

Case No. S281977

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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LEGISLATURE OF THE STATE OF CALIFORNIA;  
GAVIN NEWSOM, in his official capacity as Governor of the  
State of California; and JOHN BURTON,  
*Petitioners,*

v.

SHIRLEY N. WEBER, Ph.D., in her official capacity as  
Secretary of State of the State of California,  
*Respondent,*

THOMAS W. HILTACHK,  
*Real Party in Interest.*

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**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE*  
BRIEF IN SUPPORT OF PETITIONERS  
LEGISLATURE OF THE STATE OF CALIFORNIA ET AL.;  
PROPOSED *AMICUS CURIAE*  
BRIEF OF CALIFORNIA LABOR FEDERATION, CALIFORNIA  
PAN-ETHNIC HEALTH NETWORK, CALIFORNIA RURAL  
LEGAL ASSISTANCE, INC., CALIFORNIA WORK & FAMILY  
COALITION, CENTER FOR WORKERS' RIGHTS, CENTER FOR  
WORKLIFE LAW, CHILD CARE LAW CENTER, DISABILITY  
RIGHTS EDUCATION & DEFENSE FUND, EQUAL RIGHTS  
ADVOCATES, FIRST 5 CALIFORNIA, LEGAL AID AT WORK,  
AND UNITE-LA, IN SUPPORT OF PETITIONERS LEGISLATURE  
OF THE STATE OF CALIFORNIA ET AL.**

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## **CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Pursuant to California Rules of Court, Rule 8.208, I hereby certify that no entity or person has an ownership interest of 10 percent or more in proposed *amicus curiae*. I further certify that I am aware of no person or entity, not already made known to the Justices by the parties or other *amici curiae*, having a financial or other interest in the outcome of the proceedings that the Justices should consider in determining whether to disqualify themselves, as defined in Rule 8.208(e)(2).

Executed on January 31, 2024, in San Francisco, California.

/s/Sharon Terman

Sharon Terman  
Legal Aid at Work

Attorney for *Amici Curiae*

## I. INTRODUCTION

Pursuant to California Rule of Court 8.520(f), the following organizations hereby apply for leave to file a brief as *amici curiae* in support of Petitioners’ request that this Court remove from the November 5, 2024 ballot the “Taxpayer Protection and Government Accountability Act” (hereafter referred to as the “Measure” or the “Initiative”): California Labor Federation, California Pan-Ethnic Health Network, California Rural Legal Assistance, Inc., California Work & Family Coalition, Center For Workers’ Rights, Center For WorkLife Law, Child Care Law Center, Disability Rights Education & Defense Fund, Equal Rights Advocates, First 5 California, Unite-LA, and Legal Aid at Work.

We submit this brief to show how the measure would impermissibly revise the California Constitution and interfere with the provision of essential public services, including the administration of California’s Paid Family Leave and State Disability Insurance programs on which millions of families rely to heal and care for loved ones during critical life moments.

The measure would unconstitutionally and fundamentally change the balance of power in the government by stripping the Legislature of its ability to raise revenue and preventing the Legislature from delegating routine revenue-related tasks to state agencies. It could halt the operation of California’s paid family and medical leave programs by depriving the Employment Development Department of its ability to set annual contribution rates for these vital social insurance programs. Because it would apply retroactively to January 1, 2022, it also threatens to undo, or at a minimum throw into

chaos, legislation that already has been enacted and for which implementation is already underway, including SB 951 (Durazo), a landmark 2022 bill that increases Paid Family Leave and State Disability Insurance benefit rates to 90 percent of regular income for low-to-middle-income workers.

## II. STATEMENTS OF INTEREST

*Amici curiae* are public interest organizations dedicated to advancing and protecting the rights of California’s workers and their families. Below are brief descriptions of each *amicus curiae* that explain our interest in the case:

**California Labor Federation**, AFL-CIO (“Federation”) is a labor federation that consists of more than 1,200 unions, representing over 2.1 million union members in manufacturing, retail, construction, hospitality, public sector, health care, entertainment and other industries. The Federation is dedicated to promoting and defending the interests of working people and their families for the betterment of California’s communities. From legislative campaigns to grassroots organizing, its affiliates are actively engaged in every aspect of California’s economy and government. The Federation’s achievements include restoring daily overtime, raising the minimum wage and passing Paid Sick Days. The Federation was one of the original sponsors of the law to create the nation’s first Paid Family Leave program.

The **California Pan-Ethnic Health Network** (CPEHN) is a statewide multicultural health advocacy organization dedicated to the elimination of racial disparities in our health care systems and safety nets. Since 1992, CPEHN has worked with community leaders from

communities of color to advocate for policies that advance health equity and improve access to our health care systems, mental health, public health, and oral health. Health equity and racial equity are closely intertwined, and when one is threatened, the other cannot be achieved. CPEHN is a strong proponent and supporter of policy solutions that provide support to communities of color, especially efforts that can combat social determinants of health. We believe in a world where everyone – regardless of your age, race, income, disability status, sex, gender identity, or immigration status – should have the ability to thrive instead of survive. CPEHN steadfastly supports expansions to paid family leave and state disability insurance. We oppose any effort to limit resources or undo critical expansions to these services that provide basic support to California families.

**California Rural Legal Assistance, Inc. (CRLA)** was founded in 1966 to be a world-class nonprofit law firm for those who cannot afford to pay a private attorney. Through 17 offices statewide, CRLA provides no-cost legal services and education to tens of thousands of rural, low-income Californians and litigates cases that benefit even more people. A key component of CRLA’s advocacy is to help clients access needed public benefits like State Disability Insurance and Paid Family Leave.

**California Work & Family Coalition (CAWFC)** is a statewide alliance of organizations which led the campaign to pass the nation’s first paid family leave law in California in 2002. CAWFC was one of the original state coalitions to form the Family Values @ Work Network. Coalition members have worked tirelessly for more

than 20 years to protect and improve our state Paid Family Leave and State Disability Insurance programs. Coalition members include advocates for families with young children, older Californians, parents and caregivers, survivors of domestic violence, small business owners, health and racial equity groups and worker and community advocacy organizations. Coalition leaders and members are deeply familiar with the experiences of countless Californians who rely on paid family and medical leave during some of the most important times in their lives. Coalition members see how crucial these rights and benefits are to the health, well-being, and economic security of families across the state.

**Center for Workers' Rights** is a Sacramento-based, workers advocacy organization whose mission is to create a community where workers are respected and treated with dignity and fairness. To bring that vision into reality, we provide legal representation to low-wage workers, advocate for initiatives to advance workers' rights, and promote worker education, activism, and leadership in the greater Sacramento area. The Center for Workers' Rights provides navigational support to workers on their claims for state disability insurance, unemployment insurance, and paid family leave.

The **Center for WorkLife Law** at the University of California College of the Law, San Francisco is a national research and advocacy organization widely recognized as a thought leader on the issues impacting pregnant and breastfeeding employees and students, and other family caregivers, such as access to reasonable accommodations, leave, and income replacement. WorkLife Law has a deep understanding of existing paid leave programs in California

and other jurisdictions and has contributed to the discourse on California paid leave in its near-decade long membership in the California Work & Family Coalition. In 2021, WorkLife Law formed an Advisory Committee of healthcare providers from across the state of California to receive guidance directly from the professionals who navigate the State Disability Insurance and Paid Family Leave programs every day. WorkLife Law also regularly collaborates with employees and community organizations to inform efforts at improving access to paid leave for workers in low-income, immigrant, and other historically-excluded communities.

**Child Care Law Center** is a nonprofit public interest law firm founded in 1978. The organization's primary purpose is to advocate for child care funding so that families with low incomes can live, work and raise their children with dignity. Child Care Law Center is recognized for our expertise in child care law and funding, and we have successfully advocated for significant funding allocations to help families with low incomes and child care providers. Child Care Law Center has a strong interest in ensuring that California's paid leave programs and other child care funding continue to benefit Californian families. These programs are a significant support to families with low incomes. Child care is difficult to find and pay for when families are working. Without functioning and sustainable paid leave programs, families will have a harder time affording and maintaining their child care. Families need to be able to take off work when they are sick, after childbirth, or when caring for someone else, and continue to provide for their children. Child care and paid leave

programs are public goods that support families with low incomes and help them thrive.

The **Disability Rights Education & Defense Fund (DREDF)**, based in Berkeley, California, is a national nonprofit law and policy center dedicated to protecting and advancing the civil and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy, and law reform efforts. For over three decades, DREDF has received funding from the California Legal Services Trust Fund (IOLTA) Program as a Support Center providing consultation, information, training, and representation services to legal services offices throughout the state on disability issues. DREDF is recognized for its expertise in the interpretation of state and federal laws affecting disabled Californians.

**Equal Rights Advocates (ERA)** is a national non-profit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women, girls and people of all gender identities. Since its founding in 1974, ERA has litigated numerous class actions and other high-impact cases on issues of gender discrimination and civil rights brought under federal, state, and local laws. ERA recognizes that access to paid family leave is tied to pay equity for countless women and caretakers in the workforce. ERA cosponsored the California Fair Pay Act (Lab. Code, § 1197.5), along with subsequent legislation amending the state's Equal Pay Act. ERA has appeared as amicus curiae in numerous cases involving the



interpretation of workplace equity and anti-discrimination laws, including serving as amicus counsel in *Rizo v. Yovino* (9th Cir. 2020) 950 F.3d 1217. ERA is interested in the effective administration of PFL as a means of protecting the economic security of workers and their families.

**First 5 California** (also known as the California Children and Families Commission) was established in 1998 when voters passed Proposition 10, which taxes tobacco products to fund services for children ages 0 to 5 and their families. First 5 California programs and resources are designed to educate and support teachers, parents, and caregivers in the critical role they play during a child's first five years – to help California kids receive the best possible start in life and thrive. First 5 California served as a member of Governor Newsom's Paid Family Leave Task Force and has advocated for equitable paid family leave laws in California and at the federal level for the last 25 years. First 5 California believes that trauma-informed, healing-centered, and culturally responsive systems promote the safe, stable, nurturing relationships and environments necessary to eliminate inequities and ensure healthy development for all children, and ensuring parents and caregivers can take time to bond with their babies is a critical piece of this puzzle.

**Legal Aid at Work** (formerly known as the Legal Aid Society – Employment Law Center) is a non-profit public interest law firm founded in 1916 whose mission is to help people understand and assert their workplace rights and to advocate for employment laws and systems that empower low-paid workers and marginalized communities. Legal Aid at Work frequently appears in state and

federal courts to promote justice for workers and their families. Recognized for its expertise in paid family and medical leave and related rights, Legal Aid at Work served as a member of Governor Newsom's Paid Family Leave Task Force and has advocated for the passage and equitable implementation of every major piece of work-family legislation in California, including the first-in-the-nation Paid Family Leave program implemented two decades ago. Legal Aid at Work has a strong interest in ensuring that California's paid leave programs continue to benefit the millions of California families who rely on them to care for themselves and their loved ones when welcoming a new child or addressing a family medical crisis.

For nearly 25 years, **UNITE-LA** has grown to be one of the most respected business intermediaries in the country with sustained regional, statewide and national business engagement in cradle-to-career and non-traditional business issues, such as Paid Family Leave (PFL). UNITE-LA has helped aid the business community in advancing civic/corporate social responsibility goals; enhances their visibility and brand; and helps them effectively adopt family-friendly employment practices. UNITE-LA is committed to advancing policies and investments at the regional, statewide and national levels that make it possible for our rising workforce to have access to equitable opportunities, such as PFL, resulting in breaking generational poverty and achieving economic mobility. UNITE-LA is proud to have served as a member of Governor Newsom's Paid Family Leave Task Force, working to ensure adequate wage replacement rate for workers with low incomes, who already face health disparities due to systemic racism, sexism, and xenophobia and unable to access entitled benefits.

UNITE-LA is committed to protecting programs, such as State Disability Insurance and PFL, that help support our historically marginalized families.

### **III. PURPOSE OF PROPOSED BRIEF OF *AMICI CURIAE***

The proposed brief presents arguments that materially add to and complement Petitioners' Traverse. *Amici curiae* are experienced and knowledgeable about the implementation and impact of California's paid family and medical leave programs. We therefore can illuminate the ways in which the Measure at issue in this case would impermissibly alter the role of government and interfere with the state's provision of these vital benefits, to the detriment of workers, families, businesses, and the economy as a whole. Our perspectives will assist this Court and are relevant to the disposition of this matter.

### **IV. CONCLUSION**

For all the foregoing reasons, *amici curiae* respectfully request that the Court grant *amici curiae*'s application and accept the attached brief for filing and consideration.

Dated: January 31, 2024

Respectfully submitted,

/s/Sharon Terman

Sharon Terman

Legal Aid at Work

Attorney for *Amici Curiae*

**CERTIFICATE OF COMPLIANCE WITH CAL. RULES OF COURT, RULE 8.520(f)(4)**

*Amici curiae* hereby certify under the provisions of California Rules of Court 8.520(f)(4)(A) that no party or counsel for any party authored the proposed brief in whole or in part or made any monetary contribution intended to fund the preparation or submission of the brief. *Amici curiae* further certify under California Rules of Court 8.520(f)(4)(B) that no person or entity other than *amici curiae* and their counsel made any monetary contribution intended to fund the preparation or submission of the brief.

Executed on January 31, 2024, in San Francisco, California

/s/ Sharon Terman

Sharon Terman

Legal Aid at Work

Attorney for *Amici Curiae*

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**PROPOSED *AMICUS CURIAE* BRIEF OF CALIFORNIA LABOR  
FEDERATION, CALIFORNIA PAN-ETHNIC HEALTH  
NETWORK, CALIFORNIA RURAL LEGAL ASSISTANCE, INC.,  
CALIFORNIA WORK & FAMILY COALITION, CENTER FOR  
WORKERS' RIGHTS, CENTER FOR WORKLIFE LAW, CHILD  
CARE LAW CENTER, DISABILITY RIGHTS EDUCATION &  
DEFENSE FUND, EQUAL RIGHTS ADVOCATES, FIRST 5  
CALIFORNIA, LEGAL AID AT WORK, AND UNITE-LA, IN  
SUPPORT OF PETITIONERS LEGISLATURE OF THE STATE OF  
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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	15
INTRODUCTION .....	19
OVERVIEW OF PAID FAMILY AND MEDICAL LEAVE IN CALIFORNIA .....	20
ARGUMENT .....	24
I. This initiative would fundamentally upend the balance of power between the branches of California’s government, dramatically impacting the State’s ability to create and maintain programs like paid family and medical leave. ....	24
II. This initiative would drastically impact the ability of the California government to perform essential functions, including supporting working families in their times of need, resulting in negative health consequences statewide. ....	27
CONCLUSION.....	33

## **TABLE OF AUTHORITIES**

### **Page(s)**

#### **California Cases**

<i>Geiger v. Bd. of Supervisors</i> (1957) 48 Cal.2d 832, 839-840 .....	27
<i>Raven v. Deukmejian</i> (1990) 52 Cal.3d 336.....	24
<i>Rossi v. Brown</i> (1995) 9 Cal.4th 688 .....	27
<i>Strauss v. Horton</i> (2009) 46 Cal.4th 364.....	24

#### **Legislative Materials**

Senate Bill No. 770 (2013-2014 Reg. Sess.).....	21
No. 1123 (2017-2018 Reg. Sess.).....	31
No. 951 (2021-2022 Reg. Sess.).....	22, 23
No. 1058 (2021-2022 Reg. Sess.).....	31

#### **California Statutes**

Cal. Unemp. Ins. Code §§ 984(2)(A)-(3) .....	22
§ 984(a)(1) .....	32
§ 984(d)(1).....	22
§§ 2601 et seq. ....	20
§§ 3300 et seq. ....	20

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Arora, K., & Wolf, D., <i>Does Paid Family Leave Reduce Nursing Home Use? The California Experience</i> , (2017) 37 J. Policy Analysis & Mgmt. p. 38-62 (Nov. 2017), <a href="https://doi.org/10.1002/pam.22038">https://doi.org/10.1002/pam.22038</a> .....	21
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## INTRODUCTION

The “Taxpayer Protection and Government Accountability Act” (hereafter referred to as the “Measure” or the “Initiative”) would unlawfully revise the Constitution and interfere with critical government functions, including the administration of California’s Paid Family Leave and State Disability Insurance programs. The Measure would impermissibly rob the Legislature of its power to legislate by turning it into a body that merely proposes, rather than enacts, policies that raise revenue for vital state needs, such as paid leave for California’s working families. It would deprive the Legislature of its power to delegate revenue-related functions to administrative agencies, and it would prevent the executive branch from exercising its delegated powers, including setting annual contribution rates for the state’s paid leave social insurance programs.

This revision could have devastating impacts on core government functions including the provision of paid leave to families during times of need, and the retroactive provision of the measure dramatically amplifies the harm. Specifically, the Initiative could undo recent legislation to address inequities in and increase access to paid family and medical leave in California and could endanger the functioning of the entire Paid Family Leave and State Disability Insurance programs, which for decades have supported workers who are welcoming a new child, healing from illness, or tending to family medical crises.

## OVERVIEW OF PAID FAMILY AND MEDICAL LEAVE IN CALIFORNIA

In 1946, California became the second state in the nation to enact a temporary disability program, and in 2002, became the first state to enact a paid family leave program. (CA EDD, *Overview of Paid Family Leave Program*, [https://edd.ca.gov/siteassets/files/pdf\\_pub\\_ctr/de2530.pdf](https://edd.ca.gov/siteassets/files/pdf_pub_ctr/de2530.pdf).) Today, California's State Disability Insurance (SDI) and Paid Family Leave (PFL) programs provide essential wage replacement benefits to people who are temporarily unable to work due to their own non-industrial disability, injury, or illness, including pregnancy-related conditions (SDI), and to those who take leave to bond with a new child, care for a loved one with a serious illness, or address needs related to a family member's military deployment (PFL). (Cal. Unemp. Ins. Code §§ 2601 et seq.; §§ 3300 et seq.)

An overwhelming body of evidence has shown that these programs improve the health and wellbeing of parents, children, family caregivers, and people with disabilities, while benefiting employers and improving labor force participation. (Nat. Partnership for Women & Families, *Paid Leave Works: Evidence from State Programs* (Nov. 2023), <https://nationalpartnership.org/wp-content/uploads/2023/02/paid-leave-works-evidence-from-state-programs.pdf>.) Paid family leave also is associated with a decrease in nursing home admissions, leading to reductions in government spending (Arora, K., & Wolf, D., *Does Paid Family Leave Reduce Nursing Home Use? The California Experience*, (2017) 37 J. Policy Analysis & Mgmt. p. 38-62 (Nov. 2017), <https://doi.org/10.1002/pam.22038>.), and parents who take PFL after the birth of a child are less likely to rely on public assistance and food stamps

after returning to work than those who did not take PFL. (Houser, L., & Vartanin, V., *Policy Matters: Public Policy, Paid Leave for New Parents, and Economic Security for U.S. Workers*, Rutgers Center for Women and Work (April 2012), <https://nationalpartnership.org/wp-content/uploads/2023/02/policy-matters.pdf>.) Thirteen other states (including D.C.) have followed California's lead, enacting their own paid family and medical leave programs (U.S. Department of Labor, Women's Bureau, *State Paid Family and Medical Leave Laws* <https://www.dol.gov/agencies/wb/paid-leave/State-Paid-Family-Medical-Love-Laws>), and voters nationwide overwhelmingly support these policies across party lines and demographic groups. (Lake Research Partners and Paid Leave for All Action, *"Survey Findings Show Broad and Deep Support for Paid Parental, Family and Medical Leave,"* (Nov. 2023), <https://irp.cdn-website.com/167e816a/files/uploaded/Lake.Paid.Leave.for.All.Poll.Press%20Memo.pdf>.)

In the decades since their passage, the California Legislature has made multiple significant improvements to SDI and PFL, including expanding the list of family members a worker can care for (Sen. Bill No. 770 (2013-2014 Reg. Sess.)), extending the number of weeks a worker can take under PFL (Sen. Bill No. 83 (2019-2020 Reg. Sess.)), and most recently, increasing the wage replacement rate for SDI and PFL to 90 percent for low-to-middle-income workers, and to 70 percent for higher earners. (Sen. Bill No. 951 (2021-2022 Reg. Sess.)).

California's Employment Development Department (EDD) administers SDI and PFL, which cover virtually all private employees and some public employees in the state, more than 18 million people.

(CA EDD, *About the State Disability Insurance Program*, [https://edd.ca.gov/en/disability/About\\_the\\_State\\_Disability\\_Insurance\\_SDI\\_Program/](https://edd.ca.gov/en/disability/About_the_State_Disability_Insurance_SDI_Program/).) The EDD pays out billions of dollars in vital paid leave benefits for more than 1,000,000 claims each year. (CA EDD, *Disability Insurance Program Statistics*, [https://edd.ca.gov/siteassets/files/about\\_edd/pdf/qsdi\\_di\\_program\\_statistics.pdf](https://edd.ca.gov/siteassets/files/about_edd/pdf/qsdi_di_program_statistics.pdf)); (CA EDD, *Paid Family Leave (PFL) Program Statistics*, [https://edd.ca.gov/siteassets/files/about\\_edd/pdf/qspfl\\_pfl\\_program\\_statistics.pdf](https://edd.ca.gov/siteassets/files/about_edd/pdf/qspfl_pfl_program_statistics.pdf).) Employees fund these benefits via payroll contributions, and the Legislature has delegated to the Director of the EDD the responsibility of setting contribution rates each year, according to a statutory formula that is designed “to maintain a prudent reserve, reflect benefit costs, and avoid excessive volatility and instability.” (CA EDD, *May 2023 Disability Insurance (DI) Fund Forecast*, <https://edd.ca.gov/siteassets/files/pdf/eddiforecastmay23.pdf>.) The rate cannot exceed 1.5% or be less than .1% of an employee’s wages. (Cal. Unemp. Ins. Code §§ 984(2)(A)-(3).) The EDD Director is statutorily authorized to increase or decrease the rate by .1% to maintain a fund balance that is adequate but not excessive. (Cal. Unemp. Ins. Code § 984(d)(1).)

Recognizing that workers with low incomes were less likely to apply for and receive Paid Family Leave than their higher earning counterparts, in 2019, Governor Newsom convened a Paid Family Leave Task Force to examine policy solutions to improve access to benefits. (Office of Governor Gavin Newsom, *Governor Newsom Signs Bill Extending Job-Protected Family Leave to Nearly 6 Million Californians* (Sep. 2020), <https://www.gov.ca.gov/2020/09/17/governor-newsom->

signs-bill-extending-job-protected-family-leave-to-nearly-6-million-californians/.) A key recommendation of the Task Force was to increase wage replacement rates, especially for low-paid workers, so that those who earn low wages can afford to take leave that is crucial for their families' health, wellbeing, and economic security. (Office of the Governor, Governor's Paid Family Leave Task Force: Report of Recommendations (Dec. 2019).) In 2022, the Legislature and Governor enacted SB 951 by Senator Maria Elena Durazo, a landmark bill raising paid leave benefit rates from 60% for most earners to 90% for low to middle income earners, and 70% for higher earners, effective January 2025. (Office of Governor Gavin Newsom, *California Expands Support for Working Families* (Sep. 2022) <https://www.gov.ca.gov/2022/09/30/california-expands-support-for-working-families/>.) To fund this increase, SB 951 required all workers, as of January 1, 2024, to contribute the same percentage of their income to the State Disability Insurance Fund, which pays for both temporary disability and paid family leave benefits. (Sen. Bill No. 951 (2021-2022 Reg. Sess.) [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB951](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB951).) Previously, lower and middle-income workers contributed to the fund based on their entire income, but higher earners stopped contributing after earning a certain amount (\$153,164 in 2023). (CA EDD, *May 2023 Disability Insurance (DI) Fund Forecast* <https://edd.ca.gov/siteassets/files/pdf/edddiforecastmay23.pdf>.) SB 951 will help fulfill the promise of paid leave by making it possible for all families, regardless of income, to take the time they need to heal from

illness, recover from childbirth, bond with new children, and care for ill loved ones, without having to sacrifice their financial stability.

As discussed below, the Measure at issue in this case unlawfully revises the Constitution and jeopardizes not only the implementation of SB 951, but the viability and functioning of the longstanding State Disability Insurance and Paid Family Leave programs as a whole. In so doing, the Measure threatens to impose devastating consequences on millions of families who rely on these benefits during critical life moments.

## **ARGUMENT**

### **I. This initiative would fundamentally upend the balance of power between the branches of California’s government, dramatically impacting the State’s ability to create and maintain programs like paid family and medical leave.**

A ballot initiative is an unlawful revision of the Constitution if it would “make a far-reaching change in the fundamental governmental structure or the foundational power of its branches as set forth in the Constitution.” (*Strauss v. Horton* (2009) 46 Cal.4th 364, 444; *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 341.) The Initiative would drastically change the responsibilities of the branches of California’s government by curtailing the power of the Legislature and limiting the administrative and regulatory power of the executive branch.

The Initiative would take away critical powers and responsibilities from the Legislature. Centrally, it would eliminate the Legislature’s longstanding power to impose taxes, and consequently,



to fund policy improvements. Under current law, the Legislature can enact taxes through a two-thirds majority vote and can pass other fees and contributions with a majority vote. If the Initiative passes, the Legislature would no longer be able to enact taxes through a two-thirds majority vote; instead, the Legislature would only be able to *propose* taxes or fees, as the power to *enact* taxes would shift to the voters. (California Constitution, Measure, Sec. 4, proposed art. XIII A, § 3, subd. (b)(1).) Without the power to enact taxes, the ability of the Legislature to serve its purpose would be imperiled. Currently, a Legislator can write a bill like SB 951 imposing a change in State Disability Insurance Fund (DI Fund) contribution rates to fund a critical policy improvement, and the bill becomes law once it is passed by a majority vote and signed by the Governor. If the Initiative were to become law, it is likely that a Legislator would only be able to propose a time-limited change in contribution rates in the DI Fund, and the bill would become law only after being passed by a two-thirds majority vote and being approved by voters in an election. While a paycheck contribution to the DI Fund is not a tax, the Initiative redefines a tax as virtually any action that could increase costs for any taxpayer. The Initiative's definition of an "exempt charge" is extremely narrow, for instance, allowing for permitting fees and judicial penalties, or charges for specific services provided directly to the payor, not provided to those who are not charged, and not exceeding the actual cost of providing that service to the payor, and status as an "exempt charge" must be proven by clear and convincing evidence. Because the Initiative changes the democratic process for

legislating and takes away core powers of the Legislature, it is an unlawful revision of the Constitution.

The Initiative also would dramatically limit the administrative and regulatory powers of the executive branch by preventing the Legislature from delegating authority to agency experts. The Initiative would place restrictions on virtually every form of raising funds, including through contributions and fees that have previously been administered and determined by administrative agencies. Instead, any such action could be subject to a popular vote. (California Constitution, Measure, Sec. 4, proposed art. XIII A, § 3, subds. (a), (b)(1), (c), (h)(4).) Consequently, the Initiative will prevent the executive branch from fulfilling its mandate under the California Constitution to administer state programs, while also taking away from the Legislature its power to delegate to experts. Currently the Legislature has delegated to the Director of the EDD the task of calculating precisely what percentage of workers' income (between .01% and 1.5%) must be contributed to the DI Fund each year, a power that is critical to ensuring that PFL and SDI can continue to support families. If the initiative were to pass, despite the longstanding legislative directive delegating the power to set contribution rates to the Director of the EDD, the Director may only be able to *propose* a contribution rate, which the Legislature would need to take up and pass by a two-thirds vote, which would then be placed on the ballot and be voted on by all of California, delaying necessary rate changes and placing the stability of the DI Fund in constant jeopardy. This new, convoluted, and lengthy process could

upend the EDD's decades-old statutory mandate to set contribution rates, which is an essential power the agency must have in order to effectively administer PFL and SDI benefits.

**II. This initiative would drastically impact the ability of the California government to perform essential functions, including supporting working families in their times of need, resulting in negative health consequences statewide.**

The initiative process is not appropriate where it would seriously impair essential government functions. (*See Rossi v. Brown* (1995) 9 Cal.4th 688, 703, *citing Geiger v. Bd. of Supervisors* (1957) 48 Cal.2d 832, 839-840.) This initiative would significantly impair the state's ability to manage fiscal affairs by making virtually any forms of raising necessary funding contingent on voter approval, taking this power away from the Legislature, and seriously delaying any potential implementation. In doing so, it puts at risk every state responsibility, service, and program that relies on government funding, including State Disability Insurance and Paid Family Leave.

California's State Disability Insurance and Paid Family Leave are critical programs that have been designed and improved over more than 75 years and through many carefully considered legislative changes. In addition to legislative changes impacting coverage, eligibility, and benefit rates, the Employment Development Department has made countless additional changes to the ways in which it administers, and educates the public about, these benefits. Currently over 1,000,000 Californians benefit from these programs each year. (See CA EDD, *Disability Insurance Program Statistics*

[https://edd.ca.gov/siteassets/files/about\\_edd/pdf/qsdi\\_di\\_program\\_statistics.pdf](https://edd.ca.gov/siteassets/files/about_edd/pdf/qsdi_di_program_statistics.pdf); CA EDD, *Paid Family Leave (PFL) Program Statistics* [https://edd.ca.gov/siteassets/files/about\\_edd/pdf/qspfl\\_pfl\\_program\\_statistics.pdf](https://edd.ca.gov/siteassets/files/about_edd/pdf/qspfl_pfl_program_statistics.pdf).) Advocates for business, public health, workers, women, parents, children, people with disabilities, the elderly, survivors of domestic violence and more have worked together to secure changes and improvements to the system, so that SDI and PFL can fulfill their critical purpose for the state of California: ensuring that workers have the income they need to take necessary leave from work to protect their health, heal, have babies, bond with new children, and care for their loved ones. This initiative harms the state of California and impairs essential government functions both by endangering the implementation of 2022's SB 951 as well as the EDD's ability to administer SDI and PFL at all.

SB 951, authored by Senator Maria Elena Durazo and signed by Governor Gavin Newsom in 2022, institutes a critical improvement to the state's PFL and SDI program, increasing benefit rates to 90% of normal pay for middle-to-lower income Californians, so that they can afford to take leave to care for their health and that of their family. Previously, the lowest income Californians were four times less likely to utilize PFL, in comparison to Californians earning \$80,000-\$99,999 per year.

(Schumacher, K., *Paid Family Leave Payments Don't Add Up for California Workers*, Cal Budget & Policy Center (Feb. 2022)

<https://calbudgetcenter.org/resources/paid-family-leave-program-is-out-of-reach-for-many-californians/>.) The programs' previous wage replacement rates, which forced a family caregiver, new parent, or person with a disability to accept up to a 40% income loss, often made taking leave cost-prohibitive. Instead, individuals would work through their

cancer treatments, work up until the day they gave birth, or be forced to leave ill family members without adequate care. (Jain, S., *Opinion: Bill to Strengthen Paid Family Leave is Good Medicine*, Cal Health Report (Aug. 2022) <https://www.calhealthreport.org/2022/08/19/opinion-bill-to-strengthen-paid-family-leave-is-good-medicine/>.) SB 951, although signed in 2022, delayed implementation of more equitable DI Fund contributions to 2024 and implementation of the higher wage replacement rates to 2025, to ensure adequate time to raise the necessary funding to pay for the benefits, as well as to provide the EDD with needed time to update its systems to administer these improvements.

This initiative would jeopardize the state's ability to implement SB 951 and provide adequate financial support to families in times of need by potentially making key provisions of it invalid, unless approved by popular vote. By requiring an expiration date for every tax or fee, it also would harm families' ability to plan for their needs in the future by creating uncertainty about future benefit rates. Paid family leave is associated with reduced infant hospital admissions, improved maternal and infant health, lower enrollment in nursing homes for older adults, and improved cognitive development in children. (Nat. Partnership for Women & Families, *supra*; Arora, *supra*; Houser, *supra*.) Further, new parents with access to paid leave are significantly less likely to require public assistance. (Joint Economic Committee Democrats, *Universal Paid Family and Medical Leave Will Generate Economy-Wide Benefits and Spur Economic Growth* [https://www.jec.senate.gov/public/\\_cache/files/bf389596-f53a-4398-a01c-3da58addd2e0/universal-paid-family-and-medical-leave-will-](https://www.jec.senate.gov/public/_cache/files/bf389596-f53a-4398-a01c-3da58addd2e0/universal-paid-family-and-medical-leave-will-)

generate-economy-wide-benefits.pdf.) This creates cost savings for the state in healthcare and other benefits. Paid family leave is associated with higher labor force participation and employee retention, better employee morale, and a better and healthier work environment. (AEI-Brookings, *The AEI-Brookings Working Group Report on Paid Family and Medical Leave* (Sep. 2018) <https://www.aei.org/wp-content/uploads/2018/09/The-AEI-Brookings-Working-Group-Report-on-Paid-Family-and-Medical-Leave.pdf>.) Eighty-nine percent of small business owners believe paid family leave is important to their employees' economic security and even more wish they could provide additional leave. (Small Business Majority, *Opinion Poll: California small business owners support expanding paid family leave protections, increasing paid sick days* (July 2023) p. 6 <https://smallbusinessmajority.org/sites/default/files/research-reports/ca-small-business-support-paid-family-leave-and-paid-sick-days.pdf>.) This initiative could rob California of these invaluable benefits.

The added uncertainty also would prevent the state from providing these critical services by putting it in the impossible position of needing to move forward with designing and implementing certain statutorily required improvements, while also being ready to undo these and other provisions without adequate notice. It is typical that the EDD requests a minimum of one to two years of lead time, and up to three and a half years, to make sometimes modest and necessary technological changes to its systems, establish internal protocols, train staff, create collateral, and educate the public to prepare for effective implementation of legislation. (See, e.g., Sen. Bill No. 1058 (2021-2022 Reg. Sess.), Sen. Bill No. 1123 (2017-2018 Reg. Sess.).)

As noted above, to fund the increase in benefits to 90% for middle-to-low-wage earners, and 70% for all other Californians, SB 951 changed contribution rates so that all workers pay the same percentage of their income into the DI Fund. These modified contribution rates are now in place for 2024, raising the necessary funds to start paying out the improved benefits in 2025. The EDD is currently working to modify its systems so that come 2025, it will be able to pay out the appropriate benefits. If this initiative makes the modified contribution rates subject to popular vote, the EDD will be forced to continue collecting the current, as of 2024, contribution rates, while also being prepared to instantaneously shift back to previous rates in case the measure, SB 951, is not approved by popular vote within 12 months. If the Initiative forces a sunset date on the modified contributions, the EDD will need to pour significant resources into preparing its systems to switch back to previous contribution rates, while continuing to implement the current ones.

Equally significantly, the threat of the reversion of contribution rates to those previously in place could endanger the DI Fund. SB 951 was designed to make needed improvements to PFL and SDI's benefits to support families, funded by the more equitable contribution rate. If the contribution rate reverts while the EDD is still statutorily required to proceed with increasing benefits to 90% of normal income, it would risk the stability of the DI Fund. If the DI Fund is unstable, workers who are pregnant, caring for an ill family member, or dealing with a serious disability will no longer be guaranteed the income that they need to plan, survive, care for one another, and heal.

This initiative also risks the EDD's ability to carry out essential government functions by taking away the Legislature's ability to delegate

expert financial tasks to administrative leaders. Each year, the Director of the EDD prepares a public statement declaring the worker contribution rates to the DI Fund for the coming calendar year. (Cal. Unemp. Ins. Code § 984(a)(1).) The Director sets the rate based on the benefits dispersed the previous year, the amount in the DI fund, and the wages Californians earned throughout that time. (Id.) The Director may increase or decrease the amount by up to .1% as necessary to maintain an adequate fund balance. (Id. at (d)(1).) This rate is based on timely data and designed to ensure that the DI Fund continues to have the necessary funding to pay benefits to the estimated 1,000,000 qualifying claimants each year. This provision weighs the competing interests of California's workers by both ensuring that the state's DI and PFL programs are functioning and available during times of need, and also ensuring that workers are not paying into the fund any more than is necessary. For example, the contribution rate in 2022 was 1.1%, which was then lowered to .9% in 2023 and again was raised to 1.1% in 2024. (CA EDD,

*Historical Information*

[https://edd.ca.gov/en/payroll\\_taxes/historical/#:~:text=SDI%20Rate,for%20each%20employee%20is%20%241%2C378.48.](https://edd.ca.gov/en/payroll_taxes/historical/#:~:text=SDI%20Rate,for%20each%20employee%20is%20%241%2C378.48.)) As explained above, changes to increase contribution rates, such as the increase in 2024 to 1.1%, would likely be considered tax changes because of the Initiative's overbroad definition of tax and narrow definition of exempt charge. If the Director cannot set the rate without legislative and voter approval, the delay involved in the process will prevent the contribution rates from being responsive and based on current data. Thus, the Initiative will not only risk critical recent improvements to the state's paid family and medical leave programs, it will risk the functioning of the programs at all,



as the EDD may lose the ability to secure the adequate funding to function and pay benefits.

## CONCLUSION

The Measure before this Court impermissibly imposes drastic changes to our Constitution and structure of government, and threatens to stymie the provision of Paid Family Leave and State Disability Insurance to millions of Californians who rely on these benefits to support themselves and their loved ones during times of need. The Measure puts at risk a major legislative improvement to increase equity in PFL and SDI, and endangers the entire operation of these longstanding programs that are vital for the health and economic security of families and the health of businesses and our economy. Because the Measure is unconstitutional, *amici curiae* respectfully ask this Court to remove it from the ballot.

Dated: January 31, 2024

Respectfully submitted,

/s/Sharon Terman

Sharon Terman

Katherine Wutchiett

Shazzy Kamali

Legal Aid at Work

Attorneys for *Amici Curiae*

**STATEMENT OF COMPLIANCE WITH CAL. RULES OF  
COURT RULE 8.204(c)(1)**

The text in this proposed *Amicus Curiae* brief consists of 3,603 words, including footnotes, as counted by the word processing program used to generate this document.

Executed on January 31, 2024 in San Francisco, California.

/s/Sharon Terman

Sharon Terman  
Legal Aid at Work

Attorney for *Amici Curiae*

## **PROOF OF SERVICE**

I am employed in the County of San Francisco. I am over the age of eighteen years and not a party to the within entitled action. My business address is 180 Montgomery Street, Suite 600, San Francisco, CA 94104.

On January 31, 2024, I served the following documents described as:

- **APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS LEGISLATURE OF THE STATE OF CALIFORNIA ET AL.;**
- **PROPOSED *AMICUS CURIAE* BRIEF OF CALIFORNIA LABOR FEDERATION, CALIFORNIA PAN-ETHNIC HEALTH NETWORK, CALIFORNIA RURAL LEGAL ASSISTANCE, INC., CALIFORNIA WORK & FAMILY COALITION, CENTER FOR WORKERS' RIGHTS, CENTER FOR WORKLIFE LAW, CHILD CARE LAW CENTER, DISABILITY RIGHTS EDUCATION & DEFENSE FUND, EQUAL RIGHTS ADVOCATES, FIRST 5 CALIFORNIA, LEGAL AID AT WORK, AND UNITE-LA IN SUPPORT OF PETITIONERS LEGISLATURE OF THE STATE OF CALIFORNIA ET AL.**

on the interested parties in this action as follows:

☒ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address below and

☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☒ placing the sealed envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for

collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in Fresno, California, in a sealed envelope with postage fully prepaid.

☐ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY PROCESS SERVER:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional process server for service.

☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

☒ **BY EMAIL TRANSMISSION (TRUEFILING):** By electronically submitting for filing and service the document(s) listed above through TrueFiling, an electronic filing vendor approved by this Court. The name of the vendor and the transaction receipt I.D. are given in the vendor's emailed Notification of Service.

**Case No. S281977**

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

Executed on January 31, 2024, in Fresno, California.

Franchesca Garcia  
Franchesca Garcia