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OCT 17 2011

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Corporate Responsibility Initiative
P.O. Box 49729
Brentwood Village, CA 90049-0729

Ms. Kamala D. Harris, Attorney General
1300 I St.
Sacramento, CA 95814

Attn: Initiative Coordinator

Dear Ms. Harris:

By this letter, I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of the proposed initiative measure to amend the California Constitution, enclosed with this letter.

The chief purpose and points of the proposed initiative measure are to amend the California Constitution to provide a constitutional framework under which the Legislature may regulate the formation and operation of corporations and under which the Legislature is limited in the ways in which it may provide public benefits to corporations.

Pursuant to California Elections Code §9001(b)(1), I, Thomas Montague Hall, declare, under penalty of perjury, that I am a citizen of the United States, 18 years of age or older, and a resident of Los Angeles County, California.

I am the only proponent of this proposed initiative measure.

Pursuant to California Elections Code §9001(b)(2), I provide the following public contact information:

Thomas Montague Hall
Post Office Box 49729
Brentwood Village, CA 90049
(424) 652-4404.

With this letter, I enclose the full text of the proposed initiative measure to amend the California Constitution, a check in the amount of \$200, and a separate page containing the certification required by California Elections Code §9608.

Very truly yours,



Thomas M. Hall

Initiative Petition re: Corporations Amendment

§.I INTRODUCTION:

1. By initiative petition, the people of the State of California enact this Article to the California Constitution to empower the State to authorize the organization and registration of Corporations to conduct business within the State, subject to the terms and limits enacted in this Article;
2. It is the intent of the people of the State of California that the State shall have and exercise authority over the organization, registration and operation of Corporations to the greatest extent permissible under law and within any limits imposed by the Constitution of the United States of America;
 - a. The authority of the State of California to fix terms and conditions for the operation of Corporations shall not be restricted, except as limited in this Constitution, including but not limited to this Article;

§.II DEFINITIONS:

1. CORPORATION: A corporation is an artificial entity, created under the authority of the legislature, for the purpose of facilitating the organization of capital with which to conduct legal business;
 - a. CORPORATION includes a corporation organized under the laws of any other state or territory of the United States, or of any foreign government recognized by the United States at the time the corporation was organized, if and only if, such corporation is in compliance with all laws and regulations of the State of California, including laws or regulations

requiring the registration of foreign corporations with the State of California;

b. A corporation is not a citizen and does not have any of the rights or privileges of citizenship, except as may be authorized by this Article or the Legislature acting pursuant to this Article;

i. For purposes of reference in documents and operations, a corporation may be referred to as a “legal person” or an “artificial person” or a “non-natural person”, however such labels do not convey any of the rights or privileges of citizenship to the corporation;

c. A corporation is not a person, and does not have any of the rights or privileges of personhood, except as may be authorized by this Article or the Legislature acting pursuant to this Article;

i. For purposes of reference in documents and operations, a corporation may be referred to as a “legal person” or an “artificial person” or a “non-natural person”, however such labels do not convey any of the rights or privileges of personhood onto the corporation;

2. **DISCRIMINATION:** Discrimination in corporate activity is decision making which has disparate impact on employees, customers or any other person, corporation or entity, and that is not based on a quantifiable, scientifically recognized basis that is rationally connected to the business purpose of the corporation or to the specific decision being made;

3. EMPLOYEE: For purposes of this Article, EMPLOYEE shall include full and part-time workers, contract workers, casual workers, day laborers and every category of person identified as an employee in Federal Tax Law, and includes corporate directors and trustees;
4. FOREIGN CORPORATION: Corporations organized under the laws of any other state or any foreign government, and properly registered with the State of California, shall be "FOREIGN CORPORATIONS";
 - a. An entity of any type that is organized under the laws of any other state or foreign government, but which is not registered with the State of California shall not receive any legal recognition as a corporation in California, or by any agency of the state of California or its subordinate political units;
5. HEALTH CARE: For purposes of this Article, HEALTH CARE includes any treatment that is scientifically recognized for medical conditions, and equally for such treatments scientifically recognized for prevention of medical conditions;
 - a. Medical conditions include dental and psychological conditions and the treatment or prevention of such conditions;
 - b. Unless a different standard is legislated by the Legislature, the determination of what is scientifically recognized, for purposes of this Article, shall be consistent with Federal rules for determining the admissibility of expert opinion in civil and criminal trials;
 - c. Payments actually made for health insurance or health care plans may be included in the category of HEALTH CARE to the extent permitted by this Article;

6. INTENTIONAL TORT: For purposes of this Article, Intentional Tort includes, but is not limited to, gross negligence and recklessness, as those concepts are used in California tort law, and any other conduct which could expose a defendant to punitive or exemplary damages under California Civil Code §3294;
7. NON-PROFIT and NOT FOR PROFIT: For purposes of this Article, Non-profit and Not-for-profit corporations include all the forms of such corporations currently recognized and authorized in the California Corporations Code and Revenue and Taxation Code;
 - a. Subject to the terms and limitations of this Article, the Legislature may authorize other forms of Non-profit and Not-for-profit corporations;
 - b. Unless otherwise specified by the Legislature, "Non-profit" and "Not-for-profit" have the same meaning and may be used interchangeably;
8. PROPERTY: For purposes of this article, PROPERTY includes all forms of real, personal, tangible and intangible property, including intellectual property;
 - a. Property recognized by a foreign state or jurisdiction in which a corporation does business will be recognized, by the State of California, as to that corporation and persons and entities with which it does business;

§.III FORMATION OF CORPORATIONS:

1. The Legislature may authorize the formation, chartering and recognition of corporate forms as it may see fit, including but not limited to: C-corporations; S-corporations; Limited Liability Companies; Limited Liability Partnerships; Non-

profit entities; Unions; Educational Organizations; Social Organizations; and, Religious Organizations;

2. To the extent that the Legislature authorizes the formation of any corporate form under the laws of the State of California, corporations of the same form organized under the laws of any other State of the United States shall be recognized by the Courts and other agencies of the State of California, when, and only when, they are in compliance with all registration and other requirements for foreign corporations in the State of California;
 - a. To the greatest extent allowed by the U.S. Constitution, Federal law or the laws of this and other states of the United States, California will recognize as a Foreign Corporation doing business in California, any organized business entity other than a sole proprietorship, that is conducting business in California or conducting business anywhere outside of California in any way that directly affects the people, government, governmental agencies of California or businesses doing business in California;
3. A Foreign corporation shall be granted the same rights and privileges in the State of California as if it had been organized under the laws of the State of California, except to the extent that its rights and privileges under the laws of the government under which it is organized are more restrictive than those of the State of California. In such case, the corporations rights and privileges shall be as extensive as permitted by the laws of the government under which the corporation is organized;

- a. No Foreign corporation may have greater rights and privileges in California than it would have had if organized under the laws of the State of California;
 - b. The Legislature has no authority to grant a Foreign corporation greater rights and privileges than it would have had if organized under the laws of the State of California;
 - c. Every Foreign corporation doing business in the State of California shall register with the Secretary of State, or with such other office as is designated for the purpose of registering Foreign Corporations;
 - i. A foreign corporation which does business in the State of California, without registering, shall be treated for tax and legal purposes, including appearances in Court, as a sole proprietorship, in which each corporate director and each corporate officer is jointly and severally liable for the corporation's contracts, torts, crimes, debts, fines, fees and other obligations;
 - ii. The State shall charge every Foreign Corporation a fee for registration. The fee shall be set by the Legislature, but shall in no event be less than 125% of the corporation's *pro rata* share of the actual cost of maintaining the registration system and records and of registering the Foreign Corporation;
4. Subject to the limitations in this Article and other Articles of this Constitution, the Legislature may grant corporations rights and privileges;
- a. As authorized by the Legislature, consistent with the provisions of this

Constitution, investors in a corporation may have their liability for damages caused by the corporation limited to the amount of their investment in the corporation;

- b. The Legislature may grant a corporation permission to conduct any lawful business activity;
 - i. Neither the Legislature nor any other official or agency of the State of California has authority to grant any corporation permission to conduct any illegal business activity or to commit any crime, or to engage in Discrimination;
- c. The State of California may grant different rights and privileges to different types of corporate entities;
- d. Subject to the provisions of this Article or other Articles of this Constitution, the Legislature may condition a corporation's rights and privileges upon the corporation's adherence to regulations, fiduciary and other duties or such other conditions as the Legislature may elect to impose;
 - i. Such conditions may be enacted to take effect after hearings and determination of conduct, or automatically upon the occurrence of conduct, as the Legislature chooses;
 - (1) If a corporation's rights or privileges are affected upon the occurrence of specified conduct, the Legislature or designated agency shall provide mechanisms and procedures by which the corporation may challenge the conditions;

- (2) Any such challenge to conditions shall be available to the corporation, if and only if, it is in compliance with the conditions, and with all other laws and regulations affecting the corporations, at all times during the challenge;
 - (3) Any such challenge to conditions shall be available to the corporation, if and only if, the corporation is current on all tax obligations, local and federal as well as state, at the time the challenge is filed and at all times during the challenge procedure;
 - ii. The Legislature may authorize the Secretary of State or any other Executive branch to make regulations and fix duties and conditions to which corporations must adhere. Any such regulations, duties and conditions must apply uniformly to all corporations within any type authorized by the State of California under paragraph 4.c. above;
- 5. The State of California may authorize corporations to conduct business for profit or non-profit purposes;
 - a. The State of California may authorize different rights and privileges for profit and non-profit corporations;
 - b. Any corporation that has been organized and conducting business for more than 24 months, and which spends more than 30% of its gross income on administrative costs, salaries and advertizing, may not be classified as a non-profit corporation;

- c. To the greatest extent permitted by Federal Constitutional law, a corporation may discriminate between people and other corporations in the conduct of its business;
 - i. The people of the State of California declare that the State will not aid in any discrimination that does not have a scientifically recognized basis that is rationally connected to the business purpose of the corporation or to the decision being made;
 - (1) The determination of whether discrimination has a scientifically recognized basis that is rationally connected to the business purpose of the corporation or to the decision being made, is a question of fact, to be determined by a jury;

§.IV ABILITIES OF CORPORATIONS:

- 1. Except as otherwise prohibited in this Constitution, a corporation may appear in Court as plaintiff or defendant;
- 2. Except as otherwise prohibited in this Constitution, a corporation may make and perform all forms of contract obligations;
- 3. A corporation may conduct any legal business activity that the Legislature has authorized it to conduct;

§.V LIMITATIONS ON CORPORATE CONDUCT:

- 1. A corporation is incapable of performing an illegal act;
 - a. Crimes or Illegal acts committed in the name of any corporation are, in-

fact, the actions of the corporation's officers and directors;

- i. Such officers and directors are jointly and severally liable, as individuals, for crimes and other illegal acts committed in the name of the corporations for which they work;
- ii. Such officers and directors are jointly and severally liable, as individuals, for all damages, including punitive damages, that may be awarded as a consequence of any injury resulting from a crime or illegal act committed in the name of a corporation for which they work;
- iii. The owners of common stock of a corporation are not liable for crimes or other illegal acts committed in the name of the corporation, except as determined by statute;
 - (1) The Legislature may define conditions under which corporate stockholders are liable for crimes or illegal acts of a corporation;
- iv. Any statute of limitations on a crime or other illegal act committed in the name of a corporation begins to run from the date of discovery of such crime or illegal act. Knowledge of the crime or illegal act by any Employee of the corporation does not constitute discovery of the crime or illegal act;

2. A corporation is incapable of committing an Intentional Tort, as defined in Federal or California law, the law of any other State of the United States, or the common law;

- a. Intentional torts committed in the name of any corporation are, in-fact, the actions of the corporation's officers and directors;
 - i. Such officers and directors are jointly and severally liable, as individuals, for intentional torts performed in the name of a corporation for which they work;
 - ii. Such officers and directors are jointly and severally liable, as individuals, for all damages, including punitive damages, that may be awarded as a consequence of any injury resulting from an intentional tort committed in the name of a corporation for which they work;
 - iii. The owners of common stock of a corporation are not liable for damages, including punitive damages resulting from any intentional tort committed in the name of a corporation, except as determined by statute;
 - (1) The Legislature may define conditions under which corporate stockholders are liable for crimes or illegal acts of a corporation;
 - iv. Any statute of limitations on an intentional tort committed in the name of a corporation begins to run from the date of discovery of such crime or illegal act. Knowledge of the intentional tort by any Employee of the corporation does not constitute discovery of the intentional tort;
3. A corporation may not discriminate on the basis of race, gender, sexual

orientation, national origin or any other basis defined by Federal or California law, the law of any other State of the United States, or the common law;

- a. Distinguishing between people on the basis of quantifiable differences related to job requirements is not discrimination for purposes of this Article;
- b. Distinguishing on the basis of personal belief, or opinion, not related to quantifiable measures related to job requirements is discrimination;
- c. A corporation that discriminates as part of its business practice shall not be eligible for any government contract of any sort during the period that it discriminates and for a period of two years after the discrimination ends;
- d. A corporation that discriminates as part of its business practice shall not be entitled to any California tax deduction or credit, other than for Health Care, during the period that it discriminates and for a period of five years after the discrimination ends;
 - i. If a corporation takes a tax deduction or credit while discriminating, any such tax shall be recoverable jointly and severally from the corporation, its officers and directors, with interest at the statutory rate for judgments, upon a determination that the discrimination has happened;
- e. Whether a corporation has discriminated is a question of fact, to be determined by a jury, by a preponderance of the evidence;

§.VI TAXATION OF CORPORATIONS:

1. Subject to the terms of this Article, the State of California shall tax the income of corporations doing business in the state of California;
 - a. The Legislature may set different tax rates for different levels of corporate income;
 - b. For purposes of taxation, all corporations of any sort, shall be either for-profit corporations or non-profit corporations;
2. Subject to the provisions of this Article, a corporation shall be taxed on its income within the State of California, if the corporation records its California gross income separately from its income from other states;
 - a. If a corporation does not record California income separately from its income from other states, the corporation shall pay taxes on its total gross income from all jurisdictions;
 - b. If a corporation is taxed by any state or governmental entity other than a California entity on the corporation's California income, the gross income on which the corporation is taxed in California shall include the corporation's gross income earned in such non-California entity;
3. A for-profit corporation shall be taxed on its gross income within the State of California, If the corporation records its California income separately from its income from other states;
 - a. If a corporation does not record California gross income separately from income from other states, the corporation shall pay taxes on its total gross income from all jurisdictions;

4. A non-profit corporation shall not be taxed on its gross income to the extent that such income is used to provide goods or services consistent with the authorized purpose of the non-profit corporation or is held in trust for such use in the future;
 - a. The Legislature may authorize non-profit corporations to deduct up to 30% of their gross income for administrative expenses actually incurred;
 - b. The Legislature may authorize non-profit corporations to deduct up to 15% of their gross income for publicity and public relations expenses actually incurred;
5. The Legislature may authorize corporations to deduct from their gross incomes monies actually spent in the operation of the corporation, subject to the limitations set forth in this Article;
6. Limitations on credits and deductions;
 - a. The Legislature shall not have the authority to set a minimum corporate tax rate, before deductions and credits, lower than the maximum rate set for individual tax payers;
 - b. Subject to any other limitation on deductions in this Constitution, a corporation may deduct actual costs paid for Health Care, plus up to 5% administrative costs;
 - i. A corporation may take deductions for Health Care costs actually paid for both employees and non-employees of the corporation;
 - ii. Health Care includes but is not limited to medical, dental, psychiatric and psychological treatments and preventative care;
 - iii. If a corporation provides different levels of Health Care coverage to

employees in different positions, it may only deduct for coverage actually paid for the benefits of the least covered employees;

(1) A corporation may not increase the deductibility of Health Care costs for employees above the least covered employees by classifying the Health Care payments as compensation, business costs or anything other than Health Care costs;

iv. A corporation may take deductions for premiums actually paid for Health Care insurance for both employees and non-employees of the corporation, but may not deduct any amount for negotiation or administration of Health Care insurance;

(1) If a corporation provides different levels of Health Care insurance to employees in different positions, it may only deduct the costs actually paid for the insurance of the least covered employees;

(2) A corporation may not increase the deductibility of Health Care insurance costs for employees above the least covered employees by classifying the insurance payments as compensation, business costs or anything other than Health Care costs;

c. A corporation may take deductions for pension and retirement plan payments actually made to pension and retirements plans;

i. No deduction for pension and retirement plan payments may exceed three times the amount of pension and retirement plan payments

- made for the corporation's lowest paid employee, including part time employees;
- ii. Pension and retirement plan payments are not "actually made" until such payment has been deposited into a plan or account from which the corporation is unable to recapture the payment, even in a bankruptcy proceeding or upon discharge of the employee;
- d. A corporation may not take deductions for contributions to political activity of any sort;
- i. For purposes of this prohibition, advertising for a candidate or a political or social issue constitutes political activity contributions, even if no specific candidate or ballot measure is identified with the expenditure;
 - ii. For purposes of this prohibition, administrative costs for proposing, planning, administering, accounting and any other business activity related to the such contributions are non-deductible political activity;
 - iii. For purposes of this prohibition, lobbying and any expenses including planning, administration and accounting for lobbying expenses are non-deductible political activity;
 - iv. Whether an activity or payment constitutes a contribution to political activity is a question of fact, to be determined by a jury, by a preponderance of the evidence;
- e. A Corporation may deduct legal fees and costs of litigation only to the extent that such fees and costs are deductible by the corporation's opponent in any

specific litigation;

- i. For purposes of this limitation, fees and costs include, but are not limited to, all administrative, adjusting and any other expenses involved in managing, tracking, accounting for and otherwise handling litigation or other legal proceedings including attorney selection, negotiations, arbitrations, and mediations;
- f. A corporation may deduct legal fees and costs actually incurred in the defense of criminal prosecution of the corporation or any of its directors, officers, or employees;
 - i. If the corporation, its director(s) or officer(s) are found guilty of a crime, any deduction for legal fees and costs expended by the corporation for defense against the prosecution shall be recaptured by the taxing entity, together with interest at the statutory rate for judgments or for delinquent taxes, whichever rate is higher;
 - (1) Until recapture of such monies is complete, the corporation may not take any deduction or any tax credit for any purpose other than Health Care costs and Health Insurance premiums actually paid;
 - (2) This recapture provision does not apply to prosecutions of non-director and non-officer employees of a corporation;
- g. Subject to the terms of this Article, a corporation may account money spent for employee compensation as a business expense for the purpose of calculating net income;

- i. A corporation may not account compensation for any employee as a business expense to the extent that such compensation exceeds an amount that is one hundred times the total compensation paid to the corporation's lowest paid employee, whether the lowest paid employee is employed full or part time;
- ii. Employee compensation includes, but is not limited to, every form of payment by the corporation to, or for the benefit of, an employee, including but not limited to bonuses, incentives, deferred compensation, per-diem and reimbursements, whether or not such payments are taxable;
 - (1) Whether money, goods, services or anything else given to, or on behalf of, an employee is compensation is a question of fact to be determined by a jury, by a preponderance of the evidence;
- iii. For purposes of this section, employee includes independent contractors, day laborers, and other casual laborers;

§.VII LIFESPAN OF CORPORATIONS:

1. A corporation may be incorporated to exist for any number of years or in perpetuity;
2. A corporation's existence may be terminated by a majority decision of the stockholders of the corporation;
3. A corporation's existence may be ended by a finding by a jury that the corporation

should be dissolved as a consequence of the commission of illegal acts or as a consequence of the commission of intentional torts;

- a. No corporation shall be dissolved on a jury finding unless the finding is by clear and convincing evidence;
 - b. No corporation shall be dissolved on a jury finding that the corporation has committed less than 10 felony illegal acts or intentional torts, or a combination of 10 felony illegal acts and intentional torts, within the five years immediately preceding the filing of the proceeding in which the jury is sitting;
 - c. A jury's factual finding that a corporation has committed illegal acts or intentional torts is a finding of fact which shall not be subject to *de novo* review on appeal;
 - d. A finding by a jury, by clear and convincing evidence, that a corporation has committed an illegal act or acts, or has committed an intentional tort or intentional torts, is separate and distinct from a finding that the corporation should be dissolved in consequence of its conduct;
4. A corporation may be dissolved for other causes, as determined by the Legislature;

§.VIII LIABILITIES OF CORPORATIONS:

1. A corporation is liable for damages arising from its business activities;
 - a. The corporation's liability does not extend to the corporation's owners, stockholders, directors or managers, except as provided in this Article;
2. Upon a jury finding, by a preponderance of the evidence, that a corporation has

committed an illegal act, or an intentional tort, the liability for all damages arising from such act shall extend, jointly and severally, to the directors and officers of the corporation;

3. Upon a jury finding, by clear and convincing evidence, that a corporation has committed an illegal act, or an intentional tort, a jury may then determine whether there shall be an award of punitive or exemplary damages;
 - a. The liability for punitive or exemplary damages arising from such act shall extend, jointly and severally, to the directors and officers of the corporation;
 - i. California law, including but not limited to Civil Code §3294, and case law, guiding the determination of whether a defendant is liable for punitive damages apply to cases involving corporations;
 - b. The determination by a jury of an amount of punitive damages which is necessary or appropriate to deter future misconduct by the corporation or other entities is a finding of fact which shall not be disputed by any appellate Court;
 - c. A corporation that commits an illegal act or an intentional tort while doing business in California, or while availing itself of any of the public facilities of the State of California, has no right to any limitation on the amount of damages which are determined by a jury to be appropriate punishment for, or deterrent from repetition of, such act, other than the right to due process in the process of determining the corporation's liability;
 - i. No appeal lies from a determination of any aspect of a punitive damages award on the ground that the damage amount is excessive;

4. In the event that a corporation is not able to pay a damage award for any corporate act, as determined by a jury, the beneficiary of the award may seize and liquidate any assets of the corporation, and of jointly and severally liable entities and persons, for the purpose of collecting the damage award;
 - a. This right is the same for special, general and punitive damages;

§.IX ENFORCEMENT:

1. Every resident of the State of California has standing to bring an action in the Courts of the State of California to prevent, stop and obtain damages for corporate illegal acts and intentional torts;
 - a. Corporate illegal acts and intentional torts, as a matter of law, cause injury to all residents of the State of California, for which injuries any resident may prosecute a claim against the persons alleged to be liable for the illegal acts or intentional torts;
2. Private attorney general statutes shall be interpreted broadly to permit actions by natural persons to proceed against those alleged to be liable for corporate illegal acts and torts of all sorts;
 - a. Any natural person who brings a successful action against a corporation or its directors and officers to prevent, stop illegal acts or intentional torts, and obtain damages for such conduct, shall be entitled to recover the full amount of their attorney's fees and litigation costs, including the costs of experts and exhibits, jointly and severally, from those found liable;
 - b. A corporation or its directors and officers who successfully defend against

allegations of illegal acts or intentional torts shall be entitled to recover their attorneys' fees and costs only to the extent that any other criminal or tort defendant would be recover such fees and costs;

3. A corporation may bring an action against other corporations to prevent or stop illegal acts or intentional torts and to recover damages for such conduct;
4. For purposes of legal interpretation of this Article, capitalization of any words shall not affect the interpretation;

§.X EFFECTIVENESS:

1. This Article shall take effect upon passage by a majority popular vote;
2. All corporations in existence and doing business in California at the time of passage of this Article shall be governed by the provisions of this Article from the date of its passage;
3. This Article shall establish the law of corporations as of the date of passage;
 - a. Corporate actions that have been completed by the date of passage are not subject to terms of this Article that were not in effect at the time of the actions;
 - b. Corporate actions that have not been completed by the date of passage of this Article or which occur after passage of this Article are governed by this Article, regardless of when they were planned or of when the corporate policies such actions carry out were instituted;
4. Except as altered by specific provisions of this Article, all provisions of the California Corporations Code shall remain in force and effect upon the passage of

this Article;

5. Except as altered by specific provisions of this Article, all provisions of the California Revenue and Taxation Code shall remain in force and effect upon passage of this Article;
6. Except as altered by specific provisions of this Article, all provisions of all Codes, Regulations, Ordinances and Laws of the State of California or of its subordinate political entities shall remain in force and effect upon the passage of this Article.