

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0533**

January 27, 2014

Chief Justice and Associates  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

**Re: Howard Jarvis Taxpayers Assn., et al. v. Bowen**  
**Case No. S220289**

To the Honorable Court:

Thank you for your time and consideration. As the author of the ballot advisory measure at issue and as a Member of Congress who may vote on Amendments to the United States Constitution, I have an interest in this case. I am writing to provide you the perspective of a legislator who has been elected by the people at both the state and federal levels in a representative democracy in the 21<sup>st</sup> century. Specifically, I will address why this ballot advisory measure strengthens our modern representative democracy.

For a representative democracy to function properly, elected representatives need to be able to utilize all the tools necessary to carry out their duties. Legislators at each level of government do not operate in hermetically-sealed chambers where they are restricted to only writing letters, giving speeches, passing bills, and sending resolutions to other governmental bodies. In the 21<sup>st</sup> century, a legislator more effectively represents the people by marshalling all available resources to communicate and influence the conversations in our representative democracy—from social media to traditional press to the ballot box.

A ballot advisory measure strengthens our representative democracy in a number of ways. First, the ballot advisory measure increases communications between the people and their state representatives. A representative democracy is a two-way street. It is not enough just for the legislator to speak to and for the people once that person has been elected; the people also need to have varied opportunities to express their sentiments to their representatives.

Moreover, as California's population has dramatically grown in size since its founding while our representatives have essentially remained the same in number, it has become increasingly difficult for State Senators and Assemblymembers to communicate effectively with a majority of their voters. This was not the case when the California and Federal Constitutions were adopted, nor is it the case in many other states in our union with smaller populations. In Missouri, for example, the size of an Assembly district is approximately 31,000 residents; in

California, Assembly districts have approximately 465,000 residents (15 times the size) and Senate districts have approximately 930,000 residents (30 times the size). How the voters vote on a ballot advisory measure in a state the size of California provides an important source of information and influence to their elected state representatives.

Second, this ballot advisory measure increases communications between the people and their federal representatives in California. Our representative democracy is multi-layered, and effective governance and communication requires information to flow not just between voters and their state representatives, but also between voters and their federal representatives. All successful prior Amendments to the Constitution of the United States occurred the same way with Congress passing a Constitutional Amendment followed by state ratification. How the voters vote on this ballot advisory measure provides an important source of information and influence to their federal representatives in California.

Third, the ballot advisory measure increases communications between the California State Legislature and Congress. Each year Congress receives thousands of letters and resolutions. Sometimes, however, there are issues that are adjudged to be so critical and monumental that the State Legislature seeks to use a different route that can break through all the cacophony in our 21<sup>st</sup> century: the ballot box. The State Legislature's authorization of an advisory vote by the people in California—the eighth largest economy in the world—sends a message far more powerful than any letter or resolution. As a Member of Congress, I know that many of my colleagues and I would be far more influenced if the voters in California (or any state) passed an advisory ballot measure asking for a Constitutional Amendment than if we simply received a letter or resolution stating the same.

The history of our nation suggests that Members of Congress don't just wake up one day and decide to pass a Constitutional Amendment. Rather, prior Amendments occurred through movements, such as the women's suffrage movement, and through various activities in states around the union. The California State Legislature wants to send a powerful signal to Congress on whether to pass a Constitutional Amendment or not, and this advisory ballot measure is an appropriate and influential method to convey to Congress the gravity of this issue.

Fourth, the ballot advisory measure can inform voters about critical issues in our representative democracy in a way that few other methods can. The simple fact of asking the millions of voters in California to cast a vote will cause many of them to learn more about the issue. The voters are also provided both pro and con arguments, followed by pro and con rebuttals, in the statewide voter guide prepared by the Secretary of State. Social media and traditional press will start reporting on this ballot measure, providing even more information to the voters. Particularly in this case, the Legislature has concluded that the *Citizen's United* decision has so radically altered our representative democracy that it would be appropriate for the voters to learn about and weigh in on this core issue affecting the future of our democracy.

Finally, the ballot advisory measure strengthens our representative democracy in a way that a poll of a random sampling of voters cannot. The California State Legislature spent time and resources conducting multiple committee hearings on this advisory measure, heard various arguments for and against, worked with numerous stakeholders, and passed the measure by a

majority vote in both chambers. It would have been far easier for a Member of the Legislature to simply conduct a poll of a random sample of voters asking the same question as the advisory ballot measure. Yet no one in the Legislature thought that would be worthwhile or effective. Members of the Legislature, having been elected and having dealt with numerous polls, are in a unique position to understand the limitations of polls.

Unlike this ballot measure, a poll solicits the views of only a handful of people being polled—generally a few hundred to perhaps two thousand and extrapolates the result. Polls can also be unreliable. If we took all polls at face value, former Congressional Majority Leader Eric Cantor (who had a 35 point lead in one poll) would still be in office. This ballot measure, in contrast, will be voted upon by millions of voters. A ballot advisory measure is not an extrapolation: it is an exact expression of the views of an exact number of millions of voters at the ballot box.

A ballot measure also speaks with a far louder and unique voice. That is why the Legislature spent significant resources and time passing this measure; why the Howard Jarvis Taxpayers Association spent resources challenging this measure; and why you are even reading this letter. Because we all understand that polls are not the same as a measure voted on at the ballot box and do not serve the same function. A poll is simply insufficient to convey what the Legislature wants to convey in this case.

In a representative democracy, the people have given much of their power to their elected representatives. For this model to work, the elected representatives need to be able to utilize all the tools and resources that they have available to perform their duties as long as their actions are not unconstitutional. There is not a single word, phrase, sentence, or paragraph in the California or U.S. Constitutions that prohibits the California State Legislature from putting on the ballot this advisory measure on *Citizen's United*. Please don't silence us. Please allow legislators to do our jobs in the manner we deem to be the most effective.

Thank you for your consideration.

Respectfully submitted,

Ted W. Lieu  
Member of Congress