

A159487

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT - DIVISION THREE**

**MICHAEL ARATA,
*Petitioner and Appellant,***

v.

**DEBORAH COOPER, in her official capacity as COUNTY CLERK-
RECORDER AND REGISTRAR OF VOTERS, and**

**SHARON L. ANDERSON, in her official capacity as CONTRA
COSTA COUNTY COUNSEL,
*Respondents.***

**CONTRA COSTA TRANSPORTATION AUTHORITY, a special
district, and**

**CONTRA COSTA COUNTY BOARD OF SUPERVISORS,
*Real Parties in Interest.***

***[PRIORITY MATTER PURSUANT TO ELECTIONS CODE
§ 13314(a)(3)]***

After Order of the Superior Court for the County of Contra Costa,
Case No. MSN192489; Hon. Charles “Steve” Treat
Additional Judge: Hon. Edward G. Weil

**PETITIONER & APPELLANT’S MOTION FOR EXPEDITED
APPEAL, SHORTENING OF TIME, AND CALENDAR
PREFERENCE**

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**PETITIONER & APPELLANT’S MOTION FOR EXPEDITED
APPEAL, SHORTENING OF TIME, AND CALENDAR
PREFERENCE**

TO THE HONORABLE PETER J. SIGGINS, PRESIDING JUSTICE,
AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT
OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE
DISTRICT, DIVISION THREE:

Petitioner and Appellant Michael Arata respectfully requests that this Court issue an order to expedite the appeal, to shorten the time for appeal, and, if necessary, to obtain calendar preference to schedule expedited briefing and hearing pursuant to Elections Code § 13314(a)(3) (“[t]he action or appeal shall have priority over all other civil matters”) and Cal. Rules of Court, rules 8.240, 8.50, 8.54, and 8.68.

Appellant submits there exists good cause for granting the motion. Following the Superior Court ruling, Appellant’s mother unexpectedly died. Appellant’s family obligations took precedence over pursuit of an immediate appeal.

Appellant indicated that this case is entitled to priority through his answer to Part II.B of the Civil Case Information Statement (APP-004) filed on February 10th (and revised on February 18th) and through a cover letter filed with that form. This motion is made on the grounds that an

expedited timetable would enable this appeal to be resolved before the March 3, 2020 election. The attached memorandum supports this motion.

Appellant suggests the following expedited briefing schedule.

Appellant's Opening Brief and Appendix would be filed within twenty-four hours of the Court's Order Granting Expedited Appeal, Shortening of Time, and/or Calendar Preference. (Appellant will be ready to file as soon as 11:59 p.m. on Wednesday, February 19th.) Respondents' Brief would be due by 11:59 p.m. on Monday, February 24th (or whatever date that the court selects thereafter). Appellant's Reply Brief would be due by 11:59 p.m. on Wednesday, February 26th (or whatever date that the court selects thereafter). Because Appellant is seeking expedited review prior to the election on March 3rd, he is willing to submit on the papers. If the Court desires oral argument, Appellant will be available.

In the alternative, Appellant requests an expedited briefing and hearing schedule that results in a final decision by the Court by early July 2020. Local ballot measures must qualify for the November 3, 2020 ballot no later than August 7, 2020. Elections Code § 10403. The Court should order an expedited briefing and hearing schedule that permits it to decide this case by early July 2020 in order to clarify the definitions and scopes of Elections Code §§ 9160, 9190, 13116, 13119, and 13314 before the ballot labels, ballot measure letter designations, and impartial analyses are prepared and approved for local measures on the November 3, 2020 ballot.

The procedural and substantive issues presented in this case are of significant public interest and are likely to recur in the near term, while evading review, given the timeframes applicable to elections. Public entities preparing ballot materials for the November 3, 2020 election need prompt appellate resolution of these legal issues. *Huening v. Eu* (1991) 231 Cal.App.3d 766, 770 [even if the relief sought in the superior court is no longer available, appellate review of disputes concerning election procedures “may be appropriate if the contentions raised are of general public interest ‘and are likely to occur in future elections in a manner evasive of timely appellate review’”]. See also *Edelstein v. City & County of San Francisco* (2002) 29 Cal.4th 164, 172; *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110, 120; *Vargas v. Balz* (2014) 223 Cal.App.4th 1544, 1547.

The Legislature recently enacted strong substantive law affecting local measure ballot labels in Elections Code § 13119. Before the November 3, 2020 statewide election, the Court should clarify ambiguities and uncertainties concerning enforcement of §§ 13119(b) and (c), first enacted by Stats. 2015, Chapter 337 (AB 809) and Stats. 2017, Chapter 105 (AB 195). The legislative history demonstrates that the Legislature enacted the AB 195 amendment in 2017 in order to apply the ballot label requirements to county transportation agencies like Real Party in Interest

Contra Costa Transportation Authority. In 2019, Governor Newsom vetoed SB 268, which would have weakened the ballot label provisions in § 13119.

Based on the above considerations, Appellant respectfully requests that, pursuant to Cal. Rules of Court, rules 8.240, 8.50, 8.54, and 8.68 and Elections Code § 13314(a)(3), the Court expedite the appeal, shorten the time for appeal, and grant calendar preference to scheduling expedited briefing and hearing in this appeal.

Dated: February 18, 2020.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jason A. Bezis". The signature is written in black ink and is positioned below the typed name.

JASON A. BEZIS

Attorney for Petitioner & Appellant Michael Arata

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**POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER &
APPELLANT’S MOTION FOR
EXPEDITED APPEAL, SHORTENING OF TIME, AND
CALENDAR PREFERENCE**

Cal. Rules of Court, rule 8.240 allows a party to bring a motion for calendar preference, which means expediting the appeal schedule, which may include expedited briefing and calendar preference in setting the date for oral argument. Cal. Rules of Court, rule 8.68 allows the presiding justice, upon a showing of good cause, to shorten the time to do an act required or permitted under the rules.

Calendar preference is requested on the basis that Elections Code § 13314(a)(3) expressly states, “The action or appeal shall have priority over all other civil matters.” This case concerns a challenge to the countywide Measure J sales tax increase on the March 3, 2020 Contra Costa County ballot. Appellant contends that an error has occurred in the printing of ballots and other neglect of duty concerning the election has occurred. The due date for the opening brief is currently scheduled for March 16, 2020, which is thirteen days after the election. Petitioner and Appellant seeks this order shortening time so that his appeal can be considered before the election.

Dated: February 18, 2020

Respectfully submitted,



JASON A. BEZIS
Attorney for Petitioner & Appellant Michael Arata

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is 3661-B Mosswood Drive, Lafayette, CA 94549-3509.

On February 18, 2020, I served a true copy of the following document:

PETITIONER & APPELLANT’S MOTION FOR EXPEDITED APPEAL, SHORTENING OF TIME, AND CALENDAR PREFERENCE

on the following parties in said action:

Thomas L. Geiger
Assistant County Counsel
COUNTY OF CONTRA COSTA
Thomas.Geiger@cc.cccounty.us

Attorney for Deborah Cooper, Sharon L. Anderson and Contra Costa County Board of Supervisors

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Attorneys for Contra Costa Transportation Authority

Electronic copy submitted to Court of Appeal upon filing (CRC 8.78)

BY EMAIL TRANSMISSION: By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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Clerk of the Court
Contra Costa County Superior Court
725 Court Street
Martinez, CA 94553

BY UNITED STATES MAIL: By enclosing the document in a sealed envelope or package addressed to the persons at the address above and depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on February 18, 2020, in Lafayette, California.



JASON A. BEZIS

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