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10 COUNTY GROWERS ALLIANCE

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF HUMBOLDT**  
13 **UNLIMITED JURISDICTION**

14 JOHN LEE CASALI, STEVE LUU, KAREN  
15 HESSLER, DYLAN MATTOLE, PATRICK  
16 WILLIAM ANDREWS, HANNAH WHYTE,  
17 INDICUS MCGRATH RIGGS and the  
18 HUMBOLDT COUNTY GROWERS  
19 ALLIANCE,

20 Petitioners/Plaintiffs,

21 v.

22 JUAN P. CERVANTES, in his official capacity  
23 as Humboldt County Registrar of Voters; and  
24 DOES 1 through 10, inclusive,

25 Respondents/Defendants,

26 MARK THURMOND; and ELIZABETH  
27 WATSON,

28 Real Parties in Interest

Case No.: CV2301608

**PETITIONERS/PLAINTIFFS’  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF WRIT  
OF MANDATE AND INJUNCTIVE AND  
DECLARATORY RELIEF.**

(Filed contemporaneously with Declaration of  
Nicholas L. Sanders and Exhibits.)

**Date:** Tuesday, November 28, 2023  
(*Specially Set*)

**Time:** 10:30 a.m.

**Dept:** 4

Complaint filed: October 11, 2023

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1 **INTRODUCTION**

2 **“I think there are a couple of growers who wish they hadn’t signed it**  
3 **[the Initiative Petition],’ [Real Party in Interest Elizabeth] Watson said.”**

4 (Black, Lester; “Humboldt cannabis farmers sue to block 'Karen initiative' from ballot”;  
5 SF Gate; October 12, 2023.)

6 This case involves a simple question: did the Measure A petition provide voters with enough  
7 true information for those voters to understand what that initiative actually does? As Real Parties  
8 know, the answer is clearly “no.”

9 Petitioners/Plaintiffs JOHN LEE CASALI, STEVE LUU, KAREN HESSLER, DYLAN  
10 MATTOLE, PATRICK WILLIAM ANDREWS, HANNAH WHYTE, INDICUS MCGRATH  
11 RIGGS and the HUMBOLDT COUNTY GROWERS ALLIANCE (“Petitioners”) seek a writ of  
12 mandate and injunctive and declaratory relief directing Respondent/Defendant JUAN P.  
13 CERVANTES, in his official capacity as Humboldt County Registrar of Voters (the “Registrar”), to  
14 remove an unlawfully qualified ballot measure from the March 5, 2024 Humboldt County ballot. The  
15 ballot measure, designated as “Measure A,” and which qualified based on an unlawful petition and  
16 therefore should not be presented to the voters, is the “Humboldt Cannabis Reform Initiative” (the  
17 “Initiative”). The Initiative, whose official proponents are Real Parties in Interest MARK  
18 THURMOND and ELIZABETH WATSON (“Real Parties”), is fatally flawed for two reasons.

19 First, the Initiative violates the California Elections Code’s “full text doctrine” by failing to  
20 provide voters with sufficient information to intelligently evaluate the Initiative’s legal effect,  
21 including its effect on current law, within the four corners of the Petition. Below, Petitioners discuss  
22 eight examples of such violations, including several examples in which the Initiative directly amends  
23 County Code without any citation or reference whatsoever. Any one of these examples is sufficient  
24 to render the Petition invalid and remove the Initiative from the March 5, 2024 ballot.

25 For example, the Initiative amends the County’s current definitions of “mixed light” and  
26 “outdoor” cultivation by now defining as “mixed-light” cultivation any outdoor cultivation which  
27 uses light deprivation. While this definitional change in the Initiative may seem relatively  
28 straightforward, it has significant effects on other County laws – most notably, that mixed-light  
cultivation is taxed at twice the rate as outdoor cultivation. Given that a majority of cannabis  
cultivators in the Count use light deprivation, the Initiative will result in a majority of cultivators

1 having their tax levy doubled. Despite this fact, neither the Initiative nor the Petition contain any  
2 reference to any tax provisions in the County Code, and both fail to even mention the word “tax.”

3 Through exclusions such as this one in the Petition, Real Parties are attempting to implement  
4 changes in County law without enumerating the Initiative’s material legal changes to voters, and  
5 have created confusion regarding the effect of the Initiative on Humboldt County Law. In other  
6 words, Real Parties materially deprived voters of the opportunity to intelligently evaluate the  
7 Petition they were asked to sign. As Real Parties have noted, this causes remorse in voters who only  
8 later find out what the Initiative will do. The Petition therefore violates the Elections Code and  
9 applicable case law, and, as discussed herein, should not appear on the ballot.

10 Second, the Petition contained objectively inaccurate information and calculated untruths that  
11 substantially misled and misinformed reasonable voters into believing that the Initiative affects only  
12 “large-scale” cannabis cultivation, in violation of the Elections Code and applicable case law as  
13 discussed below. Because the Initiative actually affects all cannabis cultivators – with the lion’s  
14 share of the burden falling on small cultivators – the Initiative should not appear on the ballot.

15 Accordingly, Petitioners seek judicial relief by way of: (1) a writ of mandate compelling the  
16 Registrar to refrain from taking any action that would cause the Initiative to appear on the March 5,  
17 2024 ballot; (2) injunctive relief preventing the Registrar from taking any action that would cause  
18 the Initiative to appear on the ballot; (3) a judicial declaration that the Initiative is legally invalid and  
19 shall not appear on the ballot; and (4) such other and further relief as the Court deems just and  
20 proper.

## 21 **FACTUAL BACKGROUND**

### 22 **The Initiative and the Petition**

23 On or about March 4, 2022, Real Parties submitted the Initiative to the Registrar. A true and  
24 correct copy of the Initiative is attached to the Declaration of Nicholas L. Sanders (“Sanders  
25 Declaration” or “Sanders Dec.”) as Exhibit 1 and incorporated herein by this reference. Between  
26 March 2022 and September 2022, Real Parties created, and caused to be circulated, the Petition,  
27 which included their “Notice of Intent to Circulate Petition.” A true and correct copy of the Petition  
28 is attached to the Sanders Declaration as Exhibit 2 and incorporated herein by this reference.

On or about September 12, 2022, Real Parties, after having caused the Petition to be  
circulated coming the County’s voters, submitted the signed Petition to the Registrar.

1 On or about October 11, 2022, the Registrar certified the number of signatures on the Petition  
2 as sufficient to qualify the Initiative for the March 5, 2024 Humboldt County ballot.

3 On or about October 25, 2022, the County Board of Supervisors fulfilled its ministerial duty  
4 by voting to place the Initiative on the March 5, 2024 ballot.

5 On or about June 27, 2023, the Humboldt County Planning Department prepared for the  
6 Board of Supervisors an “Amended Analysis and Recommendations” (the “Analysis”) report  
7 discussing the extensive and unpredicted legal effect of the Initiative on Humboldt County law. A  
8 true and correct copy of the Analysis is attached to the Sanders Declaration as Exhibit 3, and  
9 incorporated herein by this reference.

### 10 **The Initiative’s Framework**

11 The Initiative proposes changes to Humboldt County laws mostly through amendment to the  
12 County’s General Plan. It includes 12 pages of new goals, policies, standards and implementation  
13 measures related to cannabis cultivation. These legal changes include, among other things: new  
14 definitions for numerous terms used in Humboldt County Code, a cap on permits for cannabis  
15 cultivation, limits on the types and methods of cultivation, and limits on permit renewal terms and  
16 conditions. Many of these provisions directly conflict with current County law.

17 Importantly, the Initiative makes abundantly clear that its General Plan amendments apply  
18 beyond the four corners of its legal language. For example, section 4.9.3 of the Initiative’s General  
19 Plan amendments require that the “Definitions below *shall control over* any definitions of the same or  
20 similar terms contained elsewhere in the Humboldt County Code.” (Sanders Dec., Exh. 1, page 7  
21 [emphasis added].) Section CC-IM2 of the Initiative’s General Plan amendments states “The goals,  
22 policies, standards, and implementation measures set forth in Section 4.9 of the General Plan *shall*  
23 *control over* any conflicting provisions of the Humboldt County Code or Zoning Regulations.”  
24 (Sanders Dec., Exh. 1, page 15 [emphasis added].) Section 7 (“Implementation”) of the Initiative  
25 states “any provisions of the Humboldt County Code, Zoning Regulations, or any other County of  
26 Humboldt ordinance or resolution that are inconsistent with the General Plan amendments adopted by  
27 this Initiative *shall not be applied or enforced* in a manner inconsistent with this Initiative.” (Sanders  
28 Dec., Exh. 1, page 30 [emphasis added].) In other words, the Initiative’s legal changes control over  
any and all other County law, and any existing County law which does not conform to the Initiative’s  
amendments cannot be applied or enforced.



1 Real Parties evidently understood that the Initiative would affect the County Code, because it  
2 includes some revisions to County Code and amendments to the County’s Local Coastal Plans which  
3 conform these laws to the Initiative’s General Plan amendments, and attached one Board of  
4 Supervisors Resolution to the documents. These redlined amendments to the County Code, as well as  
5 the inclusion of the Resolution, all conform to some degree to the Initiative’s General Plan  
6 amendments, although, as discussed in detail below, they do not come close to capturing the true  
7 legal effect of the Initiative’s General Plan amendments on County Code, and in at least two cases  
8 create additional confusion regarding the Initiative’s legal effect.

8 **The First Comprehensive Cannabis Land Use Ordinance**

9 In early 2016, several months before California formally legalized recreational cannabis,  
10 Humboldt County established a comprehensive regulatory scheme for cannabis cultivation by  
11 implementing the “First Comprehensive Cannabis Land Use Ordinance.” A true and correct copy of  
12 this ordinance is attached to the Sanders Declaration as Exhibit 4, and is incorporated herein by this  
13 reference.

14 **The Second Comprehensive Cannabis Land Use Ordinances**

15 In 2018, Humboldt County adopted two new comprehensive regulatory ordinances amending  
16 the First Comprehensive Cannabis Land Use Ordinance. These new ordinances control any permits  
17 issued, or any permits deemed “modified,” after their effective date. In other words, older permits  
18 are controlled by the First Comprehensive Cannabis Land Use Ordinance, and newer or modified  
19 permits are controlled by the Second Comprehensive Cannabis Land Use Ordinances. True and  
20 correct copies of these ordinances are attached to the Sanders Declaration as Exhibit 5, and are  
21 incorporated herein by this reference.

21 **The Small Cultivator Ordinance**

22 In 2020, Humboldt County adopted additional laws regulating small cultivators, many of  
23 which provide reduced regulatory burden on small cultivators. A true and correct copy of this  
24 ordinance is attached to the Sanders Declaration as Exhibit 6, and is incorporated herein by this  
25 reference.

26 **Measure S (Cannabis Tax Ordinance)**

27 In 2016, a ballot Measure, known as “Measure S,” established, among other things, the  
28 comprehensive taxation scheme for cannabis cultivation in Humboldt County. A true and correct

1 copy of this ordinance is attached to the Sanders Declaration as Exhibit 7, and is incorporated herein  
2 by this reference.

3 **LEGAL DISCUSSION**

4 **1. Real Parties’ Petition Violated the Full Text Requirement by Failing to Include**  
5 **Reference to, or Notice of, Amendments in Existing County Law.**

6 **A. The Full Text Requirement’s Legal Framework.**

7 Elections Code section 9101 sets forth the “full text requirement” imposed on all initiative  
8 petitions which are circulated among County voters to qualify an initiative for the ballot. Section  
9 9101 states, in relevant part, that “[a]ny proposed ordinance may be submitted to the board of  
10 supervisors by filing an initiative petition with the county elections official . . . [and that e]ach  
11 petition shall . . . contain a full and correct copy of the notice of intention and accompanying  
12 statement including the full text of the proposed ordinance.”

13 Courts – in a line of cases stretching back nearly a century – have regularly held that the full  
14 text requirement requires more than a mere presentation of the proposed legal language which will be  
15 implemented by an initiative or referendum, and instead represents an affirmative duty owed to  
16 potential signers of the initiative to provide a sufficient amount of information and notice to those  
17 voters to allow them to understand the legal changes being proposed, without causing confusion.  
18 (See *Boyd v. Jordan* (1934) 1 Cal.2d 468, 475; *Myers v. Stringham* (1925) 195 Cal. 672, 675-676.)  
19 Courts have repeated that “[t]he purpose of the full text requirement is to provide sufficient  
20 information so that registered voters can intelligently evaluate whether to sign the initiative petition  
21 and to avoid confusion.” (*Mervyn’s v. Reyes* (1999) 69 Cal.App.4th 93, 99.) The *Mervyn’s* Court  
22 also set forth a requirement that “persons evaluating whether to sign the petition be advised which  
23 laws are being challenged and which will remain the same.” (*Id.* at 104.) In *Wilson v. Napa* (2017) 9  
24 Cal.App.5th 178, the First District held that a petition should be removed from the ballot due to  
25 invalidity under the full text requirement, because, among other reasons, the proposed initiative made  
26 changes to the law which were not included on the face of the petition, and potential signers therefore  
27 “would be required to do extraneous research” in order to properly understand the legal effect of a  
28 proposed initiative. (*Id.* at 185.) And in *Creighton v. Reviczky* (1985) 171 Cal.App.3d 1225, the  
Court describes the legal effect of violating the full text requirement when it ruled that a petition  
regarding the adoption of a specific plan, and which did not include the text of the affected ordinance,  
“failed to provide the electors with the information which they needed in order to exercise

1 intelligently their rights,” and therefore was invalid. In each of these cases, the measure was removed  
2 from the ballot as invalidly qualified under the full text requirement. (*Id.* at 1232.)

3 From these cases, we can decipher the general rule that an initiative petition must provide  
4 *sufficient information* for potential signers to *intelligently evaluate* the legal effect of an initiative,  
5 including the *specific ways* that the initiative will interact with existing law, all within the *four*  
6 *corners* of the initiative petition. And if a voter cannot evaluate the initiative’s legal effect from the  
7 face of the petition, then the voter cannot intelligently exercise his or her rights, and his or her  
8 signature cannot be a valid expression of the voter’s will.

9 Here, and as explained in detail below, the Initiative amends numerous sections of the County  
10 Code. Real Parties had various ways to provide information about these amendments to voters  
11 through the language of the Initiative or in the Petition. Real Parties could have included redlined  
12 County Code amendments within the Initiative language, they could have cited and described the  
13 ordinances in the Initiative or Petition, or they could have simply attached any relevant ordinances to  
14 the Petition. If the Real Parties engaged in any of those activities, then voters would be able to look  
15 at the face of the Petition and decipher the legal effect of the Initiative. They did not.

16 Instead, Real Parties engaged in three types of violations of the full text requirement: (1) they  
17 amended provisions of the County Code *without any notice* whatsoever of the amendments; (2) they  
18 amended provisions of the County Code and provided amendments to the County Code in a manner  
19 which provided *insufficient notice* of the amendments and *caused confusion*; and (3) they amended  
20 provisions of the County code and provided attachments of County law in a manner which provided  
21 *insufficient notice* and *caused confusion*.

22 This Court can look at any individual example below as sufficient to render the Petition  
23 invalid – it need not delve deeply into the specifics of the complicated land use matters implied, but  
24 instead simply needs to look at the current law, determine that the Initiative amends that law, and  
25 then determine that the Petition failed to include sufficient information for potential signers to  
26 intelligently evaluate the legal effect of the Initiative within the four corners of the Petition. The sum  
27 of the numerous violations only adds to a level of egregiousness, and is not necessary to demonstrate  
28 that the Petition violated the full text requirement. Any violation in the examples below is sufficient.

In the end, an initiative which fails to comply with the full text requirement cannot validly  
qualify for the ballot, and courts regularly remove violative initiatives from the ballot in pre-election  
challenges. (See also *Nelson v. Carlson* (1993) 17 Cal.App.4th 732, 738-740 [referendum petition

1 properly rejected by city because copy of general plan and local coastal plan amendments not  
2 attached]; *Defend Bayview/Hunters Point Committee v. City and County of San Francisco* (2008) 167  
3 Cal. App. 4th 846, 856-858 [City Attorney properly deemed referendum petition invalid because  
4 petition failed to include redevelopment plan]; *Billig v. Voges* (1990) 223 Cal.App.3d 962 [City  
5 properly refused to accept signatures gathered on referendum petition because petition did not include  
6 ordinance language or all referenced exhibits].)

7       Actions such as this instant case are common, and a judicial resolution which removes an  
8 initiative from the ballot because its petition failed to satisfy the full text requirement is fully  
9 justified. As the California Supreme Court has noted, “the type of defect that most often has been  
10 found fatal is the failure of an initiative or referendum petition to comply with the statutory  
11 requirements of setting forth in sufficient detail the text of the proposed initiative measure . . . so that  
12 registered voters can intelligently evaluate whether to sign the initiative petition and to avoid  
13 confusion.” (*Costa v. Superior Court* (2006) 37 Cal.App.4th 986, 1016, fn. 2 [cleaned up].)

14       Here, given the numerous violations of the full text requirement, it is clear that voters could  
15 not have validly expressed their will, and that the Petition must be deemed invalid. The common and  
16 proper judicial intervention in such cases is to remove the Initiative from the March 5, 2024 ballot.

17       **B.       The Petition Failed to Provide Any Notice of Significant Amendments to County**  
18       **Law Made By the Initiative.**

19       1.       The Petition Provides No Notice That It Doubles the Tax Rate Levied on the  
20       Majority of Humboldt Cannabis Cultivators.

21       Under current County law, “mixed-light” cultivation is taxed at twice the rate of “outdoor”  
22 cultivation, and outdoor cultivation includes the use of “light deprivation”<sup>1</sup> without employing any  
23 artificial light. (Humboldt County Code section 719-3(f) [“‘outdoor’ shall mean outdoor cultivation  
24 of marijuana which does not involve the use of artificial light of any kind.”]; Humboldt County Code  
25 section 719-4 [“each person issued a commercial marijuana cultivation permit shall pay an annual tax

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26 <sup>1</sup> Light deprivation permitted under the current definition of “outdoor” cultivation includes an  
27 extremely common temporary structure – often an open-ended dome made from wood and plastic of  
28 various opacity – to strategically block natural sunlight, without any additional artificial light. This  
structure placed over a cultivation area, and permits cultivators to shorten the cannabis life cycle.  
This shortening permits cultivators to have multiple harvests and/or plan different harvests  
throughout the year. A minority of light deprivation includes the use of artificial lights within the  
light deprivation structure, which under both current County law, state law and the Initiative would  
qualify as “mixed-light cultivation.”

1 of one dollar (\$1.00) per square foot of outdoor cultivation area, two dollars (\$2.00) per square foot  
2 of mixed-light cultivation area”].) Light deprivation without artificial light is an extremely common  
3 cannabis cultivation technique in Humboldt County.<sup>2</sup> These current County definitions align with the  
4 State’s current definitions. (4 Cal. Code of Regs. section 15000(ss) & (xx) [“‘Outdoor cultivation’  
5 means the cultivation of mature cannabis without the use of artificial lighting in the canopy area at  
6 any point in time.”].)

7 The Initiative sets forth new definitions of “mixed-light” and “outdoor” cultivation which will  
8 exclude the common practice of light deprivation without artificial light as outdoor cultivation, and  
9 will instead classify it as mixed-light cultivation. (Sanders Dec., Exh. 1, page 8 [“‘Outdoor  
10 Cultivation’ means the cultivation of mature cannabis without the use of artificial lighting *or light*  
11 *deprivation* in the canopy area at any point in time.”; emphasis added].) As discussed above, the  
12 Initiative’s definitions “control over” current County definitions, and conflicting definitions “shall  
13 not be applied or enforced.” (Sanders Dec., Exh. 1, pages 7 & 30.) Therefore, if the Initiative were  
14 to become effective, the majority of cannabis cultivators in Humboldt County would have their tax  
15 rate immediately doubled.

16 Despite this dramatic effect on the taxation of most cannabis cultivators within the County,  
17 neither the Initiative nor the Petition provides any information about the tax levied on cannabis  
18 cultivators, and in fact does not even mention the word “tax.” The full text requirement demanded  
19 that the Petition provide sufficient information for voters to intelligently evaluate the Initiative’s legal  
20 effect, and how the Initiative will change and retain current law. (*Meryvn’s* (1999) 69 Cal.App.4th at  
21 99 & 104.) The only way that a voter could understand that the change in the definitions used in the  
22 Initiative’s general plan will have any effect on taxation would be to do their own extraneous  
23 research – the specific problem rendering the initiative in *Wilson v. Napa* invalid under the full text  
24 doctrine. (*Wilson* (2017) 9 Cal.App.5th at 185.) There is simply no way that any voter looking at the  
25 Petition could understand that a law not referenced in any way would be amended. For these reasons,  
26 the Petition fails as a matter of law here, where no notice of any kind was provided to voters of the  
27 Initiative’s dramatic legal effect on taxation levied on the majority of cannabis cultivators in the  
28 County.

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<sup>2</sup> A November-December 2022 survey of Humboldt County cannabis cultivators indicated that 59 percent of cultivators – a group which includes five of the seven individual Petitioners in this case – utilize light deprivation with no additional artificial light.

1           It is expected that Real Parties will claim that this and other arguments are somehow moot,  
2 because the County *may* have the capacity to enact amendments to the Initiative’s language once it  
3 becomes effective. Such claim, however, is purely hypothetical, subject to numerous provisions in  
4 the Initiative which restrict the Board of Supervisors’ capacity to amend Initiative language, and does  
5 not change the simple fact that the Initiative *will* double the tax levy on the majority of cannabis  
6 cultivators *immediately* upon becoming effective. The question at issue in this case is not whether the  
7 County can fix Real Party’s errors. The question is whether Real Parties provided sufficient  
8 information within the four corners of the Petition such that voters had notice of the Initiative’s legal  
9 effect: here, doubling the tax rate on a majority of the County’s cannabis cultivators. They did not.

10                           2.       The Petition Provides No Notice That It Removes Current Infrastructure  
11                                       Permitting Standards, and/or an Exemption, Which Are Used By Most  
12                                       Humboldt County Cultivators.

13           Under current County law, cannabis cultivation must be conducted on a road which either  
14 meets “category 4” road standards, or which has been determined by the County to have the  
15 functional capacity to accommodate commercial cannabis activity through the issuance of a special  
16 permit. (See, e.g., Humboldt County Code section 313-55.4.6.1.2.1; see also, Analysis, page 27 [“As  
17 a matter of practice, the County required that an assessment be made of the road for functional  
18 capacity. . . If it is less than a category 4 road, an engineer must assess whether the road has the  
19 functional capacity to serve all existing traffic and the cultivation site.”].) “Small cultivators” who  
20 meet certain criteria, as defined under the Small Cultivator Ordinance, qualify for an exception which  
21 exempts them from road requirements entirely. (Humboldt County Code section 314-55.4.6.1.2.)

22           The Initiative’s General Plan amendments state unconditionally that any road on which a  
23 cultivation parcel sits must “meet or exceed the Category 4 standard (or same practical effect),” with  
24 this requirement covering all cultivators, regardless of whether they qualify as a small cultivator, or  
25 whether their permit was issued under the County’s special permitting process. (Sanders Dec., Exh.  
26 1, page 13, section CC-P13; see also, Analysis, pages 28-29 [“This is a significant change that would  
27 dramatically affect existing cultivators who could otherwise modify their site, except where they are  
28 not located on a Category 4 road.”; “Many applications that could still be pending at the time of  
initiative approval could then not be approved.”; “This provides no flexibility to consider context and  
volume of traffic on a road.”; “This would increase costs for famers to complete the analysis by  
paying for an engineer, and in the cost of upgrading the road to Category 4 which will probably not

1 be feasible for 10,000 square feet of cultivation.”; “This is a direct contradiction of the small farmer  
2 provisions of the CCLUO which waived the road requirements when the cultivation area was 3,000  
3 square feet or less and the farmers lived on the property. Even these small farmers would then  
4 become nonconforming due to the road.”].)

5 Most cultivators in the County, and five of seven individual Petitioners in this case, are not  
6 located on roads which “meet or exceed the Category 4 standard.” As a result, a majority of existing  
7 cultivators in the County would be rendered “nonconforming” under the Initiative. Any new  
8 cultivation would be prohibited from utilizing the special permitting process to demonstrate adequate  
9 functional road capacity, and new applications for small cultivation would no longer be able to utilize  
10 the road exemptions established under the Small Cultivator Ordinance.

11 Nevertheless, there is no redlined amendments of the numerous County Code sections which  
12 set forth current law, including both the special permitting process and the small cultivator  
13 exemption, and no reference to the typical County practices associated with infrastructure permitting.  
14 Neither the Initiative nor the Petition provides any information about the special permitting process,  
15 any information about the small cultivator infrastructure exemption, or any reference to the fact that a  
16 majority of cultivators in the County have obtained permits without meeting the Category 4 standard.

17 Instead, the Initiative simply removes the permitting process and exemption used by a  
18 majority of cultivators in the County without any notice whatsoever. As in *Mervyn’s*, a voter had no  
19 opportunity to understand the way in which a law was being challenged and the way it would be the  
20 same. As in *Wilson*, a voter would be required to do extraneous research to determine how this  
21 unenumerated provision would affect cultivators. Because the Petition provides no notice that the  
22 Initiative removes an exemption applicable to most cultivators in the County, voters had no capacity  
23 whatsoever to intelligently evaluate the Initiative’s legal effect, and the Petition failed to satisfy the  
24 full text requirement.

25 3. The Petition Provides No Notice That It Removes Exemptions in Discretionary  
26 Review Process.

27 Under current County Code section 314-55.4.5.5, property owners engaged in cannabis  
28 cultivation of 5,000 square feet or less on a parcel between five and ten acres are exempt from the  
discretionary permit review process. The Initiative effectively removes this exemption by simply  
inserting General Plan amendment language requiring discretionary permit review for all cultivation  
sites over 3,000 square feet. (Sanders Dec., Exh. 1, pages 12-13, section CC-P8.) Though this

1 change in the law must be read to remove an exemption existing in current County Code, neither the  
2 Initiative nor the Petition includes any reference to the current exemption. Because the Petition  
3 provides no notice that it removes this exemption, voters had no capacity to intelligently evaluate the  
4 Initiative’s legal effect, and the Petition failed to satisfy the full text requirement.

5 4. The Petition Provides No Notice That It Amends Public Notice Requirements  
6 for Cultivators.

7 Under current County Code section 313-55.4.5.1.4, cultivators seeking a conditional use  
8 permit are required to provide notice to property owners and occupants within 1,000 feet of the parcel  
9 proposed for cultivation. The Initiative sets promulgates new requirements in its General Plan  
10 amendments requiring, among other things, a requirement for notice by first class mail to all property  
11 owners and occupants within one mile of the parcel proposed for cultivation. (Sanders Dec., Exh. 1,  
12 pages 12 & 14-15, sections CC-P7 & CC-S4.) Though the Initiative directly amends County Code in  
13 this regard, neither the Initiative nor Petition contains any reference to County Code section 5.4.5.1.4  
14 or the existing conditional use permit requirements. Voters had no opportunity to understand the way  
15 in which the law was being changed, and would be required to do extraneous research if they wished  
16 to understand how the Initiative affects current law. They had no opportunity to intelligently evaluate  
17 the Initiative’s legal effect, and the Petition failed to satisfy the full text requirement.

18 5. The Initiative Provides No Notice of Legal Changes Implemented By  
19 Amending Four Other Definitions Used in County Law.

20 The Initiative also changes the definitions of “commercial cannabis cultivation,” “cultivation  
21 area,” “forbearance period,” and “indoor cultivation.” These changes in definition were made  
22 without reference to existing County law, and clearly affect the regulatory structure of cannabis  
23 cultivation and permitting in Humboldt County. There is simply not sufficient space to here discuss  
24 the specific legal effect of these laws. The most important and relevant point for the purposes of this  
25 full text argument is that these definitions have changed, and it was Real Parties’ responsibility to  
26 ensure that the Initiative and/or the Petition provided notice to voters about how these amendments  
27 change County law. They did not. As a result, the Initiative fails to satisfy the full text requirement.

28 **C. Where the Petition Does Reference Existing County Law, It Provided Insufficient  
Notice of Amendments to County Law Made by the Initiative, and Caused Confusion  
Among Prospective Signers.**

As discussed above, Real Parties did include some redline amendments to the County



1 Code in the Initiative which bring this small sample of Code into alignment with the Initiative’s  
2 General Plan amendments. However, Real Parties did not include all of the relevant language  
3 necessary to properly convey the Initiative's legal effect in two distinct ways.

4 1. The Petition Provides Insufficient Notice of Legal Changes to Public Hearing  
5 Rights By Referencing an Ordinance Not Provided or Described.

6 Numerous County Code sections set forth the application requirements for cannabis  
7 cultivation permits, including public hearing requirements, and County Code section 312-9.2 sets  
8 forth the circumstances under which public hearing requirements may be waived by the County. The  
9 Initiative adds County Code section 5.4.11, which prohibits waiver of public hearing for cannabis  
10 cultivation permits. That language includes the phrase “Notwithstanding any contrary provision of  
11 the Humboldt County Code, including but not limited to Section 312-9.2.” From this language, it is  
12 clear that Real Parties understand that several County Code sections provide alternative rights to  
13 cannabis cultivators, including section 312-9.2. Nevertheless, neither the Initiative nor the Petition  
14 presents any context for this law or how it differs from current law, or provides any information  
15 about the Chapter in which the code section appears. Voters are simply provided the language and  
16 left to ponder what rights “contrary provisions of the Humboldt County Code” or “Section 312-9.2”  
17 might convey. In *Wilson*, the Court ruled a petition invalid because it failed to include legal language  
18 which was specifically referenced on the face of a petition. Real Parties have committed the same  
19 error here, and for this reason the Petition fails to satisfy the full text requirement.

20 2. The Petition Provides Insufficient Notice of Permit Renewal Requirements,  
21 and Creates Confusion By Including Incongruent Standards.

22 Current County Code section 314-55.4.5.6 sets for the requirements for cannabis cultivation  
23 permit renewal. The Initiative amends section 55.4.5.6 in two different ways: (1) it includes a  
24 General Plan amendment setting forth three new conditions for permit renewal, and (2) it provides  
25 redlined amendments to section 55.4.5.6 which includes one of the three new requirements. (Sanders  
26 Dec., Exh. 1, pages 12 [section CC-P4] & 22-26 [section 55.4.5.6].) Rather than simply provide no  
27 notice of the change to section 55.4.5.6 within the Initiative’s General Plan amendment, Real Parties  
28 here chose to actively deceive voters who read the Initiative’s redline amendments to section 55.4.5.6  
by hiding two of the three new permit renewal requirements. Not only does the Initiative provide  
inadequate notice that section 55.4.5.6 is subject to three new permit renewal requirements – a  
violation of the full text requirement in the same way as violations discussed above in section 1.B –

1 but it also creates confusion among voters who read the Initiatives redline amendments of the section  
2 – a separate indicator that the Petition violates the full text requirement. (*Mervyn’s* (1999) 69  
3 Cal.App.4th at 99 [“[t]he purpose of the full text requirement [includes] *to avoid confusion.*”];  
4 emphasis added].) As a result, the Petition fails to satisfy the full text requirement.

5 **D. Where the Initiative Attaches Provisions of Existing County Law, It Provided**  
6 **Insufficient Notice of the Initiative’s Legal Effect, and Caused Confusion Among**  
7 **Prospective Signers.**

8 Under current Board of Supervisors Resolution 18-43, there is a cap on the total number of  
9 cannabis cultivation permits which may be issued by the County. The total number of permits issued  
10 by the County has not yet reached that cap. The Initiative’s General Plan amendments places a cap  
11 on the number of total cultivation permits issued by the County at “1.05 times the total number of  
12 existing, approved, unexpired permits . . . as of March 4, 2022.” (Sanders Dec., Exh. 1, pages 10-11,  
13 section CC-P1.) This section – like section 55.4.11 above – explicitly refers to existing County law;  
14 in this case, Resolution 18-43. Real Parties in this case decided to attach Resolution 18-43 to the text  
15 of the Initiative and within the Petition.

16 However, Resolution 18-43 does not provide voters with any information about the “total  
17 number of existing, approved, unexpired permits” existing, and instead only provides information  
18 about the County’s current cap – a cap which has not been reached. Real Parties had the option to  
19 determine the specific number of permits issued as of March 4, 2022 and present that number to  
20 voters. They did not. In other words, the Petition presents voters with a false, larger number from  
21 Resolution 18-43, and any calculation based on Resolution 18-43 will yield a higher cap than the cap  
22 actually imposed by the Initiative. At best, this can be described as insufficient notice for voters to  
23 intelligently evaluate the Initiative’s legal effect. At worst, it is an act of deception by Real Parties  
24 which provides a provably false cap on permits to voters reviewing the Petition. In either case, the  
25 Petition fails to satisfy the full text requirement.

26 **E. Real Parties Were Required to Include Amended Language From the First**  
27 **Comprehensive Cannabis Land Use Ordinance, the Second Comprehensive Cannabis**  
28 **Land Use Ordinances, the Small Cultivator Ordinance, Measure S, and Section 312-9.2,**  
**But Failed to Do So.**

Real Parties had several options which would have satisfied the full text requirement. First,  
they could have reviewed existing County Code, determined the different Code sections affected by

1 the Initiative’s General Plan amendments, and then amended those Code sections in a manner which  
2 properly captured the Initiative’s legal effect. As discussed above, Real Parties engaged in an  
3 insufficient attempt to do this for some Initiative provisions, and failed entirely to do so for some of  
4 the most important provisions. This is the best and preferred method of presenting petitions to voters,  
5 and there is simply no reason that Real Parties could not have provided voters with this information.

6 The second option available to Real Parties – because they evidently refused to evaluate  
7 current law and provide voters with redlined amendments to County Code affected by the Initiative –  
8 was to simply attach the information necessary for voters to intelligently evaluate the Initiative’s  
9 legal effect without causing confusion. The sum of those parts is, at a minimum, the First  
10 Comprehensive Cannabis Land Use Ordinance, the Second Comprehensive Land Use Ordinances,  
11 the Small Cultivator Ordinances, Measure S and Section 312-9.2. These each and together set forth  
12 the current regulatory scheme for cannabis cultivation in the County, and their inclusion would have  
13 allowed voters to understand the current law, and the ways in which the Initiative would change it.

14 **2. Real Parties’ Statements That The Initiative Affected Only Large-Scale Cannabis  
15 Cultivation Violates Elections Code Section 18600 and Well-Established Case Law.**

16 In violation of Elections Code section 18600, Real Parties repeatedly included false and/or  
17 misleading statements within the Petition and in information provided to voters during the circulation  
18 process that the Initiative affects only “large-scale” cannabis cultivation. These statements were  
19 more than mere political hyperbole, and instead constituted objectively inaccurate information and  
20 calculated untruths that substantially misled and misinformed reasonable voters. The remedy applied  
21 in *San Francisco Forty-Niners v. Nishioka* (1988) 75 Cal.App.4th 637 should be applied there: the  
22 invalidation of the Initiative and the prevention of the Initiative from appearing on the ballot.

23 The Petition in numerous places states unequivocally that the Initiative “will protect the  
24 County’s residents and natural environment from harm caused by large-scale commercial cannabis  
25 cultivation”. (Sanders Dec., Exh. 2, page 1.) Real Parties also included similar phrases in campaign  
26 literature distributed during circulation of the Petition, which state that the Initiative "Support[s]  
27 small-scale, high quality cannabis cultivation" and "protect[s] residents, land owners, and our  
28 beautiful natural environment from harm caused by large-scale industrial cannabis cultivation.”  
(Sander Dec., Exh. 8.) These statements are demonstrably false for at least two reasons.

First, and most notably, the Initiative affects all cannabis cultivation. Its effect is not limited  
to large cannabis cultivation, and it in fact creates significant and potentially existential burdens for

1 small cannabis cultivators. (See, e.g., Analysis, pages 24 & 27-30.) For instance, and as discussed  
2 above, the Initiative will double the tax rate on a majority of cultivators in the County, and will  
3 render a majority of permits issued in the County nonconforming because most cannabis cultivation  
4 parcels are not located on Category 4 roads. These effects fall on small cultivators, and not “large-  
5 scale” producers.

6 Second, the terms used by Real Parties are legal terms which do not comport with any part of  
7 the Initiative’s regulations. California Business and Professions Code section 26050 defines a  
8 “large” cultivation license as cultivation of more than one acre of outdoor cannabis, or more than  
9 22,000 square feet of mixed-light cannabis cultivation. The Initiative does not in any way limit its  
10 effect to license of either one acre (outdoor) or 22,000 square feet (mixed-light). In other words,  
11 nothing in the Initiative purports to regulate “large-scale” cultivation – it merely regulates all  
12 cultivation. (See Analysis, pages 17-18 [“the threshold of 10,000 square feet it arbitrary.”].)

13 Because the Petition contained blatantly false and/or misleading statements, Real Parties  
14 violated Elections Code section 18600 by both circulating and publishing a “false statement or  
15 misrepresentation concerning the contents, purport of effect of any . . . local initiative . . . petition . . .  
16 for the purpose of obtaining any signature to, or persuading or influencing any person to sign, that  
17 initiative petition.”

18 Real Parties deliberately placed these false and/or misleading statements throughout the  
19 Petition and related campaign materials to draw the unjustified ire of voters and cajole them into  
20 signing the Petition. Therefore, this Court, in order to protect the initiative process, should invalidate  
21 the Petition based on the fact that Real Parties misinformed and deliberately misled County voters. If  
22 the Initiative is permitted to remain on the ballot, then Real Parties will be rewarded for the violations  
23 of the law, Petitioners’ and voters’ rights will be violated, and the sanctity of the initiative process  
24 will be violated. Real Parties’ deliberate and material false and misleading statements in violation of  
25 section 18600 and *Forty-Niners* justifies this Court’s granting of Petitioners’ requested relief.

26 **CONCLUSION**

27 Based on the foregoing, Petitions respectfully request that this Court issue a writ of mandate,  
28 injunctive relief, and declaratory relief as prayed for in the Writ Petition/Complaint.

DATED: November 7, 2023



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