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Chair and Members,
El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Board of Directors
El Dorado Hills CSD
1021 Harvard Way
El Dorado Hills, CA 95762

Re: **Enforcement of El Dorado County Measures Q, R and S**

Dear Board Members, Counsel and Staff:

This law firm represents Concerned Residents of El Dorado Hills Heritage Village, on behalf of itself and on behalf of the El Dorado County voters who voted to adopt Measures Q, R and S at the November 5, 2024 election. As you know, each of the measures passed with supermajority vote totals. By adopting Measure Q (relating to the El Dorado Hills Community Services District – Promontory Park Landscaping and Lighting Assessment District #22) the voters mandated the repeal of the special assessment for the CSD as allowed under Proposition 218 and ordered that the District refund previously levied special assessments. By adopting Measure R (relating to the El Dorado Hills Community Services District – Valley View Landscaping and Lighting Assessment District #33) the voters mandated the repeal of the special assessment for the CSD as allowed under Proposition 218 and ordered that the District refund previously levied special assessments. By adopting Measure S (relating to the El Dorado Hills Community Services District – Carson Creek Park Landscaping and Lighting Assessment District #39) the voters mandated the repeal of the special assessment for the CSD as allowed under Proposition 218 and ordered that the District refund previously levied special assessments.

The elections for Measures Q, R and S were certified in December 2024. To date, by all appearances, no steps have been taken by the El Dorado Hills Community Services District or El Dorado County to implement the measures and the will of El Dorado County voters. This is a demand letter that the El Dorado Hills Community Services District immediately implement Measures Q, R and S.

The CSD's refusal to act may be as the result of a presentation it received on February 13, 2025 which included the legal conclusion that "Measures Q, R and S are

Illegal." However, public agencies are not allowed to unilaterally declare measures adopted by voters as illegal and on that basis refuse to comply with them.

1. Measures Q, R and S are Afforded the "Presumption of Constitutionality."

"[O]ne of the fundamental principles of our constitutional system of government is that a statute, once duly enacted, 'is presumed to be constitutional. Unconstitutionality must be clearly shown, and doubts will be resolved in favor of its validity.'" (*Lockyer v. City and County of San Francisco* (2004) 33 Cal. 4th 1055, 1086, quoting from 7 Witkin, Summary of California Law (9th ed. 1988) Constitutional Law, § 58, pp. 102-103; and see *Powell v. County of Humboldt* (2014) 222 Cal. App. 4th 1424, 1445-1446 ["Legislative enactments*, including local ordinances*, are clothed with a presumption of constitutionality. A party challenging the constitutionality of such a measure has the burden of producing evidence to overcome that presumption"] (emphasis added).) This presumption applies to legislative enactments adopted by initiative. (*Legislature v. Eu* (1991) 54 Cal. 3d 492, 501 ["As with statutes adopted by the Legislature, all presumptions favor the validity of initiative measures...."); and see *Hollingsworth v. Perry* (2013) 570 U.S. 693, 707 ["once...approved by the voters, the measure [becomes] a duly enacted [law]"]).) "[T]he burden of overcoming the presumption of constitutionality is cast upon the [challenger.]" (*Dribin v. Superior Ct.* (1951) 37 Cal. 2d 345, 352.)

2. Measures Q, R and S are Valid Unless Overturned by a Court of Appeal.

"Administrative bodies and officers have only such powers as have expressly or impliedly been conferred upon them by the Constitution or by statute." (*Lockyer, supra,* 33 at 1086.) Consistent with this settled law, in 1978 the voters of California added article III, section 3.5 to the California Constitution. It states that "[a]n administrative agency…has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional; (b) To declare a statute unconstitutional." (*Id*.)

Applying these principles, it is manifest that the CSD and County have no power to simply and unilaterally declare Measures Q, R and S unconstitutional or refuse to enforce them. Rather, under the law, the CSD and County must *first* secure rulings from an appellate court declaring the measures unconstitutional before lawfully refusing to comply with the ordinances. (Cal. Const. Art. 3 § 3.5.) Until and unless such rulings are obtained, the CSD and County must implement and enforce the provisions of the measures.

Here, having failed to avail itself of judicial recourse once Measures Q, R and S were adopted[1], the CSD and County assumed a duty not only to comply with and enforce the initiatives, but also to defend them against judicial challenges by others. (*Arne 11 Development Company v. City of Costa Mesa* (1980) 28 Cal.3d 511, 514 n. 3.)

[1] The CSD and County could have also filed a pre-election challenge but did not. (See, e.g., *JAHR v. Casebeer* (1999) 70 Cal.App.4th 1250.)

Instead of enforcing the measures, however, the CSD and County have purportedly declared the Measures illegal, and/or refused to comply with their provisions. (See, e.g. CSD Memorandum, February 13, 2025 and attached PPT presentation ["Measures Q, R and S are Illegal"].) Since the CSD and County plainly lack judicial power to declare the measures illegal, and since they have not obtained a ruling by the court of appeal, they must immediately enforce Measures Q, R and S.

3. The CSD's and County's Violation of the Separation of Powers Doctrine.

The CSD's and County's defiance of Measures Q, R and S directly contravenes the separation of powers between the executive and judicial branches and trivializes the people's constitutional right to legislate by initiative. It defeats the public's right to have laws enforced unless and until they have been declared unconstitutional, and rewards agencies that ignore laws they dislike. Particularly where, as here, the public has adopted a law through the initiative process, responsible officials may not subvert the people's will by usurping the judicial power and evading compliance with the law in the expectation that citizens will lack the resources and commitment to engage in years of exhausting litigation to belatedly secure agency compliance with the public's ballot decisions. By wrongfully evading compliance with Measures Q, R and S, and attempting to excuse the failure to comply with laws by continuing to maintain their unconstitutionality, the CSD and County have undermined the entire ballot initiative process.

The situation here is analogous to that in *Lockyer, supra*, 33 Cal.4th at 1082. In *Lockyer*, the city argued that local officials have "the authority to refuse to apply a statute whenever the official believes it to be unconstitutional, even in the absence of a judicial determination of unconstitutionality." (*Id*.) The court rejected the city's claim and agreed with the Attorney General's position that "the prospect of local governmental officials unilaterally defying state laws with which they disagree is untenable and inconsistent with the precepts of our legal system." (*Id*.)

As San Francisco officials maintained a duty to comply with existing law in *Lockyer*, the CSD's and County's obligations here to comply with Measures Q, R and S are ministerial rather than discretionary. It is settled law that "a local public official, charged with the ministerial duty of enforcing a statute, generally does not have the authority, in the absence of a judicial determination of unconstitutionality, to refuse to comply with the statute on the basis of the official's view that it is unconstitutional." (*Lockyer, supra*, 33 Cal.4th at 1082.) Here, despite the fact Measures Q, R and S have been the law since December 2024, public officials are refusing to comply with the Measures' provisions, all because they apparently *believe* the Measures *might be* unconstitutional. Absent an affirmative appellate determination of the Measures' unconstitutionality, CSD and County officials are obligated to comply with these voter-enacted laws. (Cal. Const. Art. 3 § 3.5; *Lockyer, supra*, 33 Cal.4th at 1082.)

4. Measure's Q, R and S are Constitutional Under Proposition 218.

Although not necessary to address at this stage, Measures Q, R and S are plainly constitutional. Article XIIIC of the California Constitution gives the citizens of California the constitutional right to repeal taxes, assessments, fees and charges through the initiative process. According to the California Supreme Court, the text of section 3 of article XIIIC "supports the conclusion that the initiative power granted by that section" specifically extends to "reducing or repealing" taxes, assessments, fees, and charges." (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal. 4th 205, 218.) The primary purpose of Measures Q, R and S is to repeal the assessments for the targeted CSDs.

The second specific purpose of Measures Q, R and S is to compel the County and CSD to issue refunds to ratepayers. This is also an appropriate use of the initiative process under Proposition 218. "Proposition 218 specifically states that '[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.'" (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal. 4th 431, 444; and see *Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234 ["[w]hen construing a constitutional provision enacted by initiative, the intent of the voters is the paramount consideration"].) The focus of Proposition 218 is on the consumer, not the government -- to the point that the CSDs and the County here bear the burden of proving constitutional compliance. (Cal. Const., art. XIIID, § 6(b); *Silicon Valley, supra*, 44 Cal.4th at 448.)

5. Conclusion.

As a result of the foregoing, the CSD and County are required by law to comply with Measures Q, R and S unless an appellate court rules otherwise. Contrary to this duty, the CSD and County have taken no steps to implement the will of El Dorado County voters. It is undisputed that no appellate court has deemed Measures Q, R and/or S unconstitutional. Therefore, the CSD and County are required by law to comply with the voters' will and enforce the Measures, which requires immediate refund of levied special assessments and a prohibition of all action(s) that would result in subsequent special assessments.

We appreciate your time and attention to this matter.

Very truly yours,

Brian T. Hildreth

cc:
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