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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF CONTRA COSTA**

10 MICHAEL ARATA and RICHARD S.
11 COLMAN, individuals and electors in the
12 County of Contra Costa,

13 Petitioners,

14 vs.

15 DEBORAH COOPER, in her official capacity
16 as ACTING COUNTY CLERK-RECORDER
17 AND REGISTRAR OF VOTERS, and
18 SHARON L. ANDERSON, in her official
19 capacity as Contra Costa County Counsel,

20 Respondents.

21 CONTRA COSTA TRANSPORTATION
22 AUTHORITY, a special district,

23 Real Party in Interest.

24 CONTRA COSTA COUNTY BOARD OF
25 SUPERVISORS,

26 Real Party in Interest.
27
28

) Case No.:

) **PETITION FOR WRIT OF MANDATE;**
) **DECLARATORY RELIEF; INJUNCTION**

) **(California Elections Code §§ 9051(b), 9105,**
) **9106, 13119(b), 13119(c); 13314; California**
) **Code of Civil Procedure § 1085)**

) ***[PRIORITY MATTER PURSUANT TO***
) ***CALIFORNIA ELECTIONS CODE §§ 9106***
) ***13314(a)(3)]***

) Filed: December 30, 2019

1 Voters a Ballot Measure Seeking Approval of a One-Half of One Cent Transactions and Use
2 Tax” (see Exhibit B) associated with this March 2020 ballot measure. CCTA was sponsor of
3 existing “Measure J” on the November 2004 ballot that imposed a half-percent sales tax from
4 2009 to 2034. The “Measure J” on the March 2020 ballot would impose an additional half-
5 percent sales tax as the 2004 “Measure J” continues to impose a half-percent sales tax until 2034.
6 Petitioners believe that the ballot letter designation “Measure J” on the March 2020 ballot would
7 create voter confusion with the existing “Measure J,” for reasons set forth *infra*.

8 5. Real Party in Interest CONTRA COSTA COUNTY BOARD OF SUPERVISORS
9 (hereinafter “SUPERVISORS”) voted at their November 19, 2019 meeting to place the CCTA
10 measure on the March 2020 ballot. The Board adopted Ordinance No. 2019-33 calling a special
11 election for voter approval of a 35-year countywide transportation transaction and use tax and
12 consolidating the special election with the statewide primary election on March 3, 2020 as
13 requested by the Contra Costa Transportation Authority. See Exhibit C. (Collectively, Real
14 Parties in Interest CCTA and SUPERVISORS are hereinafter "REAL PARTIES.")

15 6. Petitioners MICHAEL ARATA and RICHARD S. COLMAN seek a writ of mandate to
16 compel amendment of the (A) County Counsel’s Impartial Analysis, (B) ballot measure letter
17 designation, (C) ballot label, concerning rate of the tax to be levied, and (D) ballot label that
18 Respondents DEBORAH COOPER and SHARON L. ANDERSON are preparing for voter use
19 in the Contra Costa Transportation Authority ballot measure election to be held on March 3,
20 2020. They also seek declaratory and injunctive relief concerning the ballot letter designation
21 policy of the Contra Costa County Elections Division.

22 7. Issuance of a peremptory writ of mandate will not substantially interfere with the printing
23 or distribution of election materials as required by law, because this writ is filed on December
24 30, 2019, three days before January 2, 2020, the date that the County Elections Division asserts
25 as “Last day to file Writ of Mandate” in its “ATTACHMENT A - 2020 MEASURE KEY
26 DATES” from the “Guide to Filing Measure Arguments for County, Cities, School, and Special
27 Districts 2020 Contra Costa County Elections”. See Exhibit J, p. A-1.

28 8. Petitioners MICHAEL ARATA and RICHARD S. COLMAN have no adequate remedy
at law because of the imminence of the election.

1
2 **STANDING**

3 9. Petitioners have individual standing as Electors pursuant to Elections Code section
4 321(a). Petitioners have a concrete, significant interest in the matters set forth. The passage of
5 Measure J would impose an additional one-half percent (0.5%) sales tax throughout the County
6 of Contra Costa for thirty-five years, thereby increasing the cost of all taxable goods and services
7 sold to resident Electors, residents, and non-residents alike, both corporate and natural.
8

9 **JURISDICTION**

10 10. The Court has jurisdiction over this matter pursuant to Elections Code sections 9106,
11 9190, and 13314; and Code of Civil Procedure section 1085.

12 11. Elections Code section 9106 authorizes a writ of mandate to amend the ballot title or
13 summary. Section 9106 mandates that the Court “shall expedite hearing on the writ.”

14 12. Elections Code section 9190 authorizes a writ of mandate to review election materials
15 under certain circumstances.

16 13. Elections Code section 13314(a)(1) authorizes an elector to seek a writ of mandate
17 “alleging that an error or omission has occurred, or is about to occur ... in the print of, a ballot,
18 sample ballot, voter pamphlet, or other official matter, or that any neglect of duty has occurred,
19 or is about to occur.” Elections Code section 13314(a)(3) provides priority “over all other civil
20 matters.”

21 14. Code of Civil Procedure section 1085 authorizes a writ of mandate “to compel the
22 performance of an act which the law specifically enjoins, a duty resulting from an office, trust, or
23 station . . .”
24

25 **VENUE**

26 The acts complained of herein as the subject of this action occurred in the County of Contra
27 Costa, California. Thus, venue is properly with the Superior Court of the State of California for
28 the County of Contra Costa.

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1
2 **LEGAL STANDARDS**

3 15. Elections Code section 13314(a)(2) provides the analytical standard for a writ brought
4 pursuant to Section 13314(a)(1): “A peremptory writ of mandate shall issue only upon proof of
5 both of the following: [a] That the error, omission, or neglect is in violation of this code or the
6 Constitution. [b] That issuance of the writ will not substantially interfere with the conduct of the
7 election.”

8 16. Elections Code section 13119(b) requires the statement of the measure/ballot
9 question/ballot label for any proposed tax or tax rate increase to “include in the statement of the
10 ordinance to be voted on the amount of money to be raised annually and the rate and duration of
11 the tax to be levied.”

12 17. Elections Code section 13119(c) says, “The statement of the measure shall be a true and
13 impartial synopsis of the purpose of the proposed measure, and shall be in language that is
14 neither argumentative nor likely to create prejudice for or against the measure.”

15 18. Elections Code section 9051(b) requires ballot labels to have no more than seventy-five
16 (75) words. Section 9051(c) requires the ballot title and summary to be “a true and impartial
17 statement of the purpose of the measure in such language that the ballot title and summary shall
18 neither be an argument, nor be likely to create prejudice, for or against the proposed measure.”

19 19. Elections Code section 9106 mandates that a writ shall issue “only upon clear and
20 convincing proof that the ballot title or summary is false, misleading, or inconsistent with the
21 requirements of Section 9105.” Elections Code section 9105, requires that the ballot title shall be
22 “a true and impartial statement of the purpose of the proposed measure in such language that the
23 ballot title shall neither be an argument, nor be likely to create prejudice, for or against the
24 proposed measure.”

25 20. Elections Code section 9160(b)(1) says, “The county counsel or district attorney shall
26 prepare an impartial analysis of the measure showing the effect of the measure on the existing
27 law and the operation of the measure. The analysis shall include a statement indicating whether
28 the measure was placed on the ballot by a petition signed by the requisite number of voters or by

1 the board of supervisors. The analysis shall be printed preceding the arguments for and against
2 the measure. The analysis may not exceed 500 words in length.”

3 21. Elections Code section 10403 says in part, “Whenever an election called by a district,
4 city, or other political subdivision for the submission of a question, proposition, or office to be
5 filled is to be consolidated with a statewide election ... The question or proposition to appear on
6 the ballot shall conform to this code governing the wording of propositions submitted to the
7 voters at a statewide election.”

8 22. Petitioners have a beneficial interest in the outcome of this action. *Green v. Obledo*
9 (1981) 29 Cal.3d 126, 144; *Bd. Soc. Welfare v. County of Los Angeles* (1945) 27 Cal.2d 98, 100-
10 01(“where the question is one of public right and the object of the mandamus is to procure the
11 enforcement of a public duty ... it is sufficient that [a petitioner] is interested as a citizen in
12 having the laws executed and the duty in question enforced.”)

13 23. Respondents and Real Parties in Interest have a ministerial duty to follow the law and
14 have violated that duty as described herein.

15 24. Petitioners have no adequate remedy at law. Publication of the current Impartial Analysis,
16 ballot label, and ballot measure letter designation will result in irreparable harm as Petitioners,
17 and all Electors of Contra Costa County, will have to vote based on erroneous, inaccurate, and
18 misleading information.

19
20 **FIRST CAUSE OF ACTION**

21 **County Counsel’s Impartial Analysis Fails in its Mandatory Duty to be Impartial**
22 **(Petition for Writ of Mandate - Elections Code sections 9160, 9190, 13314)**
23 **(Against Respondents ANDERSON, COOPER and REAL PARTIES)**
24

25 25. Petitioners hereby allege and incorporate by reference Paragraphs 1-24, inclusive.

26 26. County Counsel has a mandatory legal duty to provide an “impartial analysis” of the
27 CCTA ballot measure. Elections Code § 9160(b)(1) says in full, “The county counsel or district
28 attorney shall prepare an impartial analysis of the measure showing the effect of the measure on
the existing law and the operation of the measure. The analysis shall include a statement

1 indicating whether the measure was placed on the ballot by a petition signed by the requisite
2 number of voters or by the board of supervisors. The analysis shall be printed preceding the
3 arguments for and against the measure. The analysis may not exceed 500 words in length.”

4 27. On or about December 18, 2019 Respondent COOPER and/or her agents in the Contra
5 Costa County Elections Division placed on public display a County Counsel’s Impartial Analysis
6 to be printed and distributed to voters before the March 3, 2020 CCTA ballot measure election.

7 28. This analysis is false, misleading, and inconsistent with the requirements of the Elections
8 Code, including §§ 9160(b)(1) and 9190. It actually creates prejudice in favor of adoption of the
9 measure.

10
11 **County Counsel's Impartial Analysis Is Misleading Because It Eliminated the Prominent &**
12 **Necessary Disclosure of CCTA's Ballot Measure As an “Additional” Tax, i.e., Tax Increase.**

13 29. CCTA characterizes its 2020 ballot measure as imposing an “additional” tax in its official
14 actions authorizing the election. A true and correct copy of CCTA Ordinance 19-03, “An
15 Ordinance of the Contra Costa Transportation Authority Imposing a Transactions and Use Tax to
16 Be Administrated by the California Department of Tax and Fee Administration,” adopted by the
17 CCTA Board on October 30, 2019, is attached to this Petition as Exhibit A. Section 5,
18 “Transactions Tax Rate,” of CCTA Ordinance 19-03 states in part, “a tax is hereby imposed
19 upon all retailers in the incorporated and unincorporated territory of the District at the rate of an
20 **additional** one-half of one cent until June 30, 2055.” Section 7, “Use Tax Rate,” states in part,
21 “An excise tax is hereby imposed ... at the rate of an **additional** one-half of one cent until June
22 30, 2055.” See Exhibit A, p. 3 of 10 (emphasis added).

23 30. A true and correct copy of CCTA Resolution 19-55-P “Requesting the Contra Costa
24 County Board of Supervisors to Call and Consolidate a Special Election, Submitting to the
25 Qualified Voters a Ballot Measure Seeking Approval of a One-Half of One Cent Transactions
26 and Use Tax” adopted by the CCTA Board on October 30, 2019, is attached to this Petition as
27 Exhibit B. Its third paragraph states, “WHEREAS, the Authority currently imposes a retail
28 transactions and use tax in the incorporated and unincorporated territory of Contra Costa County,
and wishes to increase such tax for special governmental purposes at an **additional** rate of one-

1 half of one cent on the sale of tangible personal property and the storage, use, or other
2 consumption of such property.” See Exhibit B, p. 1 (emphasis added).

3 31. Consistent with CCTA Ordinance 19-03 (Exhibit A) and CCTA Resolution 19-55-P
4 (Exhibit B), the CONTRA COSTA COUNTY BOARD OF SUPERVISORS also characterized
5 the 2020 CCTA ballot measure as an “additional” tax in its official action. A true and correct
6 copy of Board of Supervisors Ordinance No. 2019-33 (Calling of Special Election for Voter
7 Approval to Augment Local Sales Tax for Transportation Purposes), approved by the BOARD
8 OF SUPERVISORS on November 19, 2019, is attached to this Petition as Exhibit C. Section I,
9 “Summary,” says in part, “This ordinance calls a special election, at the request of the Contra
10 Costa Transportation Authority (the Authority), for the purpose of submitting to the voters for
11 approval an **additional** one-half of one percent sales tax.” Section II, “Recitals and Findings,”
12 refers to “an **additional** countywide one-half of one percent sales tax for 35 years” and
13 “authorizing the **additional** one-half of one percent sales tax.” See Exhibit C, pp. 1-2 (emphasis
14 added).

15 32. In the November 2016 election, CCTA sponsored Measure X, an unsuccessful ballot
16 measure that sought a half-percent sales tax increase. A true and correct copy of the County
17 Counsel’s Impartial Analysis of Measure X is attached to this petition as Exhibit D. The first
18 sentence of the Impartial Analysis described CCTA’s measure as “an **additional** one-half of one
19 percent (0.5%)” sales tax. (emphasis added).

20 33. On or before December 16, 2019, County Counsel submitted to the Registrar of Voters a
21 document titled “COUNTY COUNSEL’S ANALYSIS OF CONTRA COSTA
22 TRANSPORTION AUTHORITY ORDINANCE PROPOSING A SALES TAX.” A true and
23 correct copy of that document is attached to this petition as Exhibit E. The first sentence of the
24 Impartial Analysis described CCTA’s measure as “an **additional** one-half of one percent
25 (0.5%)” sales tax. (emphasis added).

26 34. Apparently on December 18, 2019, County Counsel submitted to the Registrar of Voters
27 a second version of a document titled “COUNTY COUNSEL’S ANALYSIS OF CONTRA
28 COSTA TRANSPORTION AUTHORITY ORDINANCE PROPOSING A SALES TAX.” A
true and correct copy of that document is attached to this petition as Exhibit F. The reference to

1 “an additional one-half of one percent (0.5%)” sales tax in County Counsel’s Impartial Analysis
2 had been deleted. The phrase appears neither in the first sentence, nor anywhere else in the
3 document.

4 35. Petitioners assert the removal of the reference to “an additional one-half of one percent
5 (0.5%)” is a deliberate misrepresentation of the proposed CCTA measure. The County Counsel’s
6 removal of this key phrase that appeared clearly and prominently in CCTA’s ordinance and
7 resolution (Exhibits A and B), the BOARD OF SUPERVISORS’ ordinance (Exhibit C), the first
8 sentence of the 2016 Impartial Analysis (Exhibit D), and the first sentence of the first version of
9 the 2020 Impartial Analysis (Exhibit E) suggests County Counsel’s December 18th version of the
10 Impartial Analysis is not impartial. Removal of this key phrase from the first sentence
11 essentially eliminates voter notice of the tax increase. Voters are entitled to clear and prominent
12 notice of proposed tax increases in Impartial Analyses.

13 36. The 2016 Impartial Analysis (Exhibit D) and both versions of the 2020 Impartial
14 Analysis (Exhibits E and F) state in their second paragraph, “The proceeds from this sales tax
15 would supplement CCTA’s existing one-half of one percent (0.5%) sales tax.” Petitioners assert
16 that this is inadequate disclosure of a tax increase, especially with the absence of the word
17 “additional,” which actually was used in CCTA’s and BOARD OF SUPERVISORS’ ordinances.

18 37. County Counsel has a duty under Elections Code § 9160 to “prepare an impartial analysis
19 of the measure showing the effect of the measure on the existing law and the operation of the
20 measure.” Petitioners assert that the December 18th version of the Impartial Analysis (Exhibit
21 F), which omits the word “additional” that CCTA and the BOARD OF SUPERVISORS used
22 prominently in their ordinances, is misleading and therefore fails to meet this standard.

23 38. On December 24, 2019, Petitioners have submitted through their attorney a Public
24 Records Act request to County Counsel seeking disclosure of the individual who requested the
25 removal of the “additional” phrase. County Counsel informed Petitioners’ attorney on December
26 27, 2019 that said information will be provided no earlier than January 6, 2020

27 39. Therefore, Petitioners request a writ of mandate ordering County Counsel (or ordering
28 COOPER to order County Counsel ANDERSON) to restore the phrase “an additional one-half of
one percent (0.5%)” to the first sentence of the Impartial Analysis.

1 **County Counsel’s “Impartial Analysis” of CCTA Ballot Measure Improperly Excludes**
2 **Debt Service Interest From Her Analysis “Of the Tax Proceeds.”**

3 40. Second, the references to “of the tax proceeds” in the third paragraph of her Impartial
4 Analysis are impermissibly misleading. See Exhibit F. The four components “of the tax
5 proceeds” cited by the Impartial Analysis add to 100.0%, giving the voter the impression that
6 100.0% of the sales tax revenues will be spent exclusively on those four components. Yet none
7 of the four components in CCTA’s 2020 Transportation Expenditure Plan ("TEP" pages 4-5,
8 Exhibit G) discloses bond “interest” expenditures or other “debt service” expenditures. To be
9 consistent with the "Impartial Analysis's" fourth paragraph disclosure of CCTA's authorization to
10 issue bonds, estimated interest expenditures must be disclosed, to prevent the impression being
11 given that there are no costs associated with bond issuance and debt service.

12 41. The CCTA Board approved a “Debt Policy” in 2015 as Resolution 15-03-A to “reflect
13 changes in federal law and regulations arising from the Dodd-Frank Wall Street Transparency
14 and Accountability Act of 2010.” It says on Page 2 of 24, “Long-Term Capital Projects ...
15 Inherent in its long-term debt policies, the Authority recognizes that future taxpayers will benefit
16 from the capital investment and that it is appropriate that they pay a share of the asset cost.”
17 Consistent with CCTA’s “Debt Policy,” Petitioners assert that County Counsel’s Impartial
18 Analysis should inform voters of estimated interest expenditures associated with projects funded
19 by this tax increase (i.e., future taxpayers’ share of asset costs).

20 42. CCTA’s latest “Comprehensive Annual Financial Report” is for the fiscal year ended
21 June 30, 2019. Page 45 discloses that CCTA has \$693 million of long-term debt, which will
22 require \$204 million of interest payments through 2034. See attached Exhibit H. Unless CCTA
23 changes its bonding practices, bond interest expenditures for 2020 Measure J would be
24 substantially larger than the transportation planning and administrative components “of the tax
25 proceeds” and therefore must be disclosed in County Counsel’s analysis. County Counsel’s
26 latest “Impartial Analysis” gives voters the mistaken impression that none (0.0%) “of the tax
27 proceeds” will pay for debt service interest.

28 43. Therefore, Petitioners request a writ of mandate ordering ANDERSON (or ordering
COOPER to order ANDERSON) to re-write the third paragraph of the “Impartial Analysis” to

1 include accurate statements “of the tax proceeds” that include either an estimate of debt service
2 interest, or a statement that the portion of the tax proceeds that will be expended for debt service
3 interest is unknowable at this time, but will be the consequence of the amount of bonds issued
4 and the prevailing market interest rates. If the latter course is chosen, the following statement
5 should be included: "If CCTA's historic pattern of bonding is followed with this measure, x% [to
6 be determined] of the tax proceeds would be spent on interest."
7

8 **County Counsel’s Impartial Analysis of CCTA Ballot Measure Includes Argumentative &**
9 **Inaccurate Claims: “Reduce Congestion” & “Relieve Congestion.”**

10 44. Third, the second version of County Counsel’s Impartial Analysis (Exhibit F) does not
11 meet the Elections Code section 9160 standard because the phrases “reduce congestion” and
12 “relieve congestion” are argumentative and inaccurate. The point in contention is found twice in
13 the third paragraph of the Impartial Analysis: "According to the measure, proceeds from the sales
14 tax would be used to **reduce congestion...**" and “According to the TEP, 41.1% of the tax
15 proceeds will be used to **relieve congestion** on highways, interchanges, and major roads.”
16 (Emphasis added.)

17 45. The problem here is that CCTA is using the phrases “reduce congestion” and "relieve
18 congestion" to suggest to voters that they will experience less overall traffic. CCTA’s own
19 documents demonstrate the traffic will actually be significantly worse in the future, contrary to
20 the “reduce congestion” message being given in the ballot label. An Impartial Analysis must be
21 held to a higher standard than merely parroting the argumentative words of a measure's sponsor.

22 46. The TEP (Exhibit G) states on page 12, "ACHIEVING INTENDED OUTCOMES ...
23 CCTA will ensure funding in the TEP will achieve the outcomes identified in the 2017
24 Countywide Transportation Plan ("CTP")." The Impartial Analysis must indicate what those
25 outcomes are. CCTA’s own 2017 CTP Environmental Impact Report ("EIR," available as
26 Exhibit I) does not support CCTA’s assertion that its projects and programs would “reduce
27 congestion” or “relieve congestion.” See Exhibit I, true and correct copies of relevant pages of
28 the EIR, available at https://2017ctpupdate.net/wp-content/uploads/2017_CTP-DEIR_links_20170620.pdf. (Note: these pages from the Draft EIR were not revised in the Final EIR and

1 therefore constitute the EIR findings.) No EIR has been prepared for the 2020 TEP. Petitioners
2 and their allies are not aware of CCTA having produced a more recent countywide quantitative
3 analysis than the 2017 EIR. As such, it constitutes the only credible source of quantitative
4 information about traffic, congestion, and air quality.

5 47. The overall number of vehicle miles travelled (the product of the number of cars on the
6 road times the average trip length) increases from 23 million in 2017 to 28 million in 2040.
7 (Exhibit I, Table 2.1-4, page 2.1-21.) More cars on the road, in the absence of massive capacity
8 increases, will inevitably result in more congestion. This is confirmed by the finding on page
9 2.1-19 that by the year 2040, vehicle hours of delay ("VHD") would increase 166 percent.
10 "Travelers on major roadways throughout Contra Costa County would experience an appreciable
11 increase in total VHD as compared with the baseline condition. An appreciable increase in VHD
12 is defined as greater than 5 percent. (Significant and Unavoidable [environmental impact])"
13 (Exhibit I, DEIR page 2.1-21.) Table 2.1-3, DEIR page 2.1-19, shows that by the year 2040,
14 vehicle hours of delay would increase 166 percent, average freeway speeds would decline by 2.7
15 percent, and average arterial speeds would decline by 2.3 percent.

16 48. The "reduce congestion" and "relieve congestion" contentions in the current version of
17 County Counsel's "Impartial Analysis" are inconsistent with any of these findings. Delays are
18 the leading cause of unpredictable travel times.

19 49. Therefore, Petitioners request that a writ of mandate issue ordering that County Counsel's
20 Impartial Analysis be amended (or ordering COOPER to order ANDERSON to amend) to 1).
21 strike "reduce congestion and" and thereby amend the sentence to read: "According to the
22 measure, proceeds from the sales tax would be used to fix bottlenecks..."; 2). strike "relieve
23 congestion on" and replace that with "improve" so that the phrase at issue would be revised to
24 read, "According to the TEP, [insert actual percentage based on the interest/debt service
25 arguments *supra*]% of the tax proceeds will be used to improve highways, interchanges, and
26 major roads."; and 3). amend the Impartial Analysis to include: "According to CCTA's 2017
27 Countywide Transportation Plan's Environmental Impact Report, overall congestion in 2040 will
28 increase by 166%, highway and arterial roadway speeds will be slower than present, and
particulate air quality will be worsened."

1 **County Counsel's Impartial Analysis Is Incomplete Without Disclosure of the**
2 **Transportation Expenditure Plan's Lack of a Defined Project List.**

3 50. Fourth, the second version of County Counsel’s Impartial Analysis (Exhibit F) does not
4 meet the Elections Code 9160 standard because the Impartial Analysis fails to disclose the lack
5 of certainty as to how sales tax proceeds would be spent. CCTA’s Transportation Expenditure
6 Plan (TEP) for the 2020 ballot measure is extremely unusual in that it is not a defined list of
7 projects to be funded by the tax. Instead, the TEP contains at least thirteen examples of "may
8 include" or "may consider," as well as examples of "could include" and "could also be funded."
9 While the TEP is arguably compliant with the minimal requirements of Public Utilities Code §
10 180206, it does not provide voters with an assurance of how their taxes actually would be spent,
11 or whether the selections to be made in the future by CCTA will be effective in achieving the
12 desired outcomes (e.g., “reduce congestion).

13 51. At a minimum, County Counsel has a duty in her Impartial Analysis to inform voters that
14 the TEP is not a defined project list, but rather that CCTA will have great discretion in
15 determining most of the projects and programs to be funded. The Impartial Analysis should
16 inform voters as to whether a majority or supermajority vote of the Board will be required to
17 determine how and where to spend these discretionary dollars. Therefore, Petitioners request
18 that writ of mandate issue directing County Counsel to 1) include in the Impartial Analysis a
19 disclosure that the CCTA Board has discretion to determine how a large percentage of the
20 project funds would actually be spent; and 2) disclose whether future CCTA Board decisions
21 about allocating funding in the "may include, "may consider," “could include” and “could also be
22 funded” categories described *supra* would be considered “amendments” of the plan requiring
23 supermajority (66.66%) votes.

24 //
25 //
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1 57. Exhibit J to this Petition is a true and correct copy of the “Guide to Filing Measure
2 Arguments for County, Cities, School, and Special Districts 2020 Contra Costa Elections.” In
3 the Assignment of Letters section on page 6, the County's process is explained: "Letters are
4 assigned based upon a random draw." Note that a random draw is inconsistent with "continuing
5 in alphabetical order." (Elections Code § 13116(b).)

6 58. Exhibit K to this Petition is a true and correct copy of the list of ballot measures on the
7 Contra Costa County ballot in the March 2020 election, prepared by the County Elections
8 Division and posted on the County Elections Division website. Note that there is a total of seven
9 ballot measures. The County Elections Division gave them designations, “A,” “J,” “L,” “M,”
10 “R,” “T,” and “Y.” The CCTA Measure was given letter designation “J.”

11 59. Petitioners contend that Respondent COOPER and persons in the County Elections
12 Division acting pursuant to her direction and control acted in violation of Elections Code §
13 13116 in assigning “Measure J” to the CCTA Measure. Since the County Elections Division
14 commenced with letter “A,” the seven ballot measures on the March 2020 ballot in Contra Costa
15 County generally should have been assigned letters “A” through “G,” the first seven letters of the
16 alphabet in alphabetical order.

17 60. Petitioners request that a writ of mandate issue commanding Respondent COOPER and
18 persons in the County Elections Division acting pursuant to her direction and control to conform
19 the CCTA Measure letter designation to Elections Code § 13116 by assigning ballot letter
20 designation “B,” “C,” “D,” “E,” “F,” or “G” to the CCTA Measure. If the court issues a writ of
21 mandate changing the CCTA Measure ballot letter designation from “Measure J,” then
22 Petitioners further request that the authors of the Voter Guide Arguments and Rebuttals for the
23 CCTA Measure be given a reasonable opportunity to amend the text of their arguments and
24 rebuttals to reflect any new ballot measure letter designation.

25 61. Petitioners further request a declaratory judgment that the random draw ballot measure
26 letter designation process or method used by Respondent COOPER and persons in the County
27 Elections Division acting pursuant to her direction and control in the March 2020 election is in
28 violation of the Elections Code and an injunction issue, enjoining them from using a process in
violation in the Elections Code for ballot measure letter designations.

1
2 **Danger of E.C. § 13116(b) “Voter Confusion” With Existing CCTA “Measure J”**

3 62. Designation of the 2020 CCTA Measure as “Measure J” creates “voter confusion” with
4 the existing CCTA “Measure J” that voters passed in November 2004, which continues in effect
5 until 2035.

6 63. The Transportation Expenditure Plan (TEP) that will appear in the Voter Guide makes
7 approximately twenty-five references to the existing Measure J. The TEP also makes three
8 explicit references to the “existing Measure J.” If the CCTA measure on the March 2020 ballot
9 is designated “Measure J,” many voters might then incorrectly assume that a “yes” vote merely
10 extends the existing Measure J and is not a tax increase for a new investment program.

11 64. CCTA has placed signs at projects across the county that assert that “Measure J” funds
12 were used to fund the projects. If the CCTA Measure on the March 2020 ballot is designated
13 “Measure J,” then many voters might incorrectly assume that the passage of 2020 Measure J is
14 necessary to complete these existing “Measure J”-branded projects, including projects currently
15 under construction. The implication is that a “no” vote on 2020 Measure J would harm,
16 undermine, curtail or stop “Measure J” projects already underway.

17 65. Therefore, to avoid “voter confusion,” Petitioners request that a writ of mandate issue
18 ordering Respondent COOPER and her agents to designate a different ballot measure letter than
19 “Measure J” for the CCTA Measure in the March 2020 election.
20

21 **THIRD CAUSE OF ACTION**

22 **(Petition for Writ of Mandate – Elections Code sections 13119(b) and (c) and 13314)**

23 **(Against COOPER and REAL PARTIES)**
24

25 66. Petitioners hereby allege and incorporate by reference Paragraphs 1-65, inclusive.
26

27 **The Ballot Label for CCTA's Measure Improperly States the Sales Tax Rate.**

28 67. Based on the foregoing, CCTA has violated the law by submitting a ballot label that does
not comply with Elections Code §§ 13119(b) and 13119(c), and COOPER has violated the law

1 by accepting the ballot label in unlawful form, for printing and distribution to Electors in Contra
2 Costa County.

3 68. Elections Code § 13119(b) says, “If the proposed measure imposes a tax or raises the rate
4 of a tax, the ballot shall include in the statement of the measure to be voted on the amount of
5 money to be raised annually and the rate and duration of the tax to be levied.” Elections Code §
6 13119(c) says, “The statement of the measure shall be a true and impartial synopsis of the
7 purpose of the proposed measure, and shall be in language that is neither argumentative nor
8 likely to create prejudice for or against the measure.” The current ballot label language appears
9 calculated to mislead and prejudice voters to vote in favor, contrary to established law.

10 69. The ballot label accepted by the Registrar of Voters (Exhibit K, page 2):

11 **MEASURE _J_____**

12 **Contra Costa Transportation Authority**

13 **2/3 required to pass**

14 To:

- 15 Reduce congestion and fix bottlenecks on highways and major
- 16 roads;
- 17 Make commutes faster and more predictable;
- 18 Improve the frequency, reliability, accessibility, cleanliness, and
- 19 safety of buses, ferries, and BART;
- 20 Improve air quality;
- 21 Repave roads;

22 Shall the measure implementing a Transportation Expenditure
23 Plan, levying a ½ ¢ sales tax, providing an estimated \$103,000,000
24 for local transportation annually for 35 years that the State cannot
25 take, requiring fiscal accountability, and funds directly benefiting
26 Contra Costa County residents, be adopted?

27 70. The CCTA measure ballot question, as currently written, violates Elections Code §§
28 13119(b) and (c) because it incorrectly indicates that the rate is a “½¢ sales tax” which is
inconsistent with the plain language of the related ordinances.

1 71. Use of the “¢” symbol is an untrue synopsis of the proposed measure and would mislead
2 and confuse voters. The “¢” symbol represents units of currency. Voters may incorrectly
3 assume that the CCTA measure would impose a flat half-penny tax on each retail transaction
4 instead of the actual half-percent ad valorem tax. The “¢” symbol creates prejudice for the
5 measure because such voters would incorrectly believe that it would impose a mere half-penny
6 tax on a \$1000 purchase, where the actual tax imposed would be five dollars. Other voters,
7 especially many immigrants and many voters under age 40, likely do not know what the “¢”
8 symbol represents. The “¢” symbol does not appear on standard modern keyboards.

9 72. “County Counsel’s Analysis of Contra Costa Transportation Authority Ordinance
10 Proposing A Sales Tax” (Exhibits D, E and F) invariably refers to the new tax in “percent” and
11 “%” terms, e.g., “one-half of one percent (0.5%) retail transactions and use tax” and “0.5% sales
12 tax.” In the Impartial Analysis prepared pursuant to Elections Code § 9160(b)(1), the County
13 Counsel never uses the “¢” symbol or the term “cent.”

14 73. Use of the “¢” symbol would be inconsistent with the Elections Division’s practices for
15 ballot questions for recent elections. In 2016, the ballot question for Contra Costa Transportation
16 Authority’s Measure X stated, “... shall voters adopt the ordinance augmenting the sales tax by
17 ½% ...” See Exhibit D.

18 74. Therefore, Petitioners request that a writ of mandate issue ordering COOPER and the
19 Elections Division to strike the “¢” symbol and replace it with the “%” symbol in the 2020
20 CCTA sales tax measure ballot question.

21
22 **FOURTH CAUSE OF ACTION**

23 **Petition for Writ of Mandate - Elections Code sections 9106)**

24 **(Against COOPER and REAL PARTIES)**

25
26 75. Petitioners hereby allege and incorporate by reference Paragraphs 1-74, inclusive.

27 76. Based on the foregoing, CCTA has violated the law by submitting a ballot title and label
28 that does not comply with Elections Code sections 9051, 9105, and 13119, and Respondent has

1 violated the law by accepting the ballot title and label in unlawful form, for printing and
2 distribution to Electors in Contra Costa County.

3 77. Based on the foregoing, Petitioners are entitled to a writ of mandate pursuant to
4 Elections Code section 9106, to direct Respondent COOPER and/or Real Parties in Interest to
5 amend the CCTA measure ballot label¹ to include the information consistent with Elections Code
6 sections 9051, 9105, and 13119 prior to submission to the Electors for the March 3, 2020
7 election.

8 **CCTA Measure Ballot Label Is Untrue, Not Impartial, Argumentative & Prejudicial**

9 78. In *McDonough v. Superior Court* (2012) 204 Cal.App.4th 1169, the petitioners alleged
10 that a ballot label/question and the city clerk's analysis were misleading and biased in favor of
11 passage, rather than neutral as required by the Elections Code. The Court of Appeal concluded
12 that the ballot title and text, "PENSION REFORM," were impermissibly partisan. By combining
13 the word "reform" with "pension" in the title, all in capital letters, the city council had implicitly
14 characterized the existing pension system as defective, wrong, or susceptible to abuse, thereby
15 taking a biased position in the very titling of the measure itself. The Court of Appeal determined
16 the title should be altered to read "PENSION MODIFICATION" to eliminate the use of the
17 argumentative word "reform." The advocacy inherent in the introductory language of the ballot
18 question was deemed partisan and prejudicial. It was necessary to amend the ballot question to
19 conform to the standards of impartiality required by the Elections Code. The court issued a
20 peremptory writ of mandate and ordered the ballot title and ballot question be amended.

21 79. To satisfy the Elections Code § 13119 standard, four statements must be amended or
22 removed from the CCTA Measure ballot label (see Paragraph 69, *supra*) because they are untrue,
23 not impartial, argumentative and/or prejudicial. Petitioners propose as the standard for
24 evaluation that statements in the ballot question be consistent with CCTA's own 2017
25 Countywide Transportation Plan (CTP) Environmental Impact Report (EIR), available at
26 https://2017ctpupdate.net/wp-content/uploads/2017_CTP-DEIR_links_20170620.pdf. Exhibit I

27
28 ¹ Section 13119(a) uses the phrase "statement of the measure" interchangeably with the phrase
"ballot label" as used in the relevant section of the Elections Code, and as referenced in this
Petition.

1 contains relevant excerpts of the EIR. (Note that none of the citations to the DEIR below were
2 revised in the Final EIR.)

3 80. *Challenged Ballot Statement #1: "Reduce congestion."* As discussed *supra*, several parts
4 of the DEIR demonstrate the falsity of this statement. First, the overall number of vehicle miles
5 travelled (the product of the number of cars on the road times the average trip length) increases
6 from 23 million in 2017 to 28 million in 2040. (Exhibit I, Table 2.1-4, page 2.1-21.) More cars
7 on the road, in the absence of massive capacity increases, immediately suggest more congestion.
8 This is confirmed by the finding on Exhibit I, page 2.1-19 that by the year 2040, vehicle hours of
9 delay (VHD) would increase 166 percent. "Travelers on major roadways throughout Contra
10 Costa County would experience an appreciable increase in total VHD as compared with the
11 baseline condition. An appreciable increase in VHD is defined as greater than 5 percent.
12 (Significant and Unavoidable [environmental impact])" (Exhibit I, DEIR page 2.1-21.)

13 81. *Challenged Ballot Statement #2: "Make commutes faster and more predictable":* Exhibit
14 I, Table 2.1-3, DEIR page 2.1-19, shows that by the year 2040, vehicle hours of delay would
15 increase 166 percent, average freeway speeds would decline by 2.7 percent, and average arterial
16 speeds would decline by 2.3 percent. The ballot statement is inconsistent with any of these
17 findings. Delays are the leading cause of unpredictable travel times.

18 82. *Challenged Ballot Statement #3: "Improve air quality":* Page 2.3-23 of the DEIR (Exhibit
19 I) states that "New or expanded transportation facilities pursuant to the 2017 CTP would result in
20 a net increase in emissions of PM₁₀ from on-road mobile sources (including entrained dust) as
21 well as a net increase in emissions of PM_{2.5} entrained dust, as compared with the baseline
22 condition. (Significant and Unavoidable [environmental impact])." Clearly, the EIR finds that
23 the 2017 CTP Investment Program, to be funded by Measure J, will worsen particulate levels,
24 which are the component of air quality of greatest concern for their impact on human health. The
25 ballot statement is untrue for another reason, as well: the air quality improvements are not the
26 result of the 2017 CTP Investment Program. Table 2.3-4, on the same page of Exhibit I, indicates
27 that the very large air quality improvements from the 2017 CTP Investment Program are only
28 slightly greater than the improvements from the No Project Alternative. This indicates that the

1 CTP Alternative was only responsible for a tiny share of air quality improvements, with the rest
2 being the result of tightened statewide emissions standards.

3 83. Since CCTA's own data does not support these statements: "Reduce congestion," "Make
4 commutes faster and more predictable," and "Improve air quality", Petitioners request that a writ
5 of mandate issue, finding these phrases in the ballot to be untrue, not impartial, argumentative,
6 and prejudicial, so that the CCTA Measure ballot question does not meet the Elections Code §
7 13119(c) standard.

8 84. Petitioners further request the Court to order amendments to the CCTA Measure ballot
9 questions to include, or be substantially similar to:

10 "To:

- 11 • Fix bottlenecks on highways and major roads;
- 12 • Improve the frequency, reliability, accessibility, cleanliness, and safety of buses,
13 ferries, and BART;
- 14 • Repave roads;

15 shall the measure implementing a Transportation Expenditure Plan, levying a ½%
16 sales tax, providing an estimated \$103,000,000 for local transportation annually for
17 35 years that the State cannot take, requiring fiscal accountability, and funds directly
18 benefiting Contra Costa County residents, be adopted?"
19

20 **FIFTH CAUSE OF ACTION**

21 **(Petition for Writ of Mandate - Code of Civil Procedure sections 1085 et seq.)**

22 **(Against Respondent and Real Party in Interest)**
23

24 85. Petitioners hereby allege and incorporate by reference Paragraphs 1-84, inclusive.

25 **CCTA Measure Ballot Label Is Untrue, Not Impartial, Argumentative & Prejudicial**

26 86. Based on the foregoing, CCTA has violated the law by submitting a ballot title and/or
27 label that does not comply with Elections Code sections 9051, 9105, or 13119, and Respondent
28 has violated the law by accepting the ballot title and/or label in unlawful form, for printing and
distribution to Electors in Contra Costa County.

1 87. Based on the foregoing, Petitioners are entitled to a writ of mandate pursuant to Code
2 of Civil Procedure section 1085, et seq., to direct Respondent and/or Real Party in Interest to
3 amend the CCTA Measure ballot title and/or label to include the information required by, and
4 consistent with, Elections Code sections 9051, 9105, and 13119 prior to submission to the
5 Electors for the March 3, 2020 election.

6 Such amendments must include, or be substantially similar to:

7 "To:

- 8 • Fix bottlenecks on highways and major roads;
- 9 • Improve the frequency, reliability, accessibility, cleanliness, and safety of buses,
10 ferries, and BART;
- 11 • Repave roads;

12 shall the measure implementing a Transportation Expenditure Plan, levying a ½%
13 sales tax, providing an estimated \$103,000,000 for local transportation annually for
14 35 years that the State cannot take, requiring fiscal accountability, and funds directly
15 benefiting Contra Costa County residents, be adopted?"

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioners pray for relief as follows:

- 19 1. That this Court issue a peremptory writ of mandate ordering Respondents ANDERSON
20 and COOPER, and all persons acting pursuant to their direction and control, to amend and
21 correct County Counsel's Impartial Analysis for the CCTA Measure consistent with Elections
22 Code sections 9160, 9190, and 13314.
- 23 2. Alternatively, that this Court issue a peremptory writ of mandate ordering Respondents
24 ANDERSON and COOPER, and all persons acting pursuant to their direction and control, to
25 amend and correct the County Counsel's Impartial Analysis for the CCTA Measure as provided
26 in Paragraphs 39, 43, 49 and 51 of this Petition.
- 27 3. That this Court issue a peremptory writ of mandate ordering Respondent COOPER, and
28 all persons acting pursuant to her direction and control, to amend and correct the CCTA Measure
ballot letter designation consistent with Elections Code sections 13109, 13116, and 13314.

1 4. Alternatively, that this Court issue a peremptory writ of mandate ordering Respondent
2 COOPER, and all persons acting pursuant to her direction and control, to amend and correct the
3 CCTA Measure ballot letter designation as provided in Paragraphs 60, 61 and 65 of this Petition.

4 5. That this Court issue a peremptory writ of mandate ordering Respondent COOPER
5 and/or Real Parties in Interest, and all persons acting pursuant to their direction and control, to
6 amend and correct the ballot title and label for the CCTA Measure consistent with Elections
7 Code sections 9051, 9105, and 13119.

8 6. Alternatively, that this Court issue a peremptory writ of mandate ordering Respondent
9 COOPER and/or Real Parties in Interest, and all persons acting pursuant to their direction and
10 control, to amend and correct the ballot title and label for the CCTA Measure as provided in
11 Paragraph 83 and/or Paragraph 84 of this Petition, including:

- 12 a. strike the “¢” symbol and replace it with the “%” symbol in the 2020 sales tax
13 measure ballot question (Paragraph 74.)

14 7. That the Court award Petitioners costs, including reasonable attorney’s fees pursuant to
15 California Code of Civil Procedure section 1021.5, as permitted by law; and

16 8. That this Court grant such other and further relief as may be just and proper.
17

18 Dated this December 30th, 2019

19
20 Respectfully submitted,

21
22
23 _____
24 JASON A. BEZIS
25 Law Offices of Jason A. Bezis
26 Attorney for Petitioners
27
28