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June 26, 2023

VIA EMAIL ONLY

Chair Steve Madrone and Members
Humboldt County Board of Supervisors
825 5th Street
Eureka, CA 95501

John Ford, Director
Humboldt County Planning and Building Department
6015 H Street
Eureka, CA 95501

RE: Surreply to June 21, 2023 Letter from Kevin P. Bundy

Dear Chair Madrone, Members of the Board, and Director Ford:

On behalf of my client, the Humboldt County Growers Alliance (“HCGA”), I write to provide a surreply to the June 21, 2023 letter to the Board of Supervisors from Kevin P. Bundy (the “Bundy Letter”). Though surreplies are not typical, HCGA wishes to provide a comment based on what it perceives as an improper potential motive in the “Humboldt Cannabis Reform Initiative” (“HCRI” or the “Initiative”) proponents’ actions. Specifically, HCGA is concerned that the Initiative proponents’ true goal is to stop all public debate regarding the Initiative’s infirmities. The County cannot and should not acquiesce to their demands.

The Initiative raises serious concerns for the County, and its proponents’ own claims demonstrate that there is disagreement and confusion about its implementation. In April, the Initiative proponents alleged inaccuracies in the “Humboldt Cannabis Reform Initiative Analysis and Recommendations” (the “Analysis”), and HCGA provided a substantive response to each of the proponents’ allegations. The Initiative proponents have failed to respond in any way. If there remains any disagreement over the accuracy of the Analysis, then those disagreements warrant public consideration, as does the Analysis itself. However, instead of participating in any substantive discussions, the Initiative proponents have tried to halt all debate by asking their attorney to issue another letter claiming that the Analysis and its discussion violate the law. However, the Bundy Letter’s attempts to do so fall short.

In responding to my clarifications on election laws related to public discussion of voter initiatives, the Bundy Letter agrees that none of the activity highlighted in a prior April 20, 2023 letter constitutes a violation of the law. Instead, it claims that in some *other* circumstances the County *could* violate the law. Justice Jackson recently summarized this universal truth in the law by

stating, “Other cases presenting different allegations and different records may lead to different conclusions.” (*Twitter v. Taamneh* (2023) 143 S.Ct. 1206, 1231.) Unfortunately, that piece of trivia provides no substance, guidance, or information for the County. The Bundy Letter is not a reply to my May 18, 2023 letter, and it contains no serious allegations. Instead, it seems aimed at stoking fear and doubt in the County so that the County halts all discussion about the Initiative.

The Bundy Letter also merely ignores my specific statutory interpretation argument regarding the limits of the Initiative’s Section 7.F – that the limiting language used in the Initiative clearly limits the capacity of Supervisors to pass implementing ordinances – and instead points to a case with entirely different factual records, analyzing an initiative with no similar limiting language or issues, to stand for the proposition that a Court will agree with their unfounded position. (See also, *Twitter*, at 1231 [“Other cases presenting different allegations and different records may lead to different conclusions.”].)

The facts and law here are simple. The County is permitted under all laws and judicial interpretations to produce the Analysis, disseminate the Analysis, and discuss the Analysis and the Initiative at public hearings. That is true even for the portions of the Analysis which point out legal problems with the Initiative. And if the Initiative were to pass, then the Initiative’s limiting language likely precludes the Board of Supervisors from providing any sort of relief for the purpose of helping small Humboldt County cultivators. The Bundy Letter does not actually rebut these facts or legal conclusions, and instead merely adds confusion to the process. The Board of Supervisors should be confident that they are doing their job properly, and HCGA encourages them to continue doing so.

I. The Bundy Letter Concedes That the County Has Not Violated Any Law, and It May Continue to Disseminate the Analysis Under All Relevant Laws.

At the outset, it is most important to note that the Bundy Letter specifically concedes that the County has not engaged in any activity which violates the law – instead stating that its admonitions are “simply caution[s]” that some undetailed future action “*could* be unlawful.” (Bundy Letter, page 3; emphasis original.) The County could of course violate the law if it engaged in some action which violates the law, but that is a remarkably unhelpful tautology. What the County needs to understand is the law and facts here, and the law and facts clearly show that it will not violate the law if it continues to disseminate the Analysis and conduct hearings which discuss informational aspects of the Initiative.

My May 18, 2023 letter provided the legal background necessary and applied the facts which appear to exist in the County. The Bundy Letter concedes that there has been no legal violation and provides no basis to conclude that any specific actions taken or contemplated violate the law. Instead, the Bundy Letter

and its predecessor seem to be an attempt to confuse (perhaps scare) the County into avoiding any and all discussion of the Initiative – even the purely informational aspects which the Bundy Letter concedes are perfectly legal. Apart from this concession, the Bundy Letter can be ignored for two reasons.

First, the Bundy Letter's claims that the Analysis and/or discussion of the Analysis somehow violate the law relies on its claim that the Analysis is factually incorrect, and that all informational discussions flowing from the alleged errors therefore constitute a legal violation. However, no one has shown that the Analysis contains any inaccuracies. The Bundy Letter and its predecessor assert that there are errors, but HCGA provided specific rebuttals demonstrating the veracity of the Analysis. HCRI proponents and representatives have failed to reply. At best, there seems to be disagreement about the substantive aspects of the Initiative, with HCRI supporters representing a small but vocal group which believes there may be errors in the Analysis. This type of discussion provides a strong basis to continue holding hearings about the Analysis, not stop such discussions – if the HCRI proponents are correct, then it is vitally important for the County to know where it may be wrong. But even apart from those issues, the Analysis points out serious problems with what the Initiative says on its face, and the County has an obligation to resolve those problems prior to the March 2024 election. Instead of participating in public discussions about HCRI, the Initiative's proponents have ignored it, and instead merely perpetuate their misguided claims that the Analysis and its discussion somehow violates the law. In other words, they want the County to be quiet about the Initiative's problems, rather than try to resolve them. No law and no policy support their position.

Which brings us to the second reason the Bundy Letter can be ignored. It claims that my prior letter “fails to provide a complete account of governing law” related to the County's actions, but it does not address my arguments, provide any additional context, or discuss how any of its claims are substantiated by merely showing the County more statutes. As I mentioned in my prior letter, *Vargas v. City of Salinas* (2009) 46 Cal.4th 1 is the most relevant case for the County's analysis. The *Vargas* Court dealt with a statutorily contemplated report like the Analysis, and analyzed the permissibility of different actions taken at public hearings held to discuss a voter initiative. I provided specific quotes of holdings from that case which are relevant to the County's previous and potential actions, and tied those holdings to those actions. Those quotes show how *Vargas* applied the vaguer *Stanson v. Mott* (1976) 17 Cal.3d 206, and include specific citations to *Stanson* which can assist the County's analysis in specific contexts. *Vargas* is also particularly helpful, because its relevant analysis is almost entirely based on Government Code section 54964, a statute which the Bundy Letter claims I do not mention. I did not ignore the statute; I simply used the Court's analysis of it in an on-point context to provide the County with more information. Under section 54964, as analyzed by the *Vargas* Court, the County is well within its rights to produce and disseminate the Analysis, and none of the other statutes

cited in the Bundy Letter provide any additional information for the County's consideration. At best, the Bundy Letter properly notes that the County could at some point violate the law if it engages in impermissible activity. But it provides no examples, guidelines or analysis describing what activity might constitute impermissible activity.

Simply put, the County has acted, and is acting, appropriately by producing and disseminating the Analysis, and engaging with its contents. The Bundy Letter concedes that the County has not violated the law, and the County may continue to engage in dissemination of the Analysis and hold hearings discussing the informational aspects of the Analysis. When considering whether and how to determine whether a discussion is "informational," the *Vargas Court's* analysis is incredibly helpful to the County. It seems – based on the Bundy Letter's concession – that everyone agrees with these points. The Initiative proponents' now-rebutted claims regarding the contents of the Analysis are exactly the type of informational discussion which demands County hearings and action, and HCGA applauds the County's willingness to engage in those discussions.

II. The Bundy Letter Fails to Address the Specific Statutory Interpretation Argument Which Prohibits Supervisors from Enacting Implementing Ordinances to Help Small Cultivators.

There is little to rebut in the Bundy Letter's discussion regarding the Board of Supervisors' capacity to enact implementing ordinances, because the Bundy Letter simply does not engage with the statutory interpretation argument I presented in my May 18 letter. It instead points to a case cited in my previous letter and uses that Court's consideration of a different initiative without any limiting language to make the unfounded claim that the entire Initiative text should somehow constitute its "purpose." (Bundy Letter, pages 4-5.) In doing so, the Bundy Letter simply ignores the Initiative's plain language and my argument, and adds nothing for the County's consideration.

The Initiative permits the Board of Supervisors to enact implementing ordinances "to further the purposes of th[e] Initiative," and that specific language differs from other sections which permit amendment to certain Initiative provisions "in a manner consistent with the purpose, intent, goals, policies, standards and implementation measures." (Initiative, Section 7F & Initiative, Section 2.A.2.) The fact that the Initiative uses different, more limited words in providing the Board of Supervisors with the capacity to enact implementing ordinances means that a Court must treat the Board of Supervisors' capacity in that regard to be different and more limited. There must be a difference between "purposes" and "purpose, intent, goals, policies, standards and implementation measures," and the Bundy Letter provides no satisfactory discussion about that difference.

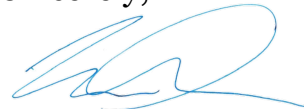
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As I detailed in (perhaps excruciating) detail in my May 18, 2023 letter, it would seem that this difference precludes the Board of Supervisors from enacting implementing ordinances in order to protect small farmers. The County must consider what capacity the Board of Supervisors has to enact implementing ordinances, and HCGA encourages the Board to do so at public hearings so that these issues can be resolved prior to the March 2024 election.

* * *

Thank you for your consideration of these important issues. HCGA remains committed to a robust public discussion about the Initiative, and hopes that the County will continue to engage with the difficult issues implicated by the Initiative. Please let me know if you have any questions about the information contained in this letter.

Sincerely,



Nicholas L. Sanders

cc:
Kathy Hayes, Clerk of the Board
Scott A. Miles, Interim County Counsel
Natalie Duke, Office of County Counsel

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