain a margin just as in the case of the hospitals. It is inaccurate and false to say that the Medicare reimbursement for 340B drugs is any different taxpayer burden than reimbursement for non-340B drugs; the taxpayer burden is identical and no additional burden on taxpayers is created on Medicare by the 340B program.

How Medi-Cal and 340B Work

12. State Medicaid agencies, including California, are required by law to reimburse providers for drugs dispensed to Medicaid fee-for-service beneficiaries at the "actual acquisition cost" of the dispensed drugs plus a dispense fee. That means

providers make no margin on prescription drugs for their Medicaid fee for service patients – just a dispensing fee to cover the cost of dispensing the drug (i.e., the labeling, filling of bottles, delivery). This is true for all providers – whether they are 340B covered entities or not. It's just the reimbursement terms of participation in the program.

13. In 2019 Governor Newsom issued an Executive Order removing the entire prescription drug benefit from Medicaid managed care and moving it into Medi-Cal fee for service. (See https://www.gov.ca.gov/wp-content/uploads/2019/01/EO-N-01-19-Attested-01.07.19.pdf.) That means that providers who dispense 340B drugs to their Medi-Cal managed care patients must bill Medi-Cal fee for service directly (and not an MCO). As a result, by law, the providers are reimbursed at their actual 340B acquisition costs – that is, the standard Medi-Cal fee for service rate – plus a dispensing fee. In other words, again, there is no margin, and there certainly is no burden on taxpayers associated with the provision of 340B drugs to Medi-Cal.

Uses of 340B

14. The 340B statute is silent as to the uses to which 340B revenue can be put. This is not just my opinion. The Government Accountability Office (GAO) has explained:

> In addition to realizing savings through 340B price discounts, covered entities can generate revenue when purchasing 340B drugs for eligible patients whose insurance reimbursement exceeds the 340B price paid for the drugs. The statute authorizing the 340B Program does not dictate how covered entities should use this revenue or require discounts on the drugs to be passed along to

patients. (See GAO-23-106095 340B Drug Discount Program Report, May 11, 2023, available at https://www.gao.gov/assets/830/820127.pdf.)

15. But this does not mean covered entities can use 340B savings for anything in the world. First, most covered entities- including AHF - are nonprofits. They are bound by state laws governing their charitable organizations, as well as their corporate articles and by laws and by federal tax laws. Second, they are bound by Congress's overarching purpose of the program which is to "stretch scarce Federal resources *as far as possible*, reaching more eligible patients and providing more comprehensive services." (H.R. Rep. 102-384, 12.) Given Congress's expressed intent, as well as the varied kinds of entities eligible to participate in the 340B program, and the myriad services such entities may provide under federal and state law, this flexibility makes sense, as it maximizes the types of services covered entities can provide and what services are included as "more comprehensive services." The limits placed by Congress on the uses of 340B savings are only the scope of services that can be provided by the covered entities themselves, all of whom are by necessity nonprofit/governmental entities serving underserved populations, which have inherent limits in the type of uses that can be made from the funds in accordance with their tax-exempt purpose or the scope of their governmental authority.

The Ryan White CARE Act

16. AHF is eligible to participate in the 340B program because it is an entity that receives grants and assistance under the Ryan White CARE Act (42 U.S.C. Section 300ff et seq.) (See 42 U.S.C. Section 256b(a)(4)(D), (J).) The Ryan White CARE Act

provides federal funding and support to combat the HIV/AIDS epidemic, and I understand its purpose to be as follows:

> "It is the purpose of this Act to provide emergency assistance to localities that are disproportionately affected by the Human Immunodeficiency Virus epidemic and to make financial assistance available to States and other public or private nonprofit entities to provide for the development, organization, coordination and operation of more effective and cost efficient systems for the delivery of essential services to individuals and families with HIV disease." (42 U.S.C. Section 300ff.)

17. The Ryan White CARE Act is the federal government's primary response to the HIV/AIDS epidemic in this country.

18. The Ryan White CARE Act provides funding through three primary streams:

a) Grants made from HHS to specific local governments designated as eligible metropolitan areas (EMAs) or transitional grant areas (TGAs). These local governments then fund nonprofits such as AHF to provide services, usually via competitive bidding. (42 U.S.C. §§ 300ff-11 – 300ff-20, also known as "Part A.")

b) Grants made from HHS to State governments, which can then fund nonprofits like AHF to provide services, usually via competitive bidding. (42 U.S.C. §§ 300ff-21 – 300ff-38, also known as "Part B.")

c) Grants made directly from HHS to nonprofit providers like AHF to provide services, usually via competitive bidding. (42 U.S.C. §§ 300ff-41 – 300ff-67, also known as "Part C.")

19. In California, AHF receives Ryan White CARE Act funding for a variety of services (i.e., medical case management, medical outpatient, benefits specialty services, ADAP, prevention, testing, counseling) in a number of counties (Alameda, San Diego, Los Angeles, San Bernardino, and Riverside) through agreements with local governments and the State.

20. Regardless of the stream through which AHF receives CARE Act grant funding, the grants may be used only for certain specified purposes:

(A) core medical services

(B) support services

(C) administrative expenses

These services are further defined in the Ryan White statutes. 42 U.S.C. § 300ff-14(a)(1) [for grants to local governments]; see also 42 U.S.C. § 300ff-22(a) [for grants to states]; 42 U.S.C. § 300ff-51 [for grants to nonprofits like AHF].)

21. In addition, states receiving grants may fund nonprofits like AHF to provide home and community-based services, outreach services, and coordination of services (42 U.S.C. § 300ff-24), newborn and maternal testing/linking those with HIV/AIDS to care and treatment (42 U.S.C. § 300ff-33), and partner counselling, testing,

and referral services (42 U.S.C. § 300ff-38). Further, grants directly from HHS to nonprofits like AHF can fund HIV/AIDS test counselling services. (42 U.S.C. § 300ff-62.)

22. Further, the specific types and amounts of services to be provided in an area, and the specific allocation of Ryan White CARE Act funds to pay for those services, are decided by government bodies and designated planning councils in order to most effectively use CARE Act dollars and respond to the specific contours and needs of the epidemic in that area. (See, e.g., 42 U.S.C. §§ 300ff-12, 300ff-21, 300ff-51, 300ff-53.)

23. Like the 340B program, the Ryan White CARE Act is overseen and implemented at the federal level by the Health Resources and Services Administration (HRSA). In Policy Clarification Notices (PCNs), HRSA has set out its guidance on the operations and items that can be paid for with CARE Act funds.[1]

The California Apartment Association Measure

24. I have reviewed the proposed initiative measure sponsored by the California Apartment Association (CAA), designated by the Attorney General as Initiative 23-0021 (the Measure).

[1] HIV/AIDS Bureau Policy 15-01, found at https://ryanwhite.hrsa.gov/sites/default/files/ryanwhite/grants/pcn-15-01.pdf, and HIV/AIDS Bureau Policy 16-02, found at https://ryanwhite.hrsa.gov/sites/default/files/ryanwhite/grants/service-category-pcn-16-02-final.pdf.

25. Proposed section 14124.48 of the Measure coins a new term I have never before encountered in the healthcare industry: "prescription drug price manipulator." (Prop. § 14124.48 subd. (l)). That definition lists a series of attributes that appear to specify a single healthcare provider, AHF. The term is limited to an entity that:

- participates in the federal government's 340B "discount prescription drug program" (prop. subd. (l)(1); see also prop. subd. (c)),
- that has in "any ten calendar year period . . . spent more than $100 million on purposes" other than what the Measure defines as "direct patient care" (prop. subd. (l)(2); see also subd. (b)),
- that owns and operates certain properties (prop. subd. (l)(3)), and
- that has any one or more of five additional attributes regarding contracting and licensure (prop. subd. (l)(4)(A)-(l)(4)(D)).

26. Based on my long residency and work in California, I don't believe there exists another entity in California that would fall within the scope of the Measure's definition of "prescription drug price manipulator." First, I have reviewed the complete list of 841 California 340B covered entities. Of these, many are government and tribal entities, which appear not to be subject to the Measure. Many others are small, local organizations such as community clinics operating one or two facilities and are extremely unlikely to have spent $100 million dollars on goods and services other than direct patient care.

27. Second, I am unaware of any other 340B participant that has significant low-income housing operations. While a handful of organizations may operate one or two sites, AHF currently operates 13 buildings in California, with over 1,417 units.

28. As the individual who effectively serves as AHF's Chief Operating Officer, the Measure provides that, if AHF is deemed to be out of compliance with the 98 percent direct care requirement, I may not be employed in any capacity by a California licensed pharmacy, health care service plan, or clinic for a period of 10 years. I consider this to be a significant restriction on my ability to find employment in a sector in which I have worked for over half my career.

Authentication of Exhibits Regarding The Measure

29. Attached as Exhibit 1 is a true and correct copy of screenshots of the Facebook page called "Protect CA Patients Now Act," which contains a disclosure that is paid for by Protect Patients Now, which in turn is sponsored by the California Apartment Association. As shown in the attached exhibit, Facebook posts on this page name AHF's CEO, Mr. Weinstein, by name, accuse him of "divert[ing] over $100 million intended for HIV treatments"—which corresponds to the CAA Measure, which only applies to organizations that have spent over $100 million over ten years.

30. Attached is Exhibit 2 is a true and correct copy of screenshots of the Instagram page run by Protect Patients Now, which contains some of the same images that appear on the Facebook page described above. Almost without exception, every

Instagram post on this page refer explicitly to AHF and many, if not most, also explicitly identify, depict, or refer to Mr. Weinstein.

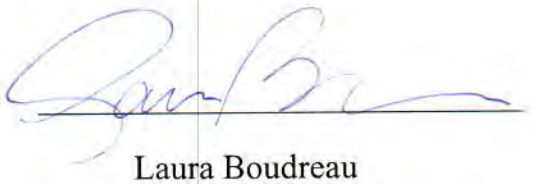
31. Attached is Exhibit 3 is a true and correct copy of screenshots of the X (formerly known as Twitter) page run by Protect Patients Now, which contains the same disclosure as the Facebook page, noting that it is sponsored by the California Apartment Association. Again, almost without exception, every post on this page refers explicitly to AHF and many, if not most, also explicitly identify, depict, or refer to Mr. Weinstein.

32. Attached is Exhibit 4 is a true and correct copy of screenshots of the Protect Patients Now website. The content on this website also specifically identifies AHF, and Mr. Weinstein, described as a "safety net scammer" and representing that "AHF has used these taxpayer funds to purchase luxury condominiums, fund ballot measure campaigns to block housing construction, put an elected politician on its payroll, and acquire low-income multi-tenant housing complexes and operate them as slums." This is very close to what the Measure's findings state.

33. Attached as Exhibit 5 is a true and correct copy of a page titled "CAA takes dual approach to fight Weinstein's crusade for radical rent control," which appears on the California Apartment Association's website, available at https://caanet.org/caa-takes-dual-approach-to-fight-weinsteins-crusade-for-radical-rent-control/.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California, on November 21, 2023.



Laura Boudreau

Exhibit 1


Search Facebook
PROTECT CA PATIENTS NOW
Ad paid for by Protect Patients Now, sponsored by California Apartment Association. Ad Committee's Top Funder: California Apartment Association
PROTECT CA PATIENTS NOW
Protect CA Patients Now Act
1 likes · 1 follower
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Protect CA Patients Now Act
October 16 at 3:15 PM ·

The Protect Patients Now Act will close a major loophole that has allowed non-profits like Michael Weinstein's AHF to misuse hundreds of millions of dollars meant for California patients.

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Protect CA Patients Now Act
October 6 ·

LGBTQ community demands leadership change at AHF. Join the #ProtectPatientsNow Act to stop the drug pricing scam.

Read more: https://medium.com/.../aids-healthcare-foundation-why-the...

AIDS Healthcare Foundation: Why the President and Board Must Resign

* Update on Change.org Petition Calling for New Leadership at AHF

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October 4 ·

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Protect CA Patients Now Act
October 3 ·

📢 Must Read Op-Ed: The 10 Worst Offenses of Michael Weinstein. Time for #accountability with non-profits like AHF by passing the #ProtectPatientsNow Act! 👀 👇

https://www.hivplusmag.com/.../op-ed-10-worst-offenses...

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Protect CA Patients Now Act

October 2 ·

The Protect Patients Now Act will force the worst abusers of the drug discount program, like Weinstein's AHF, back to the program's original mission to provide healthcare to low-income patients.

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Protect CA Patients Now Act
September 29 ·

Michael Weinstein, president of the notorious "non-profit" AHF, is the "most hated man in the AIDS business." A must-read 👀 👇

https://www.nytimes.com/.../aids-group-wages-lonely-fight...

"Mr. Weinstein's vociferous opposition to PrEP has made him perhaps **the most hated man in the AIDS business.**"

The New York Times
November 16, 2014

"I consider him a **menace to H.I.V. prevention,**" said Peter Staley, a veteran activist"

"James Loduca, the vice president for public affairs at the San Francisco AIDS Foundation, compared him to a **"climate-change denialist."**

#ProtectPatientsNow

Protect CA Patients Now Act
September 26 ·

How has Michael Weinstein been misusing our tax dollars? Let's shed light on the truth with non-profits like AHF. It's time to #ProtectPatientsNow! Learn more: http://protectcapatientsnow.com

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Protect CA Patients Now Act
September 22 ·

It's time to ensure tax dollars meant for patients actually go to help them. Join our campaign at protectcapatientsnow.com.

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Protect CA Patients Now Act
September 21 ·

"AHF's controversial president Michael Weinstein and its heavily conflicted Board of Directors spend tens of millions of dollars a year on political projects that have nothing to do with caring for those with HIV and AIDS."

MEDIUM.COM

LGBTQ Community Calls for Removal of Michael Weinstein, Entire Board of AIDS Healthcare Foundation

1

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Protect CA Patients Now Act
September 19 ·

Why is Weinstein spending lavishly on political campaigns and putting disgraced politicians on his payroll? To fuel his political agenda instead of patient care. Support the #ProtectPatientsNow to put an end to the drug pricing scam by non-profits like AHF!

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Inside the financial ties between a controversial housing nonprofit and Kevin de León

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September 18 ·

The Protect Patients Now Act will close a major loophole that has allowed non-profits like Michael Weinstein's AHF to misuse hundreds of millions of dollars meant for California patients.

#ProtectPatientsNow 👉 protectcapatientsnow.com

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Protect CA Patients Now Act
September 18 ·

Misusing taxpayer money meant for patients is not just unethical – it's immoral. Join #ProtectPatientsNow to stop the drug pricing scam.

Read more: https://www.politico.com/.../powerhouse-aids-organization...

POLITICO

Powerhouse AIDS organization faces scrutiny for use of federal money

Under the leadership of Weinstein, AHF has morphed over more than three decades into not only a massive health care enterprise but a controversial political player that has raised eyebrows with its unusual "social enterprise" model. | Joe Raedle/Getty Images

By CARLA MARINUCCI and VICTORIA COLLIVER

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Protect CA Patients Now Act
September 14 · 🌐

Now is the time to make sure that every single taxpayer dollar meant to help and support patients goes directly to where it is needed the most. Support the #ProtectPatientsNow Act!

Learn more 👉 protectcapatientsnow.com

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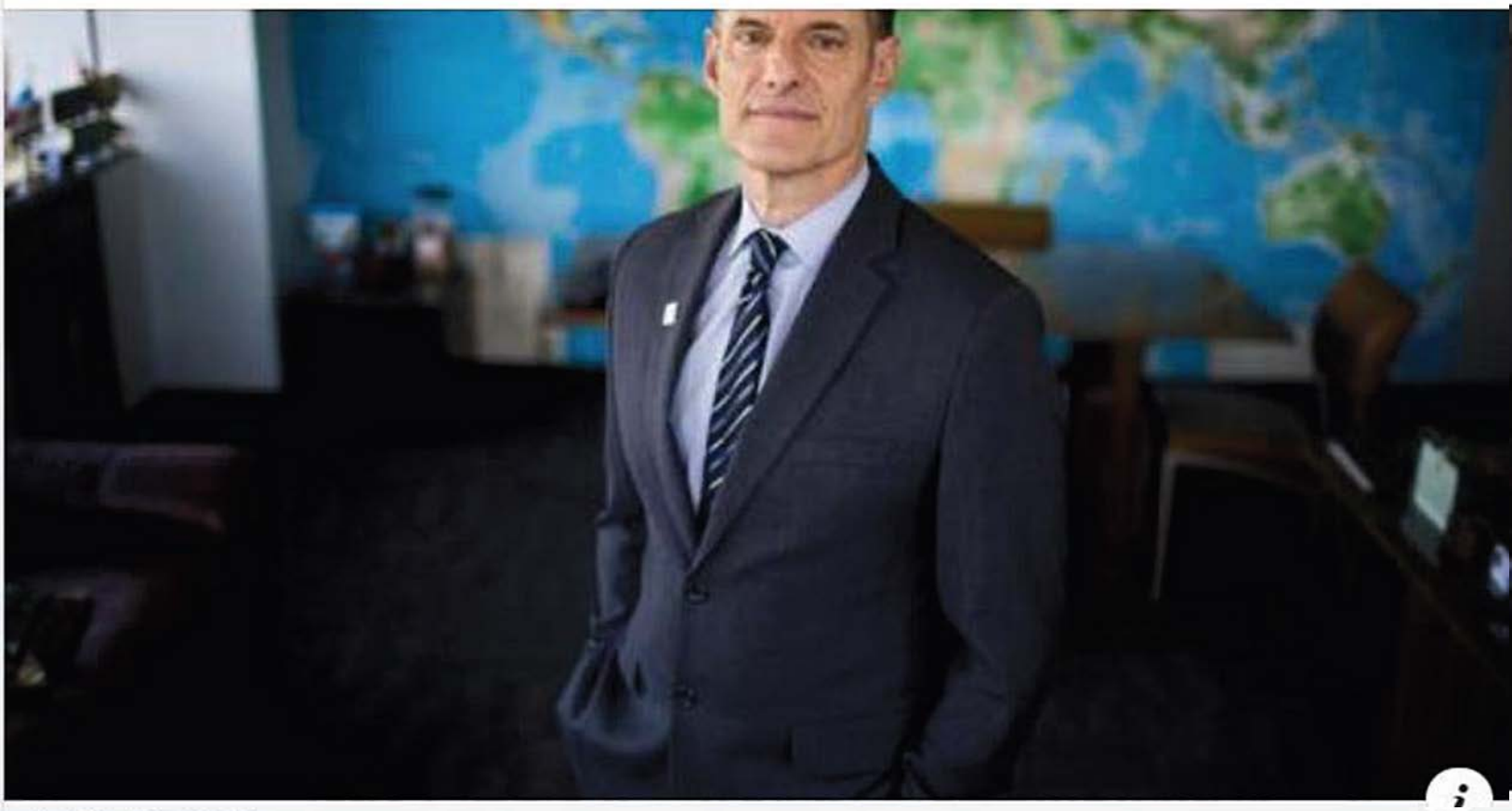
Protect CA Patients Now Act
September 13 ·

It's time to stop the drug pricing scam! Let's ensure tax dollars go where they belong – to patients who need them the most. Support the #ProtectPatientsNow Act!



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California to end AIDS Healthcare contract, alleging improper negotiation tactics

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Protect CA Patients Now Act
September 11 ·

How has Michael Weinstein been misusing our tax dollars? Let's shed light on the truth of non-profits like Weinstein's AHF. It's time to #ProtectPatientsNow!

Learn more: protectcapatientsnow.com

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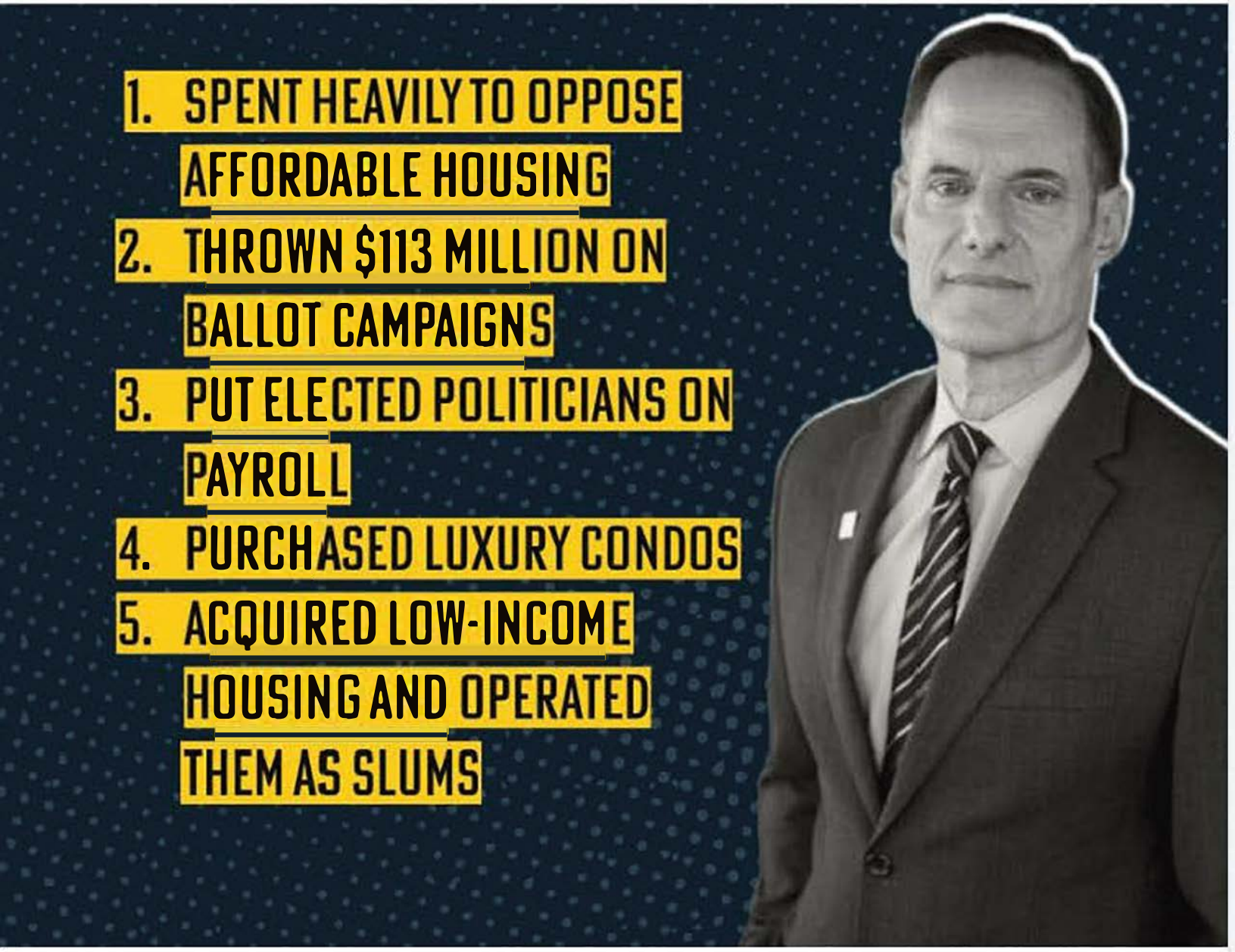
Protect CA Patients Now Act
September 5 ·

How has Michael Weinstein misused our tax dollars?

1 Spent heavily to oppose affordable housing
2 Thrown $113 million on ballot campaigns
3 Put elected politicians on payroll... See more

HOW HAS MICHAEL WEINSTEIN MISUSED OUR TAX DOLLARS?



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Protect CA Patients Now Act
August 30 ·

ICYMI: The Protect Patients Now Act would stop the drug pricing scam and require non-profits like "AHF to spend 98 percent of its taxpayer-generated revenues on direct patient care. It also would seek to prevent the group from overcharging government agencies for prescription drugs." 👏👏👏

POLITICO.COM

California proposal would sideline a prolific ballot measure player

The ballot initiative would block one man from using his nonprofit to fund his political agen...

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Exhibit 2

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Protect Patients Now

Ensure taxpayer money meant for patients goes directly to patients. Stop the Drug Pricing scam and vote YES on the Patient Protection Act.

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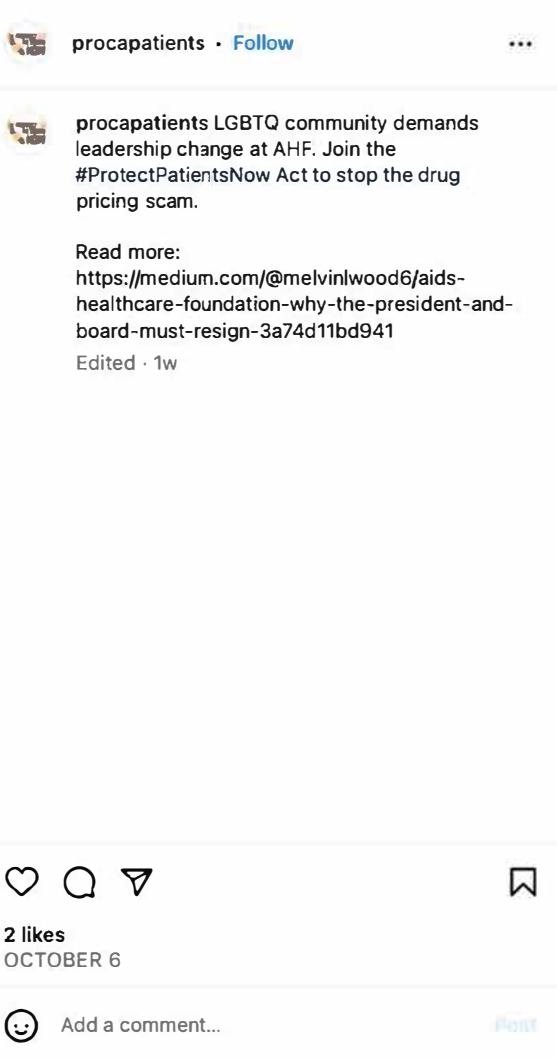

Los Angeles Times

A powerful nonprofit owns apartments for poor tenants. Why are some tenants trapped in their rooms?

Kenneth Owens, 70, stands at the steps with his walker inside the Madison Hotel, which is owned by the AIDS Healthcare Foundation. Owens is one of 18 tenants who sued the foundation over a chronically broken elevator. (Francine Orr / Los Angeles Times)

BY LIAM DILLON, BENJAMIN ORESKES, DOUG SMITH

JAN. 20, 2023 5 AM PT

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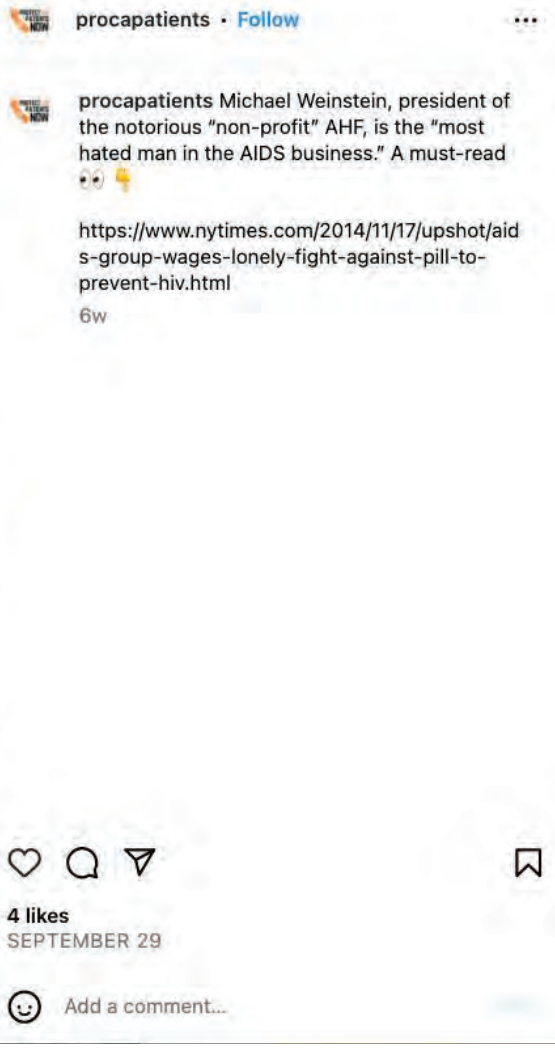
"Mr. Weinstein's vociferous opposition to PrEP has made him perhaps **the most hated man in the AIDS business."**

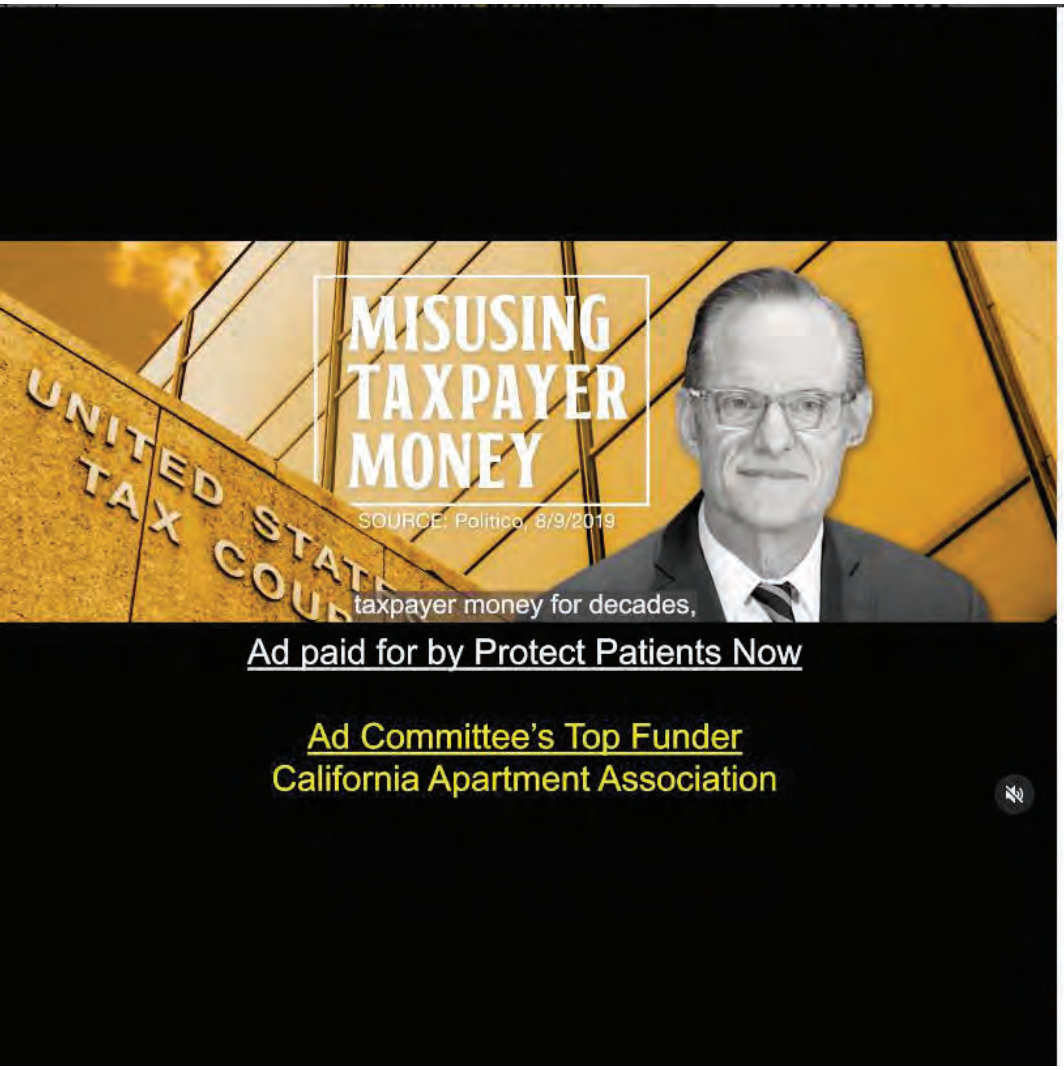
The New York Times
November 16, 2014

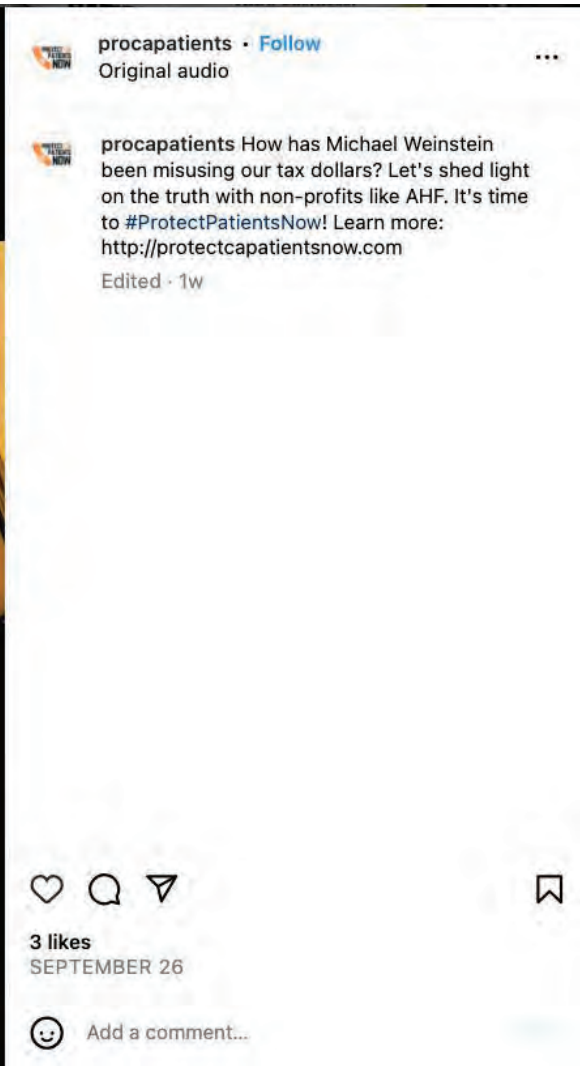
"I consider him **a menace to H.I.V. prevention**," said Peter Staley, a veteran activist"

"James Loduca, the vice president for public affairs at the San Francisco AIDS Foundation, compared him to a "**climate-change denialist.**"

#ProtectPatientsNow




MISUSING
TAXPAYER
MONEY
SOURCE: Politico, 8/9/2019
taxpayer money for decades,
Ad paid for by Protect Patients Now
Ad Committee's Top Funder
California Apartment Association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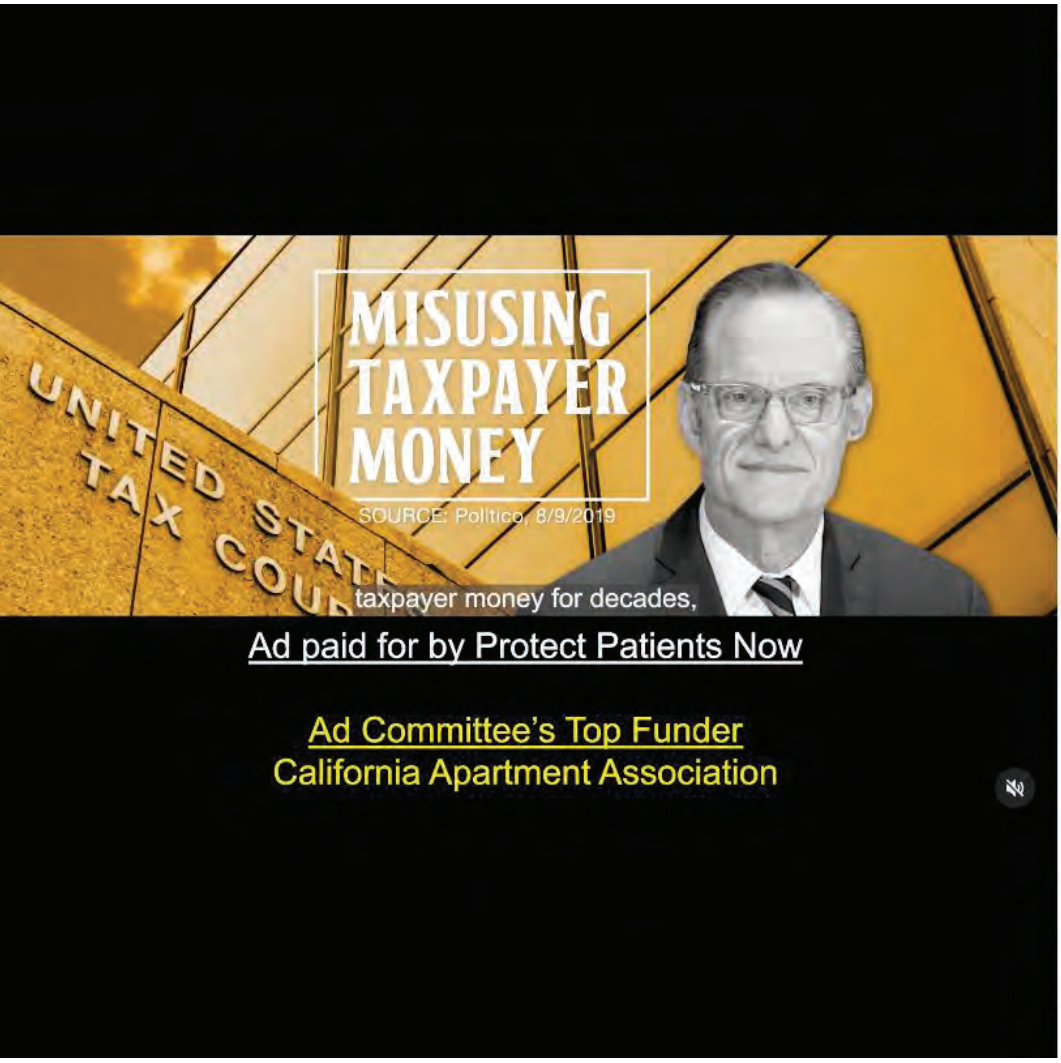
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LGBTQ Community Calls for Removal of Michael Weinstein, Entire Board of AIDS Healthcare Foundation

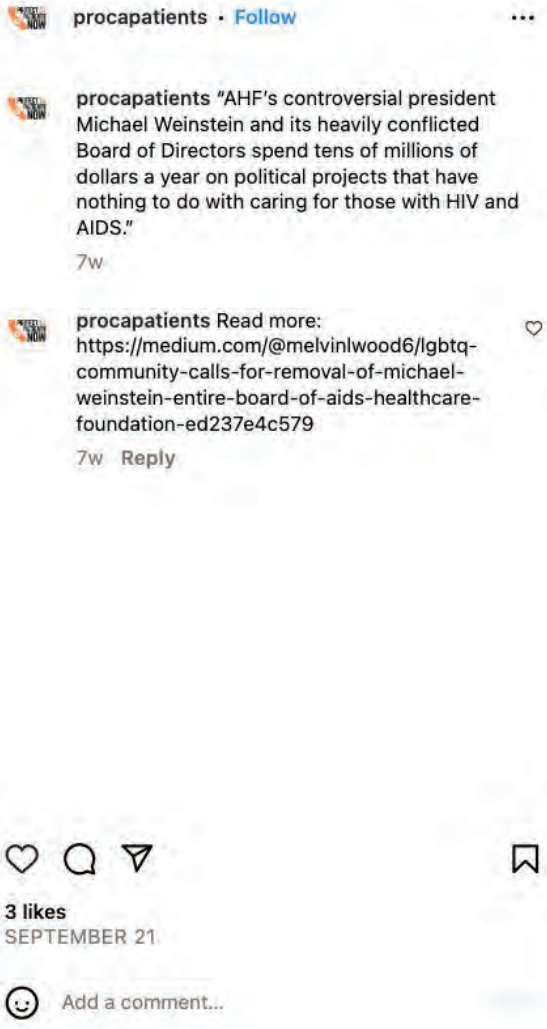
*Change.org Petition Launched As AHF Faces Multiple Investigations, Lawsuits, Conflicts of Interest

Melvin Wood · Follow
3 min read · Aug 3, 2020

Sixth in a series

Facing multiple regulatory investigations, litigation and conflicts of interest, the AIDS Healthcare Foundation is in desperate need of new leadership.

That's why the LGBTQ community is backing a change.org petition calling for AHF President Michael Weinstein and the entire Board of Directors of AHF to be replaced. You can sign the petition here.



Los Angeles Times

HOUSING & HOMELESSNESS

Inside the financial ties between a controversial housing nonprofit and Kevin de León

Los Angeles City Councilmember Kevin de León speaks at a groundbreaking ceremony on skid row in January 2022 for an affordable housing project developed by the AIDS Healthcare Foundation. (Michael Owen Baker / For The Times)

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Powerhouse AIDS organization faces scrutiny for use of federal money

Under the leadership of Weinstein, AHF has morphed over more than three decades into not only a massive health care enterprise but a controversial political player that has raised eyebrows with its unusual "social enterprise" model. | Joe Raedle/Getty Images

By **CARLA MARINUCCI** and VICTORIA COLLIVER

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Los Angeles Times

CALIFORNIA

California to end AIDS Healthcare contract, alleging improper negotiation tactics

Michael Weinstein, founder and president of the AIDS Healthcare Foundation, in 2016. (Barbara Davidson / Los Angeles Times)

BY MELODY GUTIERREZ | STAFF WRITER

JUNE 30, 2022 UPDATED 5:30 PM PT

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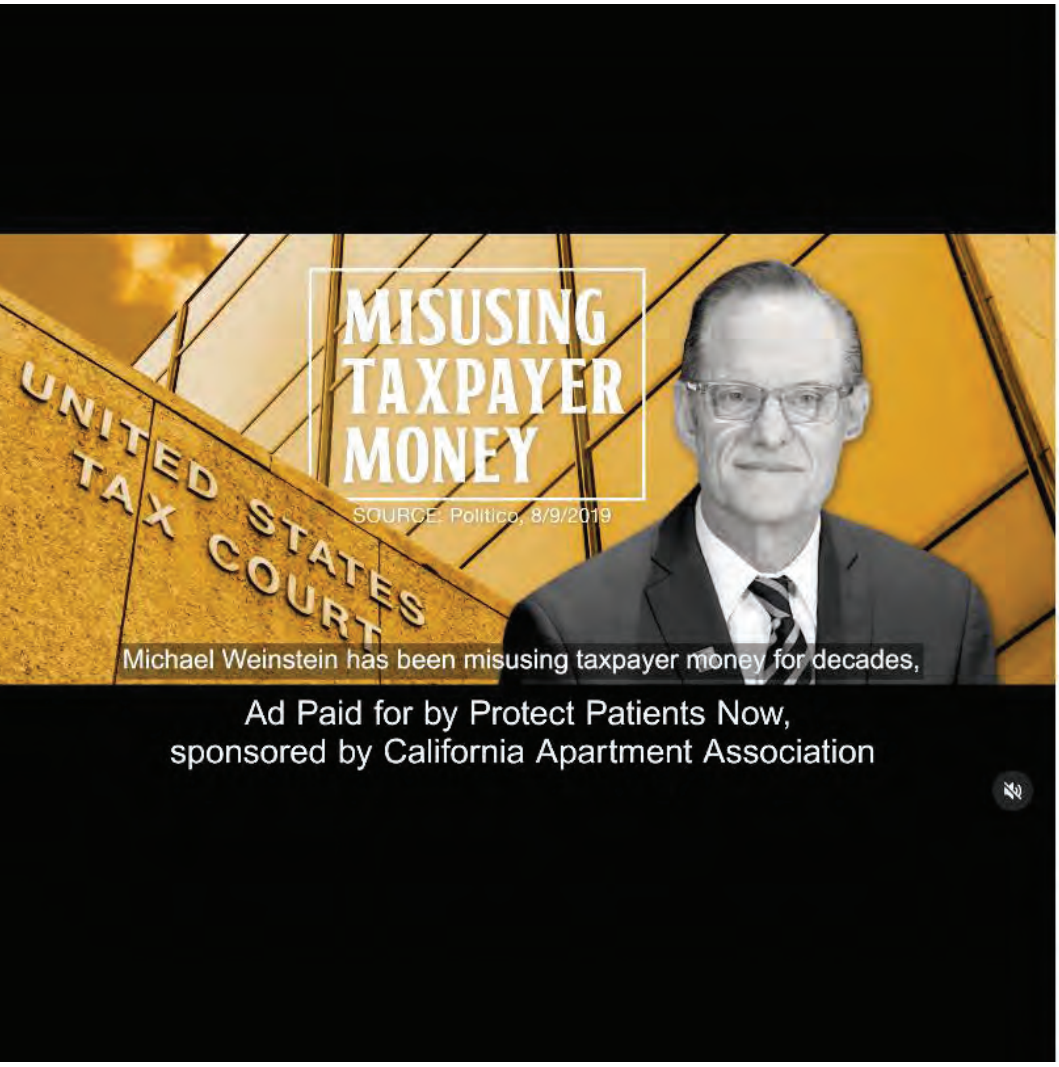

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Exhibit 3

← **Protect CA Patients Now Act**
15 posts

PROTECT CA PATIENTS NOW

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Ensure taxpayer money meant for patients goes directly to patients. Stop the Drug Pricing Scam and vote YES on the Patient Protection Act.

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It's time to ensure tax dollars meant for patients actually go to help them. Join our campaign at protectcapatientsnow.com.

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The Protect Patients Now Act will close a major loophole that has allowed Michael Weinstein and his non-profit AHF to misuse hundreds of millions of dollars meant for California patients.

#ProtectPatientsNow 👉 protectcapatientsnow.com

3:15 PM · Oct 16, 2023 · **83** Views

1 1 2

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Protect CA Patients Now Act ✓
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🚫 AHF trapped elderly and disabled tenants in their buildings. We need the Protect Patients Now Act to hold them accountable!
#PatientProtectionNow

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📝 Must Read Op-Ed: The 10 Worst Offenses of Michael Weinstein. Time for #accountability with the #ProtectPatientsNow Act! 👀 👇

hivplusmag.com/opinion/2015/0...

9:05 AM · Oct 3, 2023 · **30** Views

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The Protect Patients Now Act will force the worst abusers of the drug discount program, like Weinstein's AHF, back to the program's original mission to provide healthcare to low-income patients.

#ProtectPatientsNow 👉 protectcapatientsnow.com

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1

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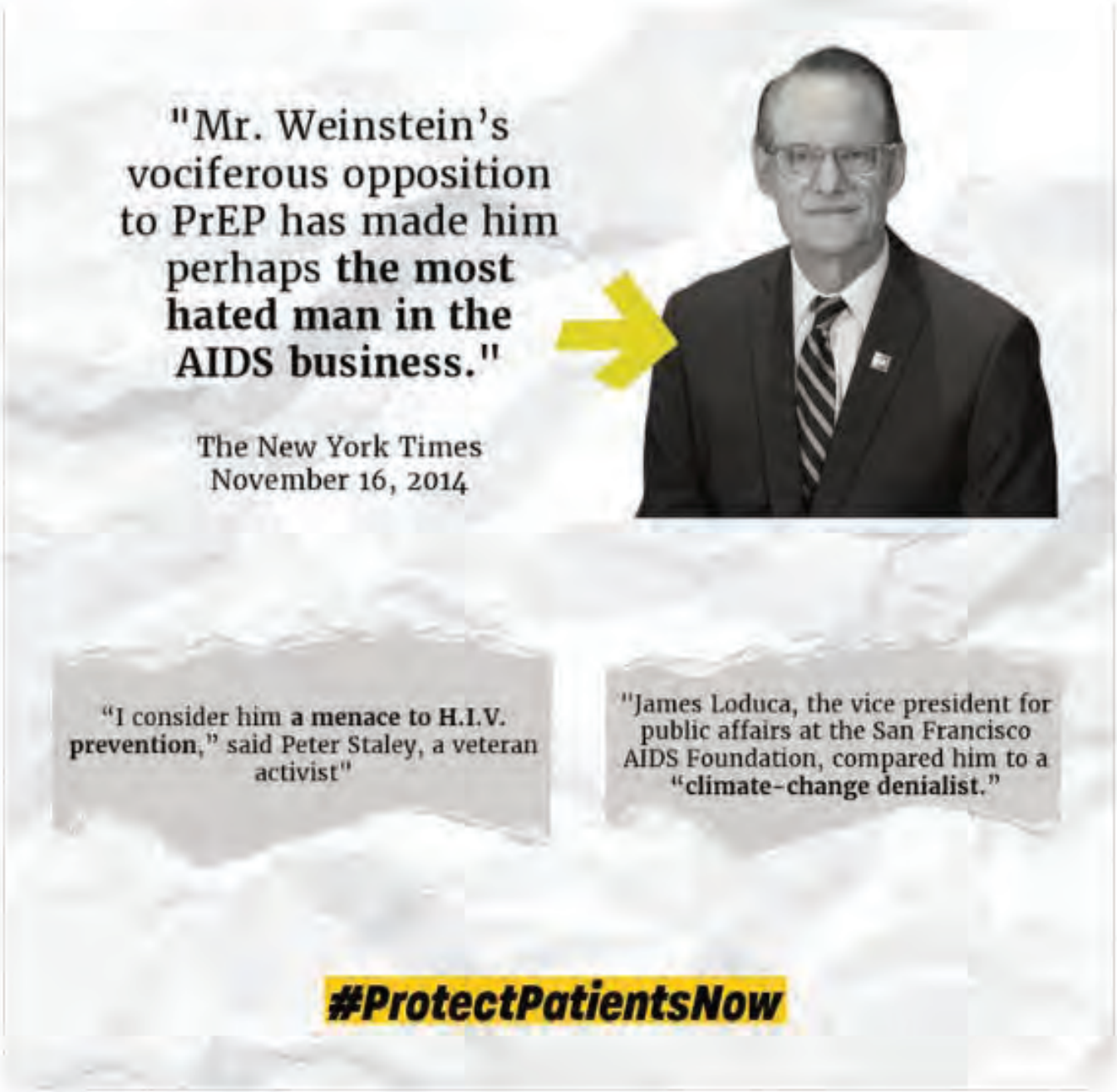
Michael Weinstein, president of the notorious "non-profit" AHF, is the "most hated man in the AIDS business." A must-read 👀 👇

nytimes.com/2014/11/17/ups...



10:50 AM · Sep 29, 2023 · **43** Views

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Protect CA Patients Now Act
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How has Michael Weinstein been misusing our tax dollars? Let's shed light on the truth. It's time to #ProtectPatientsNow! Learn more: protectcapatientsnow.com

1:30 PM · Sep 26, 2023 · **29** Views

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It's time to ensure tax dollars meant for patients actually go to help them. Join our campaign at protectcapatientsnow.com.

12:37 PM · Sep 22, 2023 · **91** Views

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"AHF's controversial president Michael Weinstein and its heavily conflicted Board of Directors spend tens of millions of dollars a year on political projects that have nothing to do with caring for those with HIV and AIDS."

8:50 AM · Sep 21, 2023 · **51** Views

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The Protect Patients Now Act will close a major loophole that has allowed Michael Weinstein and his non-profit AHF to misuse hundreds of millions of dollars meant for California patients.

#ProtectPatientsNow 👉 protectcapatientsnow.com

12:30 PM · Sep 18, 2023 · **47** Views

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Misusing taxpayer money meant for patients is not just unethical – it's immoral. Join #ProtectPatientsNow to stop the #WeinsteinScam.

Read more: politico.com/states/califor...

POLITICO

Powerhouse AIDS organization faces scrutiny for use of federal money

Under the leadership of Weinstein, AHF has morphed over more than three decades into not only a massive health care enterprise but a controversial political player that has raised eyebrows with its unusual "social enterprise" model. | Joe Raedle/Getty Images

By **CARLA MARINUCCI** and VICTORIA COLLIVER

9:32 AM · Sep 18, 2023 · **83** Views

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Now is the time to make sure that every single taxpayer dollar meant to help and support patients goes directly to where it is needed the most. Support the #ProtectPatientsNow Act!

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10:00 AM · Sep 14, 2023 · **45** Views

1

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Protect CA Patients Now Act
@ProCAPatients

It's time to stop the Weinstein scam! Let's ensure tax dollars go where they belong – to patients who need them the most. Support the #ProtectPatientsNow Act!

9:30 AM · Sep 13, 2023 · **91** Views

1 3

← **Post**

Protect CA Patients Now Act
@ProCAPatients

How has Michael Weinstein misused our tax dollars?

1. Spent heavily to oppose affordable housing
2. Thrown $113 million on ballot campaigns
3. Put elected politicians on payroll
4. Purchased luxury condos
5. Acquired low-income housing and operated them as slums

12:35 PM · Sep 5, 2023 · **160** Views

1 2

← **Post**

Protect CA Patients Now Act
@ProCAPatients

"It's common sense: tax dollars meant for patients should be spent on patients. Next November, Californians can pass the Protect Patients Now Act to stop Weinstein's scam and prevent others from following in his footsteps." Asm @Evan_Low

Learn more 👉 protectcapatientsnow.com

12:10 PM · Sep 1, 2023 · **66** Views

1

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Protect CA Patients Now Act ✓
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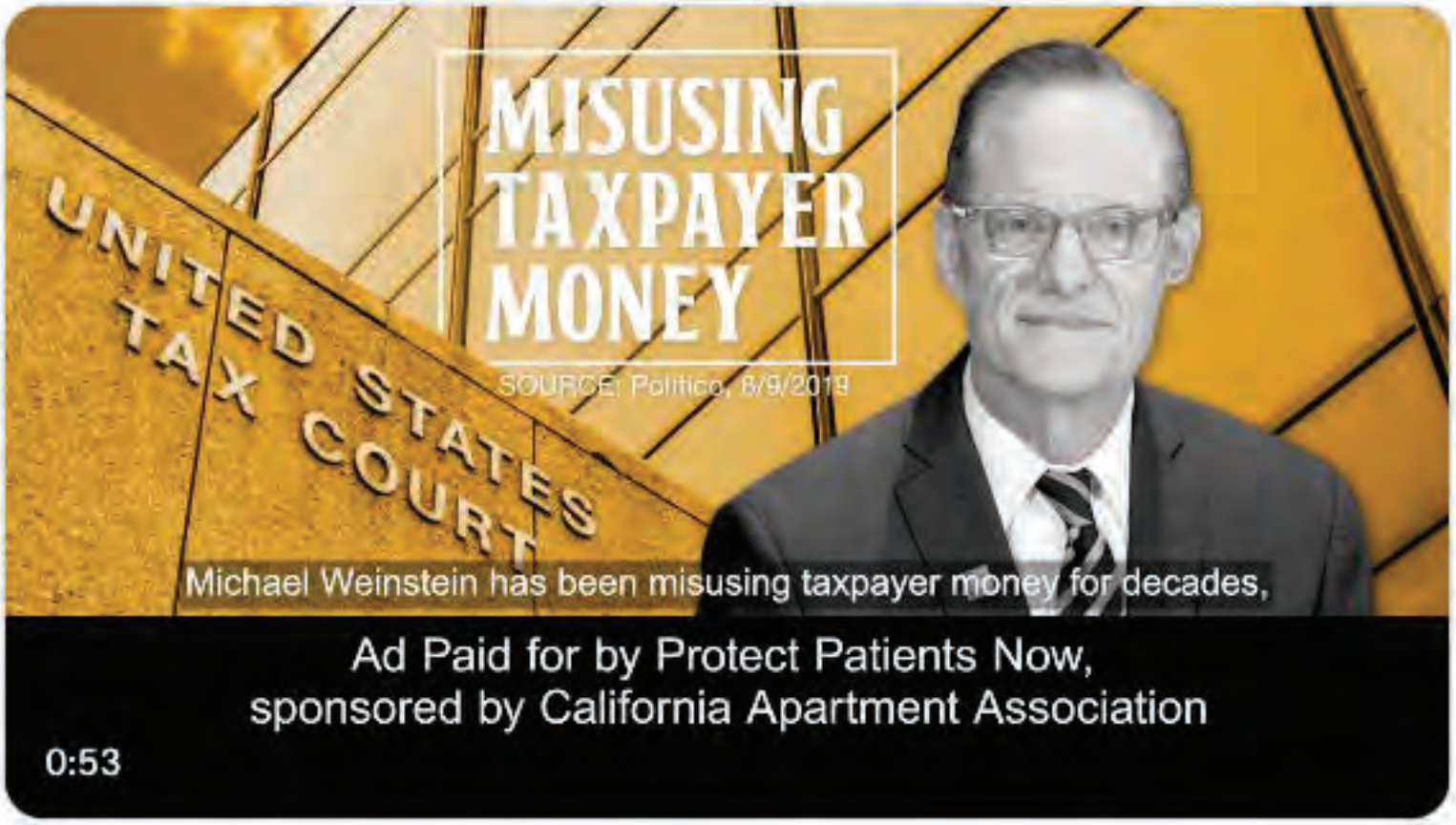
It's time to ensure tax dollars meant for patients actually go to help them. Join our campaign at protectcapatientsnow.com



8:03 AM · Aug 30, 2023 · **13K** Views

2 8 16 1

Exhibit 4

STOP THE DRUG PRICING SCAMS

Pass the Protect Patients Now Act to Help Patients and Protect Our Tax Dollars

EXPOSING THE WORST DRUG PRICING SCAMS

Almost 30 years ago, lawmakers designed a federal drug discount program that aimed to help health care nonprofits treat more low-income patients. The program allows these nonprofits to buy prescription drugs at a steep discount and then be reimbursed by health plans at a much higher price. Under existing law, these nonprofits are supposed to use this taxpayer-generated excess revenue to offer more health care benefits and serve more patients.

But some organizations such as AHF, led by safety net scammer Michael Weinstein, have abused the program, amassing hundreds of millions meant to help patients and instead spent it to further his own personal and political agenda.

Under Weinstein's direction, AHF has used these taxpayer funds to purchase luxury condominiums, fund ballot measure campaigns to block housing construction, put an elected politician on its payroll, and acquire low-income multi-tenant housing complexes and operate them as slums.

These types of blatant abuse of taxpayer money violates the intent of the law, but because of loopholes in the drug discount program, bad actors can abuse their non-profit status to waste millions of dollars and avoid accountability.

And even in the face of widespread criticism from patients and health experts, Weinstein arrogantly says he will continue spending taxpayer dollars inappropriately for as long as he is allowed to do so.

Californians can stop the worst drug pricing scams and close this loophole in the drug discount program.

PASS THE PATIENT PROTECTION NOW ACT TO PROTECT OUR CARE

The Protect Patients Now Act will force the worst abusers of the drug discount program like Weinstein's AHF back to the program's original mission to provide healthcare to low-income patients. This measure focuses only on the program's worst offenders, putting in place new accountability measures to ensure they are appropriately using taxpayer dollars.

The Act requires the program's worst offenders like Weinstein to spend 98% of their taxpayer-generated revenues on direct patient care.

So long as these worst offenders meet these requirements, they can continue their health care operations.

But if these offenders continue to misuse taxpayer funds, the Protect Patients Now Act requires the state to take away their non-profit status and make them ineligible to keep getting paid using taxpayer dollars.

Stop the scams and vote yes on the Patient Protection Act.

Rather than helping patients, the worst offenders have amassed hundreds of millions of dollars to further their own political and personal interests.

HOW HAVE YOUR TAX DOLLARS BEEN MISUSED?

For example, here are just some of the ways one of the worst drug price manipulators misspent money meant to help patients:

Opposing affordable housing

Under **Weinstein** leadership, AHF has spent heavily to oppose affordable housing, including funding a local ballot measure that would have blocked construction of housing so **Weinstein** could preserve the view from his office. **Weinstein** sued the state in hopes of blocking laws that promote affordable housing. Leaders of the NAACP and housing advocates have strongly condemned **Weinstein**'s tactics that harm communities of color.

Stopping housing construction

Under **Weinstein**, AHF has spent $113 million on ballot measure campaigns to stop housing construction, to repeal state laws that make it easier to build housing, to put price controls on all residential rental properties and other

initiatives. Although voters have repeatedly rejected **Weinstein**'s initiatives, **Weinstein** recently vowed he will continue to dump millions every year on these campaigns. "We'll do it again if we have to – and again and again and again," he told reporters in 2023.

Receiving "Slumlord" violations

According to Los Angeles Times reporting, tenants have described **Weinstein**'s AHF as a multi-billion dollar "slumlord," and under his leadership, his organization has amassed hundreds of serious health and safety citations for failing to provide adequate housing for their low-income tenants.

Supporting disgraced Councilman

A recent Los Angeles Times report showed that AHF paid disgraced L.A. City Councilmember-elect Kevin de León more than $100,000 as a consultant without public disclosure. During this time, de León met with city officials advocating on behalf of the AHF without divulging his employment status.

Purchasing luxury condos

Weinstein's AHF has used taxpayer money to purchase luxury condominiums and townhomes in California and Florida. When AHF bought their luxury Hollywood condominium in 2007, the listing described the 2 bedroom unit as "an entertainer's dream" while Redfin currently estimated the unit's value at $1 million dollars. Between 2018 and 2022, AHF also purchased and then sold at a profit 10 luxury townhomes in South Florida.

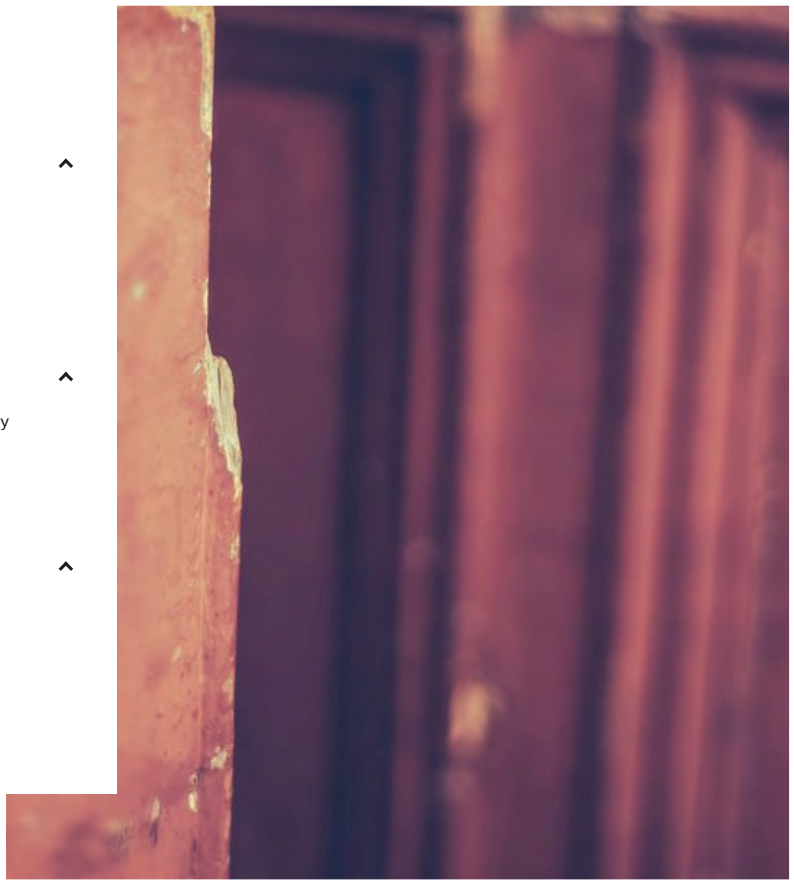


Exhibit 5

CAA takes dual approach to fight Weinstein's crusade for radical rent control

September 1, 2023

Mike Nemeth
CAA Marketing and Communications Director

The California Apartment Association is ramping up its campaign to fight another anti-housing rent control measure headed for the statewide ballot.

The measure, bankrolled by the AHF and its president, Michael Weinstein, recently qualified for the Nov. 5, 2024, general election ballot and seeks to repeal the Costa-Hawkins Rental Housing Act of 1995, California's most important rental housing protection law.

In response, CAA has reactivated Californians for Responsible Housing, the same campaign committee that successfully defeated Weinstein's previous two radical rent control measures, Propositions 10 and 21. To support the committee, CAA has hired a cadre of seasoned pollsters, campaign consultants, legal advisors, and media relations specialists.

Concurrently, CAA is sponsoring a separate ballot measure aimed at preventing Weinstein from misusing taxpayer dollars on future rent control campaigns or other political ventures unrelated to the core mission of the AHF. It would mark a substantial shift for Weinstein, who's funneled upward of $100 million to political ventures in recent years, reports Politico. He's also vowed to continue bankrolling statewide rent control measures until one passes.

By repealing Costa-Hawkins, Weinstein's so-called "Justice for Renters Act" not only would empower cities and counties to impose strict rent control on all apartments and single-family homes, but it would abolish the state's existing ban on vacancy control. Vacancy control prohibits rental housing providers from adjusting rents to market rates when a tenant moves out. Such a policy

leads to property deterioration and stifled investment in housing.

CAA's statewide initiative, the Protect Patients Now Act, would impose safeguards to prevent the AHF from misspending taxpayer dollars that should be spent on patient healthcare. The Protect Patient Now Act provides that, should the law be violated, the offending organizations could face severe repercussions, including potential investigations and loss of federal funding.

CAA's dual campaigns aim to defeat both Weinstein's current rent control measure and prevent him from misusing taxpayer dollars to fund rent control campaigns in the future.

In the coming weeks, CAA will provide details on how rental housing providers can help defeat Weinstein's latest attack on housing and support CAA's Protect Patients Now Act.

Topics

Costa-Hawkins Act

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DECLARATION OF LYLE HONIG MOJICA, CPA

I, Lyle Honig Mojica, declare:

1. I am the Chief Financial Officer (CFO) of the AIDS Healthcare Foundation (AHF), a position I have held since 2013. I make this Declaration in Support of AHF's Petition for Writ of Mandate in this proceeding. I am familiar with the matters stated here and, if called as a witness, could and would competently testify to them.

2. I hold a bachelor's degree in business with a concentration in accounting from Kansas State University. I am a Certified Public Accountant. I was previously employed as a senior business consultant with Arthur Andersen in Los Angeles, where my clients included major corporations and public agencies. As CFO, I am responsible for the day-to-day management of AHF's finance and accounting functions, including reporting, planning, and analysis. I am familiar with AHF's operations, including most specifically the organization's accounting and finances.

3. AHF's HIV/AIDS medical care and STD services operate at a substantial loss. While AHF receives reimbursement for some services from public and private insurance, collects patient copays where applicable, and receives funding under the Ryan White Comprehensive AIDS Resources Emergency Act (Ryan White CARE Act, Pub.L. 101-381, 104 Stat. 576), AHF still operates its clinics at a substantial deficit.

4. In Los Angeles County alone, AHF's HIV/AIDS outpatient clinics have incurred an average deficit of over $8,400,000 per year for the past five years. Insurance reimbursement does not pay for all services AHF performs. Many of AHF's clients have

no insurance. Finally, AHF's federal Ryan White funding does not and is not intended to make up this gap, and covers it only partially. This deficit occurs in AHF's medical operations across the country.

5. Because AHF receives Ryan White CARE Act funding through agreements with local and state government through the Ryan White CARE Act, it is a "covered entity" and is eligible to and does participate in the 340B Drug Discount program, 42 U.S.C. Section 256b. It is through participation in this program, and the revenue derived from it, that AHF is able to close the financial gaps in its medical operations. Consistent with the intent of the 340B program, AHF uses 340B revenue to cover this deficit, allowing it to provide more, and more comprehensive, services to its clients.

6. I have reviewed the proposed initiative measure sponsored by the California Apartment Association (CAA), designated by the Attorney General as Initiative 23-0021 and titled by the CAA "the Protect Patients Now Act of 2024" (the Measure).

7. A key to the Measure's punitive impact on AHF is in its definition of "direct patient care." This definition effectively ensures that the Measure singles out AHF for application, and then defines the draconian penalties the Measure imposes. Here is the definition:

> "Direct patient care" means the provision of medical services, dental services, pharmaceutical services, or behavioral health services directly administered to individual patients being treated for, or suspected of having, medical or behavioral health conditions. Direct patient care includes preventive care that is directly administered to patients. Further, in order to qualify as "direct patient care," the services must be health

> care services that are regularly provided by other health care providers in the community or nonprofit community-based organizations that are also receiving reimbursements or payments from the Medi-Cal, Medicaid, or Medicare programs.

(Prop. § 14124.48, subd. (b).)

8. First, the Measure uses this definition of "direct patient care" to limit the providers to which the proposed legislation applies. Proposed section 14124.48, subdivision (l), the definition of "prescription drug price manipulator," limits the proposed legislation to providers that "[d]uring any ten calendar year period of its existence, . . . spent more than one hundred million dollars ($100,000,000) on purposes that do not qualify as direct patient care." Relatively few 340B providers operate at the scale of AHF, so most 340B participants are exempted from the Measure simply by virtue of their smaller operations.

9. The Measure then goes on to impose on the "prescription drug price manipulator"—and nobody else—the requirement that it spend at least 98 percent of its net 340B revenues on "direct patient care." In my opinion, based on my experience administering these programs, it is not possible to operate a medical clinic with only 2 percent of this revenue available to cover operational costs. To operate a health facility the provider must, at a minimum and this is by no means an exhaustive list, pay for rent on facilities; for utilities; for repairs, maintenance, and janitorial service; for medical supplies; for employee recruitment, new-hire support, and other human resources functions; and for finance support such as insurance billing and collections and contract

management. To expect to cover just these non-direct expenses with two cents of every 98 cents of direct expenses would, in my opinion, be impossible.

10. I understand that if the Measure is allowed to appear on the 2024 general election ballot, then AHF will learn only on or after November 5, 2024, whether it has been adopted. However, the Measure purports to apply to AHF's expenditures in the *prior* calendar year. (Prop. §§ 14124.44, subd. (a) & 14124.45, subd. (e)(2).) But if a provider such as AHF is found to be subject to this measure and has spent less than 98 percent of its calendar-year 2024 340B net revenue on "direct patient care," the provider only then—with 84% of the year already over—learns that it has lost its licenses and tax-exempt status and has become ineligible to receive funds for 2025 (prop. § 14124.50, subd. (b)) and ineligible to receive "any new or renewed California state or local grants or contracts for a period of 10 years" (prop. § 14124.47, subd. (d)).

11. As a practical matter, that means that AHF will have to consider sharply reordering and reconfiguring its operations beginning in January 2024. Among the issues and concerns AHF will have to consider are:

a. Because the Measure would prohibit using the vast majority of 340B revenue on so many of AHF's clinic operational costs that are now paid for by 340B revenue, would AHF have to consolidate its footprint and clinic spaces to reduce that cost? If it does so, what would be the result on patient care and accessibility? What would be the fiscal impact regarding breaching leases and other already committed to costs?

b. Because the Measure would prohibit using the vast majority of 340B revenue on so many vital patient services that are not "direct patient care" that are now paid for by 340B revenue, to what extent will that impact AHF's ability to continue to provide those services? What would be the result on patient care and accessibility? Would AHF be able to find other employment or roles for some of the staff currently performing these services?

c. In many of AHF's agreements with local governments that pass through Ryan White funds to AHF, AHF has variously committed to providing certain services, to a certain number of clients, at certain locations, during certain times. If any of that changes in order to comply with the demands of the CAA measure, AHF may be in breach of those agreements. Would AHF be able to maintain funding in those circumstances? What would be the fiscal impact, and impact on patient care and accessibility, if this occurred?

d. Given the draconian punishments in the Measure should an entity covered by it spend even 2.1% of net 340B revenue on non-"direct patient care," AHF's budgeting will have to aim for a "cushion" of spending less than 2%. What is a safe amount? How will this impact patient care and accessibility?

e. All of the above considerations, and negative implications, will occur on the cost side of trying to comply with the Measure. On the revenue side,

AHF could try to comply by reducing the amount of 340B revenue it generates. Again, it would have to determine by how much, and determine what impacts that would have on patient care and accessibility, pharmacy services, staffing, locations, etc. In addition, this would effectively prevent AHF from growing its services, being able to stretch scarce federal resources to serve more people with more and more comprehensive services, which is precisely the purpose and intent of the federal 340B program.

f. Finally, because the Measure penalizes and seeks to regulate an entity for its non-California operations as well, AHF will have to make these decisions on a nationwide basis.

12. If AHF needs to reduce staff to comply with this measure, people will lose their jobs. If AHF needs to reduce or streamline the types of services it provides, this will result in sicker clients, and the likelihood of an increase in HIV/AIDS infections. If AHF is forced to close facilities to comply with this measure, it will reduce the number of clients AHF serves, as well as expose it to legal liability and have its federal Ryan White funding jeopardized.

13. AHF is currently working on answering the above questions and developing contingency budgets should it be subject to the Measure. While budgets are works in progress, some will have provisions that budget for reducing operations and staff. AHF is also concerned about the effect of the campaign on clinical operations. The possibility of the Measure going into effect can have a destabilizing effect on staff and

patients in the coming months, adversely affecting patient health. It is anticipated that these contingent plans will be presented to AHF Board on January 27, 2024, when it is expected to approve AHF's 2024 budget.

14. Any such measures will inevitably harm many members of the AIDS/HIV population in California, people who urgently need care and already find care difficult to get.

15. As AHF's CFO, the Measure provides that, if AHF is deemed to be out of compliance with the 98 percent direct care requirement, I may not be employed in any capacity by a California licensed pharmacy, health care service plan, or clinic for a period of 10 years. I consider this to be a significant restriction on my ability to find employment in a sector in which I have worked for 24 years.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California, on November __, 2023.

Lyle Honig Mojica

DECLARATION OF DONNA STIDHAM, RN

I, Donna Stidham, declare:

1. I am the Chief of Managed Care of the AIDS Healthcare Foundation (AHF), a position I have held since 1999. I make this Declaration in support of AHF's Petition for Writ of Mandate in this proceeding. I am familiar with the matters stated here and, if called as a witness, could and would competently testify to them.

2. I have been involved in providing healthcare for patients with HIV disease since the beginning of the epidemic. I began working with HIV/AIDS as a nurse epidemiologist when the first cases of immune deficiency were reported to the Centers for Disease Control in 1981. In 1984, I assisted in the opening of the first AIDS inpatient unit for a for-profit community hospital in the United States.

3. I hold an AS degree in nursing from Antelope Valley College. I am a California licensed Registered Nurse. As Chief of Managed Care, I am responsible for fiscal and clinical oversight and operations of a Medicare Advantage, Part D Special Needs Plan for persons with HIV/AIDS, a MediCal Special Needs Health Plan for persons with AIDS, Medical Case Management Programs in multiple jurisdictions throughout 17 states, the District of Columbia and Puerto Rico. I am familiar with AHF's services to patients with HIV/AIDS and the unique challenges and practices necessary to serve this specific, underserved patient population.

4. AHF is a nonprofit organization based in Los Angeles that operates 15 HIV/AIDS outpatient medical clinics in California, serving approximately 10,500

patients. AHF provides a little over 10 percent of all HIV/AIDS medical care in California for people living with HIV and AIDS. AHF also operates sexually transmitted disease (STD) testing treatment and prevention centers, accommodating over 40,000 patient visits per year. It performs over 41,000 free HIV/AIDS tests annually. In addition to its healthcare and wellness centers, AHF operates HIV/AIDS specialty pharmacies, Medicare and MediCal health plans, food banks, and thrift stores. It is the largest HIV/AIDS organization in California.

5. Although it started out in Los Angeles, AHF has grown to be the largest HIV/AIDS organization in the United States. It operates 69 clinics, and 62 pharmacies, in 17 states, the District of Columbia, and Puerto Rico. As in California, AHF provides approximately 10 percent of all HIV/AIDS medical care in the United States. It provides over 195,000 HIV tests per year. As HIV primarily is transmitted sexually, AHF operates 36 STD treatment and prevention clinics throughout the country.

6. AHF's Healthcare Centers are "one-stop shops" for HIV/AIDS care and provide a multitude of services the people living with HIV/AIDS need in order to not only access healthcare, but to be retained in care, have access to specialist care, manage comorbid conditions, e.g., diabetes, cardiac disease, etc. and stay adherent to their medical care plan and medication regiments, which not only addresses their HIV disease, but also addresses their comorbid disease conditions. Adherence to the medical and medication plan of care is essential to not only achieving HIV viral load suppression, but to also control, lessen the impact of, or cure, comorbid conditions. These crucial healthcare services are provided to ensure people with HIV see their doctor regularly,

have access and navigation support through the health care system for required care, have the essential supports and referrals for follow-through to address the social determinant of health barriers to care, such as food insecurity support, transportation services, housing insecurity mitigation and are able to access other integrated services.

7. AHF's model is extremely effective at securing good health outcomes. Through the implementation and use of this model, approximately 85 to 90 percent of AHF's patients have achieved viral suppression, in contrast with the national average of approximately 50 percent.

8. Among the patients served by AHF are many who struggle to afford housing. Recognizing how homelessness adversely affects health outcomes, AHF, through its Healthy Housing Foundation, has launched a program, in California and elsewhere, to purchase and renovate low-cost housing for low-income people, including families with children, and those previously unsheltered or homeless, offering priority placement to individuals with chronic health conditions, including HIV/AIDS. This program is a response to widespread gentrification and rising housing costs, which displaces AHF patients. It has been well documented that the loss of housing contributes to AIDS/HIV patients having greater difficulty adhering to their prescription regimen and greater risks of complications. Further, housing insecurity is closely correlated with poor health outcomes in general, and is a primary determinant of health. Because of the close link between housing and health outcomes, AHF has actively advocated for rent control and other laws that contribute to housing affordability and reduce the incidence of homelessness.

9. I have reviewed the definition of “direct patient care” in the proposed initiative measure sponsored by the California Apartment Association (CAA), designated by the Attorney General as Initiative 23-0021 and titled by the CAA “the Protect Patients Now Act of 2024” (the CAA Measure). That definition encompasses a much narrower range of activities than I consider necessary for the successful provision of healthcare to patients with HIV/AIDS. Here is the definition, and it excludes many of the management, adherence, retention in care, case management, food support, navigation, and housing support services that are essential to keep people with HIV/AIDS healthy and in care:

> “Direct patient care” means the provision of medical services, dental services, pharmaceutical services, or behavioral health services directly administered to individual patients being treated for, or suspected of having, medical or behavioral health conditions. Direct patient care includes preventive care that is directly administered to patients. Further, in order to qualify as "direct patient care," the services must be health care services that are regularly provided by other health care providers in the community or nonprofit community-based organizations that are also receiving reimbursements or payments from the Medi-Cal, Medicaid, or Medicare programs.

10. The Declaration of Lyle Honig Mojica, which I understand will be filed with this Declaration, makes it clear that, from an accounting standpoint, the 98-percent standard of the CAA Measure is impossible to meet. It is my opinion from a clinical perspective that complying with the 98 percent direct patient care rule would also significantly obstruct AHF’s ability to provide the quality and quantity of care currently provided to its patients, including many low-income Californians and people of color who have HIV/AIDS. These patients require particularly careful continuity of care and it

is my opinion that such care is placed in jeopardy by the Measure's spending requirements.

11. As Chief of Managed Care, I exercise significant influence and control over AHF's clinical operations. It is my understanding that the Measure provides that, if AHF is deemed to be out of compliance with the 98 percent direct care requirement, I may not be employed in any capacity by a California licensed pharmacy, health care service plan, or clinic for a period of 10 years. I consider this to be a significant restriction on my ability to find employment in the future in areas related to AIDS/HIV treatment, a field in which I have worked continuously since the start of the epidemic.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California, on November 22, 2023.

Donna Stidham

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Re: *AIDS Healthcare Foundation, v. Shirley N. Weber, in her official capacity as California Secretary of State, et al.*

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1250 Sixth Street, Suite 205, Santa Monica, California 90401. My electronic mail address is loliver@strumwooch.com.

On **November 22, 2023,** I served the foregoing document(s) described as **EMERGENCY PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF LAURA BOUDREAU; LYLE HONIG MOJICA, CPA; AND DONNA STIDHAM, RN** on all appropriate parties in this action, as listed below, by the method stated:

☒ If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s) with the Clerk of the Court by causing the documents to be sent to TrueFiling, the Court's Electronic Filing Services Provider for electronic filing and service. Electronic service will be effected by TrueFiling's case-filing system at the electronic mail address(es) indicated below.

☐ If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this is executed on **November 22, 2023,** at Los Angeles, California.

LaKeitha Oliver

SERVICE LIST

AIDS Healthcare Foundation, v. Shirley N. Weber, in her official capacity as California Secretary of State, et al.

Via EFS
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Attorney for Real Party in Interest Protect Patients Now Sponsored by California Apartment Association

Via U. S. Mail (pursuant to Cal. Rules of Court, Rule 8.29)
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P. O. Box 944255
Sacramento, CA 94244-2550