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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF NAPA**

14 YEORYIOS C. APALLAS,

15 Petitioner,

16 v.

17 JOHN TUTEUR, NAPA COUNTY
18 REGISTRAR OF VOTERS; and DOES 1
19 through 20, inclusive,

20 Respondents.

21 BELIA RAMOS; MANUEL RIOS;
22 DAVID R. WHITMER; JERI HANSEN-
23 GILL; PHILLIP BLAKE; and DOES 21
24 through 40, inclusive,

25 Real Parties in Interest.

Case No. 18CV000395

**PETITIONER'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF VERIFIED PETITION
FOR WRIT OF MANDATE**

**CALENDAR PREFERENCE
REQUIRED BY STATUTE (ELEC.
CODE § 13314(A)(3))**

Date: April 11, 2018

Time: 8:30 a.m.

Dept: I

Judge: Hon. Rodney Stone

Action Filed: March 26, 2018

Filed concurrently with: Declarations of
Robert S. Perlmutter and Alan Galbraith;
Request for Judicial Notice

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1 at 10¹ (Argument Against Measure C). This statement is demonstrably false. Two of the five
2 County Supervisors have declared that they are *neutral on*—and thus do not oppose—Measure
3 C, and the Mayor of St. Helena has declared that he supports Measure C. *See id.* at 46;
4 Galbraith Declaration, filed herewith.

5 Real Parties also make three additional claims about Measure C that contradict its plain
6 language and whose only effect can be to mislead the electorate. As shown below, Measure C is
7 narrowly tailored to achieve its goals of protecting watersheds and oak woodlands within Napa’s
8 Agricultural Watershed zoning district by: (1) strengthening protections for streams and
9 wetlands; (2) strengthening existing County oak woodland remediation requirements; and (3)
10 establishing a future permit system for oak removal.

11 But the ballot argument does not address Measure C’s actual provisions. Instead it
12 claims Measure C will “outlaw” future farming, “prevent” homeowners from building additions,
13 and “open[] the door to event centers . . . and increas[e] traffic.” Exhibits at 10. These claims
14 are patently untrue and misleading. Measure C makes no changes to what land uses are
15 permitted under the County’s existing Agricultural Watershed zoning or General Plan
16 designations. It does *not* “outlaw” farming, but rather protects the water supply essential to
17 agriculture’s long-term viability. Measure C says nothing about event centers. Indeed, Measure
18 C neither approves nor forbids any particular land use; it simply requires all such uses to comply
19 with its watershed and oak tree protection policies. Measure C also expressly allows tree
20 removal for home construction and remodeling. Indeed, the official Summary and Impartial
21 Analysis prepared by County Counsel contain no suggestion whatsoever that Measure C could
22 have *any* effects claimed by Real Parties’ misleading ballot argument.

23 Because Real Parties’ statements are blatantly untrue and misrepresent the effect of
24 Measure C, they undermine the important informational purpose of the voter pamphlet. This
25 Court should delete those statements to protect the integrity of the electoral process.

26 ¹ All exhibits relevant to this brief are attached to the Perlmutter Declaration, filed herewith.
27 References to the Declaration itself refer to specific paragraphs (e.g., “Perlmutter Dec. ¶ 3”);
28 references to the attached exhibits refer to the consecutively-numbered pages of that document
(e.g., “Exhibits at 15”).

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STATEMENT OF FACTS

A. Measure C protects watersheds and oak woodlands in the Agricultural Watershed zoning district.

The stated purpose of Measure C is “to protect the water quality, biological productivity, and economic and environmental value of Napa County’s streams, watersheds, wetlands and forests, and to safeguard the public health, safety and welfare of the County’s residents.”

Exhibits at 13. Measure C, which applies only in Napa County’s Agricultural Watershed (“AW”) zoning district, includes amendments to the Napa County General Plan (“General Plan”) and zoning ordinances, to effectuate its three primary goals.

First, Measure C restricts mature tree removal in water quality buffer zones along streams and wetlands. *Id.* at 17-19 (§18.20.050). While the County’s existing conservation regulations contain some stream setbacks, Measure C provides additional protection to these resources. *Id.* at 39 (Impartial Analysis noting that existing County conservation regulations already “provide stream setback requirements” and that where there is a conflict between these and Measure C, “the more restrictive regime would control”).

Second, Measure C strengthens existing County oak woodland remediation requirements, primarily by increasing the existing 2:1 oak tree replacement ratio to a 3:1 replacement ratio. *Id.* at 16 (amending Policy CON-24); 19-20 (§18.20.060(A)).

Third, Measure C establishes a future permit program for the removal of mature oak trees. Measure C’s goal is to balance the need for the long-term preservation of Napa’s oaks and oak woodlands with the need to protect the long-term viability of agriculture. The measure’s proponents recognized that under the 2008 General Plan—the County’s “constitution” for future development through the year 2030—“removal of some oak woodlands was necessary to allow the future growth, including vineyard development, envisioned under that plan.” *Id.* at 14.

Accordingly, the permit program does not even begin until 795 additional acres of oak woodlands within the AW district are removed (“Oak Removal Limit” or “Limit”). The Limit was designed to “take[] into consideration the historic rate of oak woodland removal associated with new vineyard development, the General Plan’s projection that a maximum of 10,000 acres

1 of new vineyards would be developed by 2030, ... and other projected growth and constraints on
2 growth under the General Plan.” *Id.*

3 **1. Measure C contains exceptions and exemptions permitting tree**
4 **removal in numerous circumstances.**

5 Measure C contains numerous exceptions and exemptions to allow tree and oak removal.
6 Trees may be removed within water quality buffer zones under ten specified circumstances,
7 including to: remove diseased trees, create firebreaks, protect public health or safety, develop
8 access roads and driveways, create wells and septic systems, build trails, and restore habitat.
9 Exhibits at 17-18 (§18.20.050(C)). Tree removal is also allowed within 150 feet of existing
10 residences or structures, or of any proposed structure for which the owner has obtained required
11 permits. *Id.* at 18 (§18.20.050(C)(10)).

12 Before the Oak Removal Limit is reached, Measure C does not regulate the removal of
13 oak trees (other than to strengthen remediation in some cases). After the Limit is reached,
14 Measure C authorizes the County to issue oak removal permits in any of the ten circumstances
15 set forth in section 18.20.050(C) (*i.e.*, firebreaks, near homes, etc.), as well as to allow limited
16 oak removal for agricultural uses. *Id.* at 21 (§18.20.060(E)(2)).

17 Measure C also contains a number of broad exemptions. Its provisions do not apply
18 where tree removal is necessary to comply with state or federal law or is directed by a state or
19 federal agency, or to projects that have obtained all discretionary permits prior to its effective
20 date. *Id.* at 19, 22-24 (§§18.20.050(G)(2), 18.20.060(G), 18.20.080).

21 **2. The Oak Removal Limit anticipates build-out of the General Plan**
22 **through 2030.**

23 Agriculture in Napa County is dominated by its vineyards. *See* Exhibits at 49-50. There
24 are more than 45,000 acres of planted vineyards in Napa County. *Id.* at 56. The General Plan
25 projected that as much as 10,000 *additional* acres of vineyards would be developed through the
26 life of the General Plan (2005-2030). *Id.* By May 2017, the County confirmed it had permitted
27 4,321 acres of new vineyards since 2005. *Id.* at 81, fn.1 (NVV Analysis). Thus, to reach the
28 10,000-acre estimate, the County would have to approve an additional 5,679 acres of vineyards
by 2030. *Id.* at 81.

1 Historically, about 14 percent of newly developed vineyard land has consisted of oak
2 woodlands. *See id.* at 85 (County data showing that 1,725.8 acres were converted to vineyards
3 between 2005-2014, and that 14.6 percent of this acreage (252.6 acres) was oak woodlands). If
4 the County approves an additional 5,679 acres of vineyards by 2030—as the General Plan
5 predicted—and if oak woodland make up 14% of this acreage, this would result in the future
6 loss of 795 acres of oak woodland. This figure (795 acres) is the basis for Measure C’s Oak
7 Removal Limit. *See id.* at 14.

8 Thus, Measure C anticipates that the amount of vineyard development projected in the
9 General Plan through 2030 can be fully built out before the Oak Removal Limit is even reached.
10 Napa Valley Vintners (“NVV”)—Napa’s leading wide industry association—endorsed this
11 conclusion, informing its members and the public that Measure C would allow “approximately
12 5,679 acres of currently undeveloped land in the AW district to be converted to vineyard”
13 without any oak removal restrictions. *Id.* at 81 (footnote omitted). NVV also recognized that
14 Measure C would not affect at all “the approximately 2,230 acres of land suitable for vineyard
15 development in the [Agricultural Preserve] district.” *Id.* (footnote omitted).

16 **B. Measure C was developed pursuant to a collaborative process between its**
17 **official proponents and the Napa Valley Vintners.**

18 The initiative that ultimately qualified for the ballot as Measure C was jointly prepared
19 pursuant to a cooperative effort between Michael Hackett, James Wilson, and the leadership of
20 the Napa Valley Vintners. *Perlmutter Dec.* at ¶ 4; Exhibits at 124-29 (Agreement Regarding
21 Preparation of Initiative). On September 1, 2017, Mr. Hackett, Mr. Wilson, the then-Chairmen
22 of the NVV (Michael Honing) and NVV’s Government Relations Director (Rex Stults) jointly
23 submitted a substantially similar initiative to Measure C to Respondent Tuteur with a request for
24 Napa County Counsel to prepare the official ballot title and summary. *Perlmutter Dec.* at ¶ 4;
25 Exhibits at 131.

26 On September 5, 2017, the NVV issued a press bulletin to its members entitled “NVV
27 and Environmental Leaders Collaborate to Protect Woodlands and Watershed” celebrating the
28 joint submission of the initiative. *See Exhibits at 42.* In the NVV Supporting Bulletin, the NVV

1 stated, among other things that:

2 The Napa County Watershed and Oak Woodland Protection
3 Initiative of 2018 establishes enhanced water quality buffer zones
4 and oak woodland protections in the Ag Watershed, without
5 overburdening responsible property owners. . . .

6 The joint initiative proposes a limit on oak woodland acreage that
7 can be removed within the AW. The limit is based on the amount of
8 oak woodland removal associated with vineyard development
9 envisioned through the lifetime of the current Napa County General
10 Plan in 2030. With limited exceptions, further removal of oak trees
11 above this limit would be precluded after that date, unless voters
12 decided to increase it. **Future vineyards could be developed in the
13 same manner as now**, provided this development didn't involve
14 further removal of oak woodlands.

15 **It's important to note that the initiative is forward-looking and
16 will not affect vineyard replants. . . .**

17 Leaders in our community have a long and successful history of
18 collaboration and compromise for the greater good, going back to
19 the establishment of the Ag Preserve a half century ago. There are
20 numerous examples since. **This is the next step in that proud local
21 tradition.**

22 *Id.* at 42-44 (last emphasis in original; all other emphasis added)).

23 A few weeks after issuing the NVV Supporting Bulletin, apparently in response to
24 pressure from certain individuals opposed to limits on oak removal, the NVV withdrew its
25 support for the initiative. Perlmutter Dec. at ¶ 6. Shortly thereafter, Mr. Hackett and Mr.
26 Wilson resubmitted on their own the substantially identical initiative that ultimately qualified for
27 placement on the ballot as Measure C. *Id.* at ¶¶ 6-7; Exhibits at 62-79.

28 **C. Land uses within the Agricultural Watershed (AW) zoning district are
regulated by the County Zoning Code and General Plan.**

Land uses within the AW district are regulated by the County Zoning Code, which
establishes permitted uses (such as agriculture, one single-family dwelling per lot, and wineries)
and the County's General Plan. *See* Exhibits at 87-88 (Napa County Code, §18.20.020); *DeVita*
v. County of Napa (1995) 9 Cal.4th 763, 771-75 (upholding Napa County Measure J and
describing role of the General Plan). Minimum lot size is 160 acres. Exhibits at 92 (Napa
County Code, §18.104.010). The AW district is the primary implementing zoning for the
General Plan "Agriculture, Watershed, and Open Space" designation. *Id.* at 55. Pursuant to

1 Measure J (1990) and Measure P (2008), which were adopted to protect Napa’s agricultural
2 heritage, the provisions governing the building intensity and minimum parcel sizes for these
3 lands cannot be amended without a vote of the people. *Id.* at 52-53; *see DeVita*, 9 Cal. 4th at
4 796-97.

5 Measure C governs only tree removal within water quality buffer zones, oak removal
6 after the Oak Removal Limit is reached, and oak remediation. It does not change any land use
7 allowed or prohibited under existing zoning. Measure C also places no limits on where existing
8 agricultural operations can continue to be conducted, does not facilitate (or prohibit) any
9 additional uses in the AW district, and does not regulate the construction or expansion of homes,
10 event centers, or any other particular land uses.

11 **D. County analyses of Measure C do not suggest that it restricts farming,**
12 **prevents the construction of home additions, or encourages event centers.**

13 On October 17, 2018, County Counsel prepared the official ballot title and summary for
14 Measure C, which is required to be a “true and impartial statement of the purpose of the
15 proposed measure.” Elec. Code, § 9105(a);² Exhibits at 34-35. The Board approved the Ballot
16 Question on February 27, 2018, pursuant to Resolution No. 2018-24. *Id.* at 102. On March 9,
17 2018, County Counsel filed its Impartial Analysis of Measure C. *Id.* at 39. Like the ballot
18 Summary, the Impartial Analysis is required to contain “an impartial analysis of the measure
19 showing the effect of the measure on existing law and the operation of the measure.” § 9160.

20 All of these documents focus exclusively on Measure C’s effects of requiring increased
21 oak mitigation, protecting streams and wetlands and establishing a future oak removal permit
22 system. The ballot question, for example, reads:

23 Shall Napa County Ordinance No. 2018-01 be adopted? (Amending
24 the Napa County General Plan and zoning code creating water
25 quality buffer zones within the Agricultural Watershed (AW) zoning
26 district and restricting tree removal within those zones;
strengthening oak removal remediation standards; and establishing a
permit program for oak tree removal once 795 acres of oak
woodland have been removed.)

27 _____
28 ² All further statutory references are to the Elections Code.

1 Exhibits at 102 (Resolution No. 2018-24).

2 Notably, the Summary, the Ballot Question and the Impartial Analysis contain no
3 suggestion whatsoever that Measure C would outlaw or restrict farming, prevent home
4 additions, allow the approval of more event centers, or increase traffic. *See id* at 34-35, 102, 39.

5 On February 27, 2018, the Napa County Board of Supervisors voted unanimously to
6 place the Initiative on the June 5, 2018 ballot as Measure C. *Id.* at 101. The Board as a whole
7 did not vote to take any position for or against Measure C. *See id.* at 108. The Board also voted
8 at this meeting to “receive” several highly controversial reports about Measure C and the other
9 proposed initiatives prepared pursuant to Elections Code section 9111 (a “9111 report”), but did
10 not approve or endorse their conclusions. *Id.* at 108-09; Perlmutter Dec. ¶ 9.

11 **E. Ballot argument and trial court proceedings.**

12 Real parties’ argument against Measure C was filed on March 16, 2018. Exhibits at 10;
13 Perlmutter Dec. ¶ 10. Petitioner’s writ petition was filed on Monday, March 26, 2018, within
14 the 10 calendar-day public examination period provided by law. § 9190.

15 On Wednesday, March 28, 2018, counsel for Petitioner appeared *ex parte* before Judge
16 Rodney G. Stone seeking an expedited briefing schedule and hearing on this matter. The Court
17 established an expedited briefing schedule, pursuant to which this brief is being filed, and set the
18 matter to be heard on April 11, at 8:30 a.m.

19 **ARGUMENT**

20 **I. The Elections Code authorizes the granting of a writ of mandate to amend or delete**
21 **false or misleading statements in the ballot pamphlet.**

22 The official ballot arguments play a critical role in political campaigns. The arguments
23 printed in the voter pamphlet may be especially persuasive to voters because the “voter’s
24 pamphlet, which accompanies the sample ballot, purports to be an authoritative document that
25 appears to give an imprimatur of official approval to statements of qualifications included
26 therein.” *Knoll v. Davidson* (1974) 12 Cal.3d 335, 352. Because voter pamphlets are
27 assembled, published and distributed by the County, and carry this “imprimatur of official
28 approval,” the Supreme Court has emphasized that they may “carry greater weight in the minds

1 of the voters than normal campaign literature.” *Id.* “Accuracy in ballot arguments is of
2 additional importance because they are ‘accepted sources from which [courts] ascertain the
3 voters’ intent and understanding of initiative measures.’” *Washburn*, 195 Cal.App.3d at 585
4 (citation omitted).

5 Recognizing the importance of ballot arguments, the Elections Code provides for a short,
6 ten-day “public examination period,” during which any voter or elections official “may seek a
7 writ of mandate or an injunction requiring any or all of the materials to be amended or deleted.”
8 § 9190(b)(1). By making such a provision, “the Legislature has expressed the view that **ballot**
9 **arguments which are sent to voters at public expense should be factually accurate**, and has
10 explicitly invited individual voters to initiate lawsuits to effectuate that public policy.”
11 *Washburn*, 195 Cal.App.3d at 590 (bold added).

12 Once a writ action is filed, a peremptory writ of mandate shall issue “upon clear and
13 convincing proof that the material in question is false [or] misleading” and that issuance of the
14 writ “will not substantially interfere with the printing or distribution of official election materials
15 as provided by law.” § 9190(b)(2); § 13314 (authorizing issuance of a writ to prevent any
16 omission or error in “the printing of, a ballot ... or other official matter”).

17 The clear and unmistakable intent of these statutes is to protect the electors from
18 deceptive claims in the official ballot pamphlet. “Restricting information in the voter pamphlet
19 to material which is neither false [nor] misleading” fosters “the integrity of the election process”
20 and aids “citizens in making informed voting choices.” *Patterson*, 202 Cal.App.3d at 30.
21 Because the “essential purpose of [ballot argument] provisions is to give the voters *information*
22 concerning the measures on the ballot,” the ballot pamphlet does *not* represent the free-wheeling
23 forum of the public campaign, but rather a “limited public forum.” *Id.* at 29 (citations omitted)
24 (emphasis added). Thus, any First Amendment rights are subject to the State’s “compelling”
25 interest in the “the integrity of elections,” which the courts have recognized are “essential to the
26 very preservation of a free society.” *Id.* at 30 (citations omitted). Accordingly, the courts must
27 strike from a ballot argument any “‘outright falsehood’ or a statement that is ‘objectively
28 untrue.’” *Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1432

1 (citation omitted). “In determining whether statements are false or misleading, courts look to
2 whether the challenged statement is subject to verifiability, as distinct from ‘typical hyperbole
3 and opinionated comments common to political debate.’” *Id.*

4 Importantly, the Elections Code prohibits not only statements that are objectively
5 inaccurate, but also statements that may *mislead* voters about a measure’s purpose or effect.
6 Thus, the courts have emphasized that even language that is “literally true” may be misleading
7 “*in context*” when it “deliberately confuses” the issues or potential voters. *Id.* at 1432-33.

8 Here, writ relief is necessary to strike the false and misleading statements in Real Parties’
9 ballot arguments and protect the integrity of the electoral process.

10 **II. The Court should strike the ballot argument’s false and misleading statements.**

11 At least four statements in Real Parties’ argument against Measure C are false and
12 misleading and should be stricken from the ballot pamphlet. The first falsely suggests that “all”
13 Napa County Supervisors and Mayors in Napa County oppose Measure C. This is objectively
14 untrue. Two Napa County Supervisors have declared under penalty of perjury that they have not
15 taken a position against Measure C, and the Mayor of St. Helena actively supports it.

16 The three other challenged statements make false and misleading claims about Measure
17 C’s effects. They claim that it will “outlaw” farming, “prevent” homeowners from building
18 home additions, and “open[] the door to event centers . . . and increas[e] traffic on our already
19 congested rural roads and Highway 29.” Measure C’s plain language shows these claims are
20 untrue. Indeed, neither the official ballot Summary nor the Impartial Analysis of Measure C,
21 both of which were prepared by County Counsel, raises a single one of these issues or suggests
22 that they are potential consequences of Measure C’s adoption. *See, supra*, pp. 8-9.

23 **A. False: “Napa County Supervisors and Mayors in Napa County ... all oppose**
24 **Measure C.”**

25 The claim that Napa County Supervisors and Mayors “all oppose Measure C” is
26 verifiably false. In placing Measure C on the ballot, the Board as a whole did not take any
27 position for or against it. Exhibits at 100-03, 108. In fact, two of the five County Supervisors
28 have signed affidavits, filed herewith, stating that they have not “taken a position for or against

1 Measure C.” *See id.* at 46. Moreover, the Mayor of St. Helena supports Measure C. *See*
2 Galbraith Dec., ¶ 3.

3 As the California Supreme Court has emphasized, accurate information about *who*
4 endorses a measure is often just as important that what the measure says: “Voters who may well
5 be able to understand and judge candidates may not always be able to comprehend and
6 determine the merits of ballot measures which frequently are cast in language, the precise
7 meaning of which often is confusing A voter may reasonably seek to judge the precise
8 effect of a measure by knowledge of those who advocate or oppose its adoption” *Brown v.*
9 *Superior Court* (1971) 5 Cal.3d 509, 522 (upholding campaign financial disclosure
10 requirements) (citation omitted). This is particularly true where the endorsement involves
11 elected officials—and the official ballot argument falsely claims the measure is unanimously
12 opposed by all county supervisors and local mayors.

13 Courts have found similar language to be misleading where it erroneously implied for
14 “all” what was only true for “some.” For example, a court held that a statement that a power
15 plant “refused to sign a contract for the use of electricity solely in California” was “factually
16 misleading” where some of the plant’s electricity *would* be sold in the state. *Huntington Beach*,
17 94 Cal.App.4th at 1435. The court concluded that the statement’s implications were verifiably
18 false: “The pamphlet statement affirmatively misleads the reader . . . into believing that *none* of
19 the electricity produced by the plant will be sold in California when *some* will.” *Id.* (emphasis
20 added). Similarly, here, the ballot argument misleads the reader into thinking that *all* Napa
21 County Supervisors and Mayors oppose Measure C when only some do. That statement is
22 verifiably false and should be stricken.

23 **B. False: “Measure C will outlaw future farming in the Ag Watershed”**

24 Real Parties’ claim that Measure C will “outlaw future farming” in the Agricultural
25 Watershed is likewise false and misleading. Measure C will not ban or “outlaw” future farming
26 or make farming illegal. The uses permitted in the AW district are, and will continue to be,
27 regulated solely by the County’s existing zoning and General Plan provisions. *See Exhibits at*
28 87-93.

1 Measure C regulates the removal of *mature trees*. *See id.* at 18, 21 (§§ 18.20.050(D)(5),
2 18.20.060(E)(1)) (trunks subject to Measure C must be at least 5 inches in diameter at 4.5 feet).
3 Thus, it will have no effect on current or future farming on lands that are currently cleared for
4 agriculture, including the more than 45,000 planted vineyards. *Id.* at 56. Projects that have
5 received all discretionary permits are also exempt from its provisions. *Id.* at 24 (§ 18.20.080).
6 Moreover, existing County conservation regulations already provide buffer zones along many
7 County streams ranging from 35-150 feet. *Id.* at 95 (Napa County Code, § 18.108.025).
8 Measure C merely strengthens these existing provisions.

9 In addition, Measure C’s oak protection provisions will not even take effect until the Oak
10 Removal Limit is reached. The most up-to-date information Measure C’s proponents were able
11 to obtain indicates that, historically, oak woodlands have constituted approximately 14 percent
12 of developed vineyard acreage in Napa County. *See supra*, p. 6. The Napa Valley Vintners—
13 who Real Parties point to as a reliable source (*see* Exhibits at 10)—came to this same conclusion
14 and distributed this information to its members. This means that thousands of acres of
15 additional vineyards (or other crops) could be developed before the 795-acre Oak Removal
16 Limit is reached and the permit program is implemented. And even after the Limit is reached,
17 Measure C will not ban or “outlaw” *any* farming or other agricultural uses. It will simply
18 restrict the removal of mature oaks. This will have *no* impact on the 45,000 acres of land
19 currently in agricultural use or the 5,679 acres of additional land projected to be converted to
20 agricultural use before the Limit is reached. And it will have no impact on additional
21 conversions of land to agricultural use that do not contain mature oak trees. (In the past decade,
22 86% of acreage converted to vineyards has not contained oak woodlands. *See supra*, p. 6.) And
23 Measure C provides that the County may issue permits for limited oak removal where it is
24 necessary for agricultural uses. *See* Exhibits at 21 (§ 18.20.060(E)).

25 In short, to say that Measure C will *outlaw* farming amounts to ““deliberate
26 disinformation.”” *Patterson*, 202 Cal.App.3d 22, 33-34, struck similarly misleading words
27 from an argument asserting that a measure allowed contracts to be awarded to “politically
28 favored private contractors.” The court struck “politically favored,” holding that that language

1 was “patently misleading” in light of the city’s competitive bidding process and the plain
2 language of the ballot proposition—which “obviously” did not authorize awarding contracts to
3 “politically favored” contractors. *Id.* Here, the County’s existing land use regulations allowing
4 farming in the Agricultural Watershed district, and the limited reach of Measure C, demonstrate
5 that the measure will not “outlaw” future farming. As in *Patterson*, Real Parties’ suggestion that
6 it will do so is patently misleading. Their argument creates the false impression that Measure C
7 bans farming or makes it illegal. Measure C does nothing of the sort.

8
9 **C. False: “Measure C will prevent property owners from . . . adding to one’s
home ...”**

10 The statement that Measure C would prevent “adding to one’s home” must also be
11 stricken. Measure C contains express exceptions for home addition and remodeling. For
12 example, the water buffer provisions expressly *allow* tree removal within 150-feet of residences,
13 additions, or other approved “structures.” *See* Exhibits at 17-18 (§ 18.20.050 (C)(10)) (“Tree
14 removal is allowed within water quality buffer zones . . . 10. Within one hundred fifty (150)
15 feet from any point of a residence or any other structure that is subject to the requirements of the
16 California Building Code or from any point of any proposed such residence or structure for
17 which the owner has obtained all legally required permits.”). Thus, Measure C imposes *no*
18 requirements on such tree removals. They will be allowed to the same extent as they are under
19 current law.

20 Moreover, if a home addition required removal of mature oaks, it would not be affected
21 by Measure C at all until after the Oak Removal Limit is reached. After that, oak removal is
22 allowed, with a permit, under the same provision—section 18.20.050(C)(10)—within 150 feet
23 of any existing or proposed residence or other structure. *See id.* at 21 (§ 18.20.060 (E)(2) (oak
24 removal permit may be issued for any circumstance set forth in § 18.20.050 (C)(1)-(10)).

25 That *some* future homeowners may need to secure a permit before expanding their homes
26 does not save the statement in the ballot argument. First, the argument states, without
27 qualification, that Measure C “will prevent property owners” from “adding on to [their] home.”
28 While the phrase “without a permit” is buried in a separate clause, that clause does not apply

1 grammatically to Real Parties’ claim about home additions. The ballot argument thus falsely
2 suggests that home additions will be entirely prevented by Measure C—a wholly misleading
3 claim. In *Huntington Beach*, the court found a statement was misleading due to similar sentence
4 construction. The court struck the statement that a power plant “does not pay *this* tax” because
5 the sentence structure suggested that “*this* tax” was an existing tax paid by all residents,
6 including the plant, rather than the new tax proposed in the initiative. 94 Cal.App.4th at 1432-
7 33 (emphasis added). Here, the ballot argument uses a similar tactic to sow confusion and
8 confuse voters.

9 Even if the “without a permit” language could be construed as applying to the home
10 addition claim, which would require a tortured and ungrammatical construction, it still would
11 not save the ballot argument’s false claim. Measure C affirmatively allows the County to issue
12 oak removal permits for home construction and expansion, and permits are already required to
13 construct homes. It is false and misleading to suggest that the mere possibility that the County
14 could exercise its discretion to deny or condition an oak removal permit—just as it does now for
15 some home additions—“prevents” homeowners from constructing additions.

16 **D. False: “Measure C will . . . open [] the door to event centers . . . and**
17 **increas[e] traffic on our already congested rural roads and Highway 29.”**

18 Real Parties’ claim that Measure C will “open [] the door to event centers” and “increas[e]
19 traffic on our already contested rural roads and Highway 29” is similarly misleading. Measure
20 C does not contain a single reference to event centers, or similar developments. And nothing in
21 Measure C can remotely be construed to authorize or encourage their construction. Rather, if
22 Measure C is adopted, event centers in the AW district will continue to require discretionary
23 approvals from the County in *exactly the same way* as they did before its adoption.

24 Of course, the County’s decision to approve event centers and use permits under *existing*
25 law has been highly controversial. Indeed, there was a recent Grand Jury investigation into
26 whether the Planning Department was issuing winery use permits without conforming to its own
27 Winery Definition Ordinance (WDO) in the Agriculture Preserve. *See* Exhibits at 111 (Final
28 Report: Are Napa County Wineries Following The Rules?). As the Report notes: “Increasing

1 public concern over the impact of winery growth on traffic, water resources, and other quality of
2 life issues has been expressed in the news media and in public hearings.” *Id.* at 113.

3 No doubt eager to capitalize on this public concern, Real Parties attempt to link Measure
4 C with expanded development of “event centers.” But Measure C has nothing to do with event
5 centers. *See Patterson*, 202 Cal.App.3d at 34 (striking misleading language suggesting that a
6 ballot proposition authorized an action it “obviously did not” authorize). Whether to allow more
7 event centers, and their attendant traffic, is a political decision that County decisionmakers will
8 be forced to make, regardless of Measure C’s adoption. *See Exhibits* at 113 (Grand Jury Report
9 noting that the “approvals of new wineries and winery expansions are regulated through use
10 permits issued by the County and are administered by the County Planning Department”).

11 **III. Real Parties’ false and misleading statements must be stricken to preserve the**
12 **integrity of the ballot pamphlet.**

13 Real Parties are entitled to express their positions and *opinions* on Measure C as
14 forcefully as they wish. They may not, however, do so by including false and misleading
15 statements in the arguments to be printed and distributed at taxpayer expense in the official
16 ballot pamphlet. While the Elections Code permits vigorous advocacy, it forbids ballot
17 arguments that are objectively untrue and designed to mislead the voters. Here, Real Parties’
18 ballot argument contains at least four statements that are objectively false or materially
19 misleading. This Court has a duty to delete or amend these statements to ensure that they are
20 not distributed to the voters. *See Huntington Beach*, 94 Cal.App.4th at 1434-35; *Knoll*, 12
21 Cal.3d at 352.

22 **CONCLUSION**

23 Petitioner therefore respectfully requests that his Petition for Writ of Mandate be granted.

24 DATED: March 29, 2018

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