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FEDERAL ELECTIONS. CAMPAIGN ADVERTISEMENTS. INITIATIVE STATUTE.

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The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

FEDERAL ELECTIONS. CAMPAIGN ADVERTISEMENTS. INITIATIVE STATUTE.

Permits political advertisers in federal elections for President, Vice-President, United States Senate, or House of Representatives to certify voluntarily, under penalty of perjury, the truth of their advertisement. Provides for certification to be filed with the county elections office where the advertisement is published via Internet, radio, television, or bulk mailing. Requires advertisements and accompanying certifications to be publicly available on a State-protected Internet site. Punishes false certifications with up to four years imprisonment. Delays prosecutions for false certifications until after the general election. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government:

Increased costs to state and local governments. These costs include (1) one-time costs—possibly tens of millions of dollars—to develop new information technology systems and (2) ongoing costs to state and local governments of possibly millions of dollars each year to administer and enforce the new certification process. (15-0051.)

Proof of Truth Committee

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September 28, 2015

Ashley Johansson
 Initiative Coordinator
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RECEIVED

SEP 28 2015

INITIATIVE COORDINATOR
 ATTORNEY GENERAL'S OFFICE

Re: Submission of Rewritten Request for Title and Summary for Proposed State Ballot Initiative

Dear Initiative Coordinator:

Today, I have enclosed a rewrite of five paragraphs which were found, in tandem, in Section 4, on pages 4 and 5 of Ballot Measure 15-0051 (also known as The Proof of Truth in Federal Elections Initiative). The original five sequential paragraphs immediately followed this title:

Rules for California Federal Election's: Voluntary Certification of a Truthful Political Advertisement – Signed Under Penalty of Perjury (VCTPA-SUPP)

These are the only changes to the previously submitted Sections 1 through Section 6. These changes can be found in Appendix A. I also include these changes as inserted into the remaining body of the original text.

It is my intent that these modest material changes be included in our request for title and summary.

I truly appreciate your effort. Should you have questions or require additional information, please contact the undersigned as annotated in the letterhead.

Sincerely, *Timothy D. Geist*

Timothy D. Geist, Proponent

Section 1. Title.

This act shall be known and may be cited as the Proof of Truth in Federal Elections Initiative.

Section 2. Findings and Declarations.

We the People of the State of California find and declare as follows:

(a) We must know the truth, in order to make wise decisions about who we should elect to federal office. False political advertisements impede our ability to make sound judgments. False political advertisements make it more likely we shall become a government of the People, by the People and against the People.

(b) The potential dangers from these deceptive impediments to choosing our leaders well are most severe with elections for federal office. Congress can declare war. Whether by malicious intent, ignorance or well-meaning stupidity, a President of the United States could executively precipitate a nuclear war. Therefore, it is a compelling government interest to facilitate voters' judgments of facts and fictions in these federal elections.

(c) To an unstudied reader, two areas of California Elections Code suggest that there can be penalties or litigation against libel or slander against political campaign opponents. However, California Elections Code Section 20440 offers no legal remedy against violations. The other, California Elections Code Sections 20500-20502 would stand a snow ball's chance in Hades of providing any remedy under the heat of First Amendment scrutiny. "The overwhelming weight of authority is that campaign rhetoric is protected speech and, as such, recovery by a candidate is highly unusual" *Beilenson v. Superior Court* (1996) 44 Cal.App.4th 944, 52 Cal.Rptr.2d 357.

(d) First Amendment scrutiny is given great weight towards protecting free political speech because "erroneous statements are inevitable in free debate," *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271-72 (1964). The threat of civil litigation or prosecution by the government can have a "chilling effect" on activities protected by the First Amendment, *Susan B. Anthony List v. Ohio Elections Commission*, No. 1: 10-cv-720 (2015), *Dombrowski v. Pfister*, 380 U.S. 479 (1965).

Although high courts of the United States will continue to use First Amendment scrutiny to defend political advertisers' right to intentionally lie to voters, thus far, the First Amendment does not protect the right to perjury, or lying under oath to some official government entity.

(e) The People of California believe the "...unquestioned constitutionality of perjury statutes, which punish those who willfully give false testimony" *United States v. Grayson*, 438 U.S. 41 (1978) can be a tool to help leverage voters' ability to identify truthful political advertisements.

A Voluntary Certification of a Truthful Political Advertisement -Signed Under Penalty of Perjury (VCTPA-SUPP) and submitted to governmental election officials simultaneously with a copy or recording of that advertisement, could give voters more information about the reliability of the statements in that advertisement. Any reasonable person will conclude citizens who would bet on the truthfulness of their asserted facts with their freedom from prison are more likely to be advocates for the truth, than opponents who would not make that bet.

(f) Due to the serious harm that may befall the People of California if we are deceived into choosing federal leaders unwisely (e.g., millions of people can die in war), sentencing associated with perjured VCTPA-SUPPs should be stern and involve time in prison. Stern sentences will help establish and maintain a VCTPA-SUPP certificate as a credible authority of truthfulness that ethical political advertisers should wish to establish. This easily understood authority of truthfulness would facilitate the electorate's wise self-governance.

(g) In order to allow breathing space for unrestrained political campaign speech and not provoke constitutional challenges, official governmental actions or statements must not actually, nor apparently, condone or condemn any political advertisement during the political campaign season in question. All prosecutorial or law enforcement activity including investigations, related to a possibly perjured VCTPA-SUPP, must be delayed until after that general election has been concluded.

(h) The clarity of a particular VCTPA-SUPP is useless if the electorate cannot observe it. Therefore the signatory proponent, or a designee, should personally deliver a copy of the advertisement with the VCTPA-SUPP to the county election office in the county where the advertisement was or will be distributed. All political advertisements which are presented with VCTPA-SUPPs should be uploaded onto a one-stop internet site explicitly dedicated to that purpose and protected by the State of California.

This internet site should be accessible to every person with internet access. Public and private links or partnerships with websites that already exist (e.g., YouTube.com and the FCC's political files) could greatly minimize the cost of establishing such a site.

(i) It is in consideration of the relative potentials for physical destructiveness, the State's budget, and bureaucratic logistics that political advertisements related to the State of California's Legislature and local elected offices are not included in this initiative.

Section 3. Statement of Purpose.

The purpose of this initiative is to:

(a) Give a strong tactical advantage to political advertisements for federal elections which are strictly true against political assertions which are not true.

(b) Facilitate voters' identification of political advertisements for federal elections which are likely to be true because the advertisers were willing to voluntarily risk prison in order to certify their advertisement's truthfulness.

(c) Incentivize the distribution of truthful political advertisements.

Section 4.

The Proof of Truth in Federal Elections Act shall apply to California Elections Code Division 20 as a new chapter following Elections Code [20000 – 20502]

Chapter 7. Proof of Truth in Federal Elections Act - Voluntary Certifications of Truthful Political Advertisements [20600-20680]

Article 1. General intent [20600 – 20600]

20600 The People of California declare the purpose of this chapter is to arm honest and diligent political campaigns in federal elections for the United States House of Representatives, Senate, Vice Presidency and Presidency with tools to prove to voters that statements in their campaign advertisement are likely to be true.

Those persons who would produce and promote an advertisement in support of or opposed to elections to federal offices, which hold the powers to declare wars or executively initiate wars thereby risking millions of human lives, should be personally willing to take the smaller risk of their own incarceration if the statements contained in that advertisement are not strictly true.

Therefore, these persons are hereby challenged to voluntarily sign a certificate, under penalty of perjury, stating the assertions in the contents of their political advertisement are strictly true. The signatory shall be sentenced to a period of up to four years in prison, if that certificate is perjured.

Article 2. Definitions (20610-20610)

20610 As used in this chapter VCTPA-SUPP shall mean the Voluntary Certification of a Truthful Political Advertisement-Signed Under Penalty of Perjury.

Article 3. Voluntary Certification of a Truthful Political Advertisement-Signed Under Penalty of Perjury (20620-20628)

(20620) Proponents who publish any political campaign advertisement or solicitation in support of or against any candidate for federal election for the United States House of Representatives, Senate, Vice Presidency or Presidency through an internet site, or radio or television station, or a single mailing of 500 or more identical letters shall have the opportunity to voluntarily certify that each asserted fact in the contents of that advertisement are true, under penalty of perjury, California Penal Code Chapter 5 Section 118-131. This Voluntary Certification of a Truthful

Political Advertisement -Signed Under Penalty of Perjury (VCTPA-SUPP) shall be submitted to an official officer in the county election office, of the county where that advertisement was or will be published, simultaneously with an exact copy of that advertisement and no other, or that solicitation and no other that is so certified.

20622 In order to allow breathing space for unrestrained political campaign speech all prosecutorial or law enforcement commentary or activity including investigations, related to a possibly perjured VCTPA-SUPP, must be delayed until after that general election has been concluded.

20624 The VCTPA-SUPP shall have two main components:

1. the specific rules governing a valid inculpable certification
2. the certification that the contents of the political advertisement are strictly true

20626 Each of the two main components of the VCTPA-SUPP must be signed by the same signatory proponent under penalty of perjury and submitted simultaneously to the official officer in the county election office.

20628 The general content of the VCTPA-SUPP shall be as follows:

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Rules for California Federal Election's: Voluntary Certification of a Truthful Political Advertisement – Signed Under Penalty of Perjury (VCTPA-SUPP)

The standard for determining whether a VCTPA-SUPP is perjured shall be whether the statements would be considered perjury if made as testimony under oath in a Court of law.

Signatories of VCTPA-SUPPs that contain(s) assertion(s) supported by the current views of a significant body of generally respected scientists shall not be prosecuted under California Penal Code Section 125, even if the ascribed signatory of the VCTPA-SUPP is not personally qualified to make such a judgement.

Proponents may not certify a political advertisement with a VCTPA-SUPP that contains any religious statements, regardless of any other content in that advertisement. Signatories of VCTPA-SUPPs which contain any religious statements shall not be prosecuted for submitting VCTPA-SUPPs, which violate no other VCTPA-SUPP rule.

A VCTPA-SUPP is perjured if the political advertisement contains recordings or pictures or any reproduction of materials which have been materially altered by the proponent of the advertisement or any person under the direction of the proponent which has the effect of deceiving voters or potential voters.

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No certification of a political advertisement with a VCTPA-SUPP with promises of a candidate's proposed future behavior is allowed. In accordance with California Penal Code Section 120, a political advertisement shall not be certified with a VCTPA-SUPP that, in so doing, may appear to verify that promises about future behavior will be honored, regardless of any other content in that advertisement. However, political advertisements that reveal: promises that were not honored, or conflicting promises from the same source, or conflicting promises from perceived political allies, may receive a VCTPA-SUPP, in so far as all additional content of the political advertisement is also consistent with all other VCTPA-SUPP rules.

I (print name): _____ am a proponent of the advertisement submitted with the attached certification and declare under penalty of perjury that I have read, understood and complied with the aforementioned rules.

Signature: _____ Date: _____

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(County Name) County Election Office's
Voluntary Certification of a Truthful Political Advertisement -
Signed Under Penalty of Perjury

I am the advertisement's proponent (print name) _____ and understand that perjury is a felony in the State of California, punishable by up to four years in prison. **Warning:** under California Penal Code 125 not knowing if something is true and stating it as fact is the same as knowing it is false and stating it as true.

Each statement that is presented as fact in the political advertisement submitted with this certification is true and not false. Or, this advertisement may also contain honest revelations of false statements, revealed as such, which may have been presented as true in some other context, circumstance.

This political advertisement's disclaimer, if any (e.g., candidate's name, office sought, committee) is: _____

I include an exact copy of that same advertisement, and no other, with the submission of this certification.

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If this advertisement was or is scheduled to be published at a **television or radio station**, That station's call sign (e.g., WXYZ) is _____ and I have attached an exact copy of the contract which lists at least some of the time slots and dates assigned for the airing of this advertisement.

If this advertisement was or is scheduled to be published on an internet site, the address of that site is _____

I authorize State employees to verify the information contained herein and to publish a copy of this political advertisement and this signed VCTPA-SUPP on the official government internet site (address here) which allows access to any interested member of the public.

I am a proponent of the advertisement and certify under penalty of perjury: the foregoing is true and correct and I have read and signed the rules for VCTPA-SUPP on page two. Print name: _____ Signature _____ Executed on (time and date) _____

Chain of Custody from Proponent Signatory to County Elections Office employee.

Received from proponent signatory: (time) _____ on (date) _____ by (print name) _____ (Signature) _____

Delivered by (print name) _____ (Signature) _____ at (time) _____ on (date) _____ to State employee (print name) _____ (Signature) _____

_____ End of VCTPA-SUPP _____

Article 4. Public records of VCTPA-SUPPs and the associated political advertisements.

20630 All political advertisements which are presented with VCTPA-SUPPs should be uploaded onto a one-stop internet site explicitly dedicated to that purpose and protected by the State of California.

Article 5. Special prosecutorial interests in perjured VCTPA-SUPPs.

20640 Due to the serious harm that may befall the People of California if we are deceived into choosing federal leaders unwisely (e.g., millions of people can die in war), State prosecutors should seek to vigorously prosecute perjured VCTPA-SUPPs.

Section 5. Liberal Construction.

The provisions of this act shall be liberally construed and implemented to effectuate its purposes of providing an intuitively obvious way for political advertisers to demonstrate to voters that

their advertisement is likely to be strictly true because they risked their freedom from imprisonment as signatories of a VCTPA-SUPP.

Section 6. Severability.

If any provision of this act, or part thereof, or the application of any provision of this act, or part thereof, to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and shall not affect the remaining provisions or applications of this act to other persons or circumstances, and to this end the provisions of this act are severable.