

August 31, 2021

VIA PERSONAL DELIVERY

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

RECEIVED

AUG 31 2021

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Anabel Renteria, Initiative Coordinator

Re: Request for Title and Summary for Proposed Initiative Constitutional Amendment

Dear Mr. Bonta:

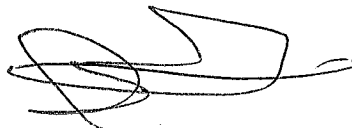
Pursuant to Article II, Section 10(d) of the California Constitution, I hereby submit the attached proposed Initiative Constitutional Amendment to your office and request preparation of a circulating title and summary of the chief points and purposes of the measure as provided by law. Included with this submission are the proponent affidavits signed by the proponent(s) of this measure as required by Sections 9001 and 9608 of the California Elections Code. My address as a registered voter is attached to this letter, along with a check for \$2,000.00.

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

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

Thank you for your assistance.

Sincerely,



John B. Estill, Proponent

Enclosure: Proposed Initiative Constitutional Amendment

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Richard C. Altmaier, Proponent

Enclosure: Proposed Initiative Constitutional Amendment

Section 1. Title.

This measure shall be known, and may be cited as, the Emergency Order Transparency, Fairness, and Oversight Act.

Section 2. Statement of Intent and Purposes.

(a) State and local officials need the discretion and flexibility to issue orders and regulations needed to respond to disasters and emergencies. However, extra transparency, accountability, and oversight are needed when emergency orders restrict our freedoms, close our schools, and harm our livelihoods.

(b) When state or local officials issue emergency orders that shut down our economy, our communities, or our schools, they should be required to disclose the data and information used to justify the shutdown order so the People of California, their elected legislative representatives, and if necessary the courts, can independently evaluate whether the restrictions are appropriate.

(c) Under recent emergency shutdown orders, many small businesses were forced to close their doors while big box stores were allowed to remain open. Independent local business owners struggled to survive the economic downturn while major corporations raked in record profits. We must ensure that future emergency orders which shut down our economy are handled in a fair and equitable way for everyone instead of allowing big corporations to prosper while small businesses suffer.

(d) Children who are denied an in-person education suffer learning loss, greater anxiety and depression, diminished access to nutrition and after-school programs, and a lifelong reduction in academic and economic achievement. Californians pay tens of billions of dollars every year to fund our public schools, and keeping our schools open should be the highest priority. In-person public elementary and high school instruction must be treated as an essential service for those wishing to attend, and schools should only be closed as an absolute last resort during states of emergencies.

(e) State and local officials should be able to respond to emergencies quickly. But when emergency orders severely restrict our freedoms and livelihoods by shutting down our schools, business, houses of worship, or prohibit travel, we need extra oversight and accountability. Our

elected state and local legislative representatives should regularly review these types of emergency orders to make sure they are narrowly tailored and are lifted as soon as it is safe to do so.

Section 3. Section 16 is added to Article V of the Constitution, to read:

SEC. 16. Notwithstanding any contrary provision of this Constitution or any other law:

(a) *Matters not Affected.*

This section shall not apply to emergency orders and regulations issued to address an ongoing earthquake, volcanic eruption, fire, flood, insurrection or riot, or foreign invasion by an enemy of the United States, or the immediate aftermath thereof.

(b) *Authority to Issue Emergency Orders and Regulations.*

(1) Except as provided in this section, state officers, and any official acting by or through the authority of a state officer, shall have the power to make, issue, amend, and rescind orders and regulations to address a state of war emergency, state of emergency, or other conditions of disaster or of extreme peril to the safety of persons and property within the state, as provided by law.

(2) Except as provided in this section, local officers, and any official acting by or through the authority of a local officer, shall have the power to make, issue, amend, and rescind orders and regulations to address a local emergency or other conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, as provided by law.

(c) *The Public's Right to Know the Justification for Shutdown Orders.*

(1)(A) A state or local officer who issues a shutdown order shall post on the officer's departmental Internet website all data, statistics, studies, forecasts, projections, modeling, and other information that was relied upon as justification for issuance of the shutdown order. The information shall be posted on a single webpage or link so that the public can easily access it. The information posted on the Internet pursuant to this paragraph shall specify precisely which piece(s) of data and precisely which statistics, studies, forecasts, projections, modeling, and other information justify each specific component of the shutdown order.

(B) The information described in subparagraph (A) of this paragraph shall be posted on the Internet not more than 7 days after the issuance of the shutdown order. If the information described in subparagraph (A) of this paragraph that was relied upon as justification for issuance of the shutdown order is updated or changed, the updated or changed information shall be posted on the Internet not more than 7 days after the update or change takes place.

(C) Any generic disclosure of information that does not provide context and identify which specific information justifies each specific aspect of the shutdown order shall be insufficient to satisfy the requirements of this subdivision.

(D) In any legal challenge to a shutdown order, the state or local officer shall be bound by the justifying information posted on the Internet pursuant to this paragraph. No other information shall be relied upon in justifying the shutdown order.

(2)(A) Notwithstanding paragraph (1), a state or local officer shall not be required to post on the Internet any information if doing so would do any of the following: (i) create a severe and immediate threat to state or national security; (ii) disclose trade secrets or other confidential financial information; (iii) create a severe invasion of a nonpublic person's privacy; or (iv) violate federal law.

(B) If clause (i) through clause (iv) of subparagraph (A) of this paragraph can be avoided by redacting relevant portions of the information, then the state or local officer shall make the necessary redactions and post the remainder of the information on the Internet.

(3)(A) A state or local officer who believes that specific data, statistics, studies, forecasts, projections, modeling, or other information, or any subset thereof, is not required to be posted on the Internet pursuant to paragraphs (1) or (2) of this subdivision bears the burden of proving by clear and convincing evidence that the information is not required to be posted on the Internet as set forth in this subdivision.

(B) A civil action challenging a state or local officer's decision to withhold information described in paragraph (1) of this subdivision shall be given preference over all other civil actions before the court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that the action shall be speedily heard and determined.

(d) Fair Treatment of Small Businesses under Shutdown Orders.

(1) It is the People's intent that the economic burdens of shutdown orders shall be shared fairly and uniformly by businesses operating in this state regardless of a business's market share or financial or political influence.

(2) No shutdown order shall draw distinctions or treat differently businesses on the basis of size, market share, stock price, square footage, or number of employees where the businesses offer substantially the same goods or services.

(3) If a specific good or service is deemed to be an essential good or service while a shutdown order is in effect, then all businesses that can offer that specific good or service shall be permitted to do so on an equal basis.

(4) If a business is permitted to offer a good or service while a shutdown order is in effect, then all businesses that offer the good or service shall be permitted to do so on an equal basis.

(e) Importance of In-Person Public Schooling under Shutdown Orders.

(1) The People hereby declare that public elementary schools and high schools provide an essential service.

(2) In-person public elementary school and high school (kindergarten to 12th grade) instruction shall be maintained as an essential service to the maximum extent possible while a shutdown order is in effect for all students who wish to attend in-person instruction while the shutdown order is in effect.

(f) State and Local Legislative Oversight and Duration of Shutdown Orders.

(1) A shutdown order issued by a state or local officer shall expire 30 days after the date it takes effect. The expiration date of a shutdown order issued by a state or local officer may be extended in 30-day increments as set forth in this subdivision.

(2)(A) The Legislature may extend a state shutdown order's expiration date by a two-thirds vote of the membership of each house so long as the vote occurs prior to the expiration date then in effect. There shall be no limit on the number of times the Legislature may extend a

state shutdown order's expiration date, but no extension shall be for more than an additional 30 days at a time.

(B) A city council or county board of supervisors may extend a local shutdown order's expiration date by a six-tenths vote of the membership thereof so long as the vote occurs prior to the expiration date then in effect. There shall be no limit on the number of times a city council or county board of supervisors may extend a local shutdown order's expiration date, but no extension shall be for more than an additional 30 days at a time.

(3) Notwithstanding paragraph (1) and paragraph (2) of this subdivision, and not more than once per calendar year, the Legislature, a city council, or a county board of supervisors may extend a state or local shutdown order's expiration date for up to 60 days instead of 30 days. If a state or local shutdown order's deadline is extended for more than 30 days pursuant to this paragraph, no subsequent extension of more than 30 days shall be valid or recognized during the same calendar year.

(4) If the Legislature, a city council, or a county board of supervisors declines to extend a shutdown order's expiration date pursuant to this subdivision, no state or local officer of the corresponding level of government shall issue the same or substantially same shutdown order based upon the same or substantially same set of facts that the expired shutdown order was intended to address.

(g) Judicial Review of Shutdown Orders.

In any challenge to the legality of a shutdown order:

- (1) Neither party is entitled to any deference from the court.
- (2) The court shall conduct an independent review of entire record before it.

(h) Definitions.

- (1) "Local officer" means an administrative or executive official of a city, county, or city and county, whether acting pursuant to state or local law.
- (2) "Local shutdown order" means a shutdown order issued by a local officer.

(3) “Shutdown order” means an order or regulation described in paragraphs (1) or (2) of subdivision (b) issued by a state or local officer that does any of the following:

(A)(i) Requires the closure of 24 or more of any of the following, or any combination thereof: a public or private elementary school or high school; a house of worship; a business or other commercial enterprise.

(ii) For purposes of this subparagraph, “closure” means a restriction on an entity’s capacity or operation to less than three-fourths of the capacity or operation that the entity had prior to the shutdown order.

(B) Imposes a curfew or quarantine upon a majority of the residents of the State of California or any city, county, or city and county within the state.

(C) Prohibits travel into or out of the State of California or any city, county, or city and county within the state.

(D) Requires the majority of residents of the State of California or any city, county, or city and county, to remain inside their places of residence for more than 72 consecutive hours.

(4) “State officer” means an administrative or executive official of the State of California.

(5) “State or local officer” means a state officer and/or a local officer.

(6) “State shutdown order” means a shutdown order issued by a state officer.

Section 4. Severability.

The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act 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 Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any other portion of this Act or application thereof would be subsequently declared invalid.

Section 5. Conflicting Measures.

(a) In the event that this initiative measure and another ballot measure or measures dealing, either directly or indirectly, with orders and regulations addressing state emergencies or local emergencies appear on the same statewide election ballot, the other ballot 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 ballot measure or measures shall be null and void.

(b) If this initiative measure is approved by the voters but superseded in whole or in part by any other conflicting ballot measure approved by the voters at the same election, and such conflicting measure is later held invalid, this measure shall be self-executing and given full force and effect.

Section 6. 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 local, state, or federal law in whole or in part, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 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 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. 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.