

**A159487**

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

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**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)]**

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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

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**APPELLANT’S APPENDIX ON APPEAL  
Volume 1 of 2  
Pages 1-266 of 291**

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*Michael Arata v. Deborah Cooper et al., A159487*  
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FILED

2019 DEC 30 P 3:34

CLERK OF SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

BY: [Signature]

PER LOCAL RULE, THIS  
CASE IS ASSIGNED TO  
DEPT 12 FOR ALL  
PURPOSES.

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.: N 19 - 2489 -

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 **PETITION FOR WRIT OF MANDATE**

2 Petitioners MICHAEL ARATA and RICHARD S. COLMAN, individuals and electors in  
3 Contra Costa County (“Petitioners”), hereby petition this Court for a peremptory writ of mandate  
4 pursuant to Elections Code sections 9106, 9190, and 13314(a)(1), and Code of Civil Procedure  
5 section 1085.

6  
7 **EXPEDITED HEARING REQUIRED**

8 As an elections-related writ, this Petition is entitled to preferential, expedited hearing per  
9 Elections Code sections 9106 and 13314(a)(3). Petitioners will file an ex parte application for an  
10 order shortening time for the Court to hold a trial setting conference in order to set an expedited  
11 briefing and hearing schedule immediately after filing this Petition. Local Rule of Court 3.47.  
12 Counsel for Petitioners will provide an advance courtesy copy of this Petition by e-mail in  
13 addition to regular service.

14 Specifically, Petitioners allege as follows:

- 15 1. Petitioners MICHAEL ARATA and RICHARD S. COLMAN are registered voters in the  
16 County of Contra Costa County and are, therefore, beneficially interested in the upcoming  
17 election of March 3, 2020 as electors within the jurisdiction of the Contra Costa Transportation  
18 Authority. Petitioner ARATA is officially known as James M. Arata on the voter rolls.
- 19 2. Respondent DEBORAH COOPER (hereinafter “COOPER”) is the Acting County Clerk-  
20 Recorder and Registrar of Voters for the County of Contra Costa.
- 21 3. Respondent SHARON L. ANDERSON (hereinafter “ANDERSON”) is County Counsel  
22 of the County of Contra Costa.
- 23 4. Real Party in Interest CONTRA COSTA TRANSPORTATION AUTHORITY  
24 (hereinafter “CCTA”), a special district, is the sponsor of a half-percent sales tax increase  
25 measure on the March 3, 2020 ballot, currently designated as “Measure J,” which will appear on  
26 ballots throughout Contra Costa County. At its October 30, 2019 meeting, the CCTA Board  
27 approved: (1) a Transportation Expenditure Plan, (2) Ordinance 19-03 “Imposing a Transactions  
28 and Use Tax” (see Exhibit A), and (3) Resolution 19-55 “Requesting the Contra Costa County  
Board of Supervisors to Call and Consolidate a Special Election, Submitting to the Qualified

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.

//

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 18<sup>th</sup> 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 18<sup>th</sup> 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](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."

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

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

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

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//  
//  
//  
//

1 SECOND CAUSE OF ACTION

2 **(Petition for Writ of Mandate – Declaratory Relief – Injunctive Relief -**  
3 **Elections Code sections 13109, 13116 and 13314)**  
4 **(Against COOPER)**  
5

6 52. Petitioners hereby allege and incorporate by reference Paragraphs 1-51, inclusive.  
7

8 **Registrar of Voters Employed an Illegal Method to Designate Ballot Measure Letters**

9 53. Respondent COOPER and persons in the County Elections Division acting pursuant to  
10 her direction and control failed to adhere to Elections Code § 13116 in designating the ballot  
11 measure letter for the 2020 CCTA Measure.

12 54. Elections Code § 13109 provides that “[t]he order of precedence of offices on the ballot  
13 shall be as listed below for those offices and measures that apply to the election for which this  
14 ballot is provided. Section 13109(n) says, “Under the heading, MEASURES SUBMITTED TO  
15 THE VOTERS and the appropriate heading from subdivisions (a) through (m), above, ballot  
16 measures in the order, state through district shown above, and within each jurisdiction, in the  
17 order prescribed by the official certifying them for the ballot.”

18 55. Elections Code § 13116(a) says in full, “In an election at which state, county, city, or  
19 other local measures are submitted to a vote of the voters, all state measures shall be numbered in  
20 numerical order, as provided in this chapter or division. All county, city, or other local measures  
21 shall be designated by a letter, instead of a figure, printed on the left margin of the square  
22 containing the description of the measure, commencing with the letter “A” and **continuing in**  
23 **alphabetical order**, one letter for each of these measures appearing on the ballot.” (emphasis  
24 added.)

25 56. Elections Code § 13116(b) says in full, “An elections official may commence designating  
26 local measures with any letter of the alphabet following the letter “A,” and **continuing in**  
27 **alphabetical order**, in order to avoid voter confusion that might result from different local  
28 measures carrying the same letter designation in successive elections.” (emphasis added.)

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 label<sup>1</sup> 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](https://2017ctpupdate.net/wp-content/uploads/2017_CTP-DEIR_links_20170620.pdf). Exhibit I

27  
28 <sup>1</sup> 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 PM<sub>10</sub> from on-road mobile sources (including entrained dust) as  
21 well as a net increase in emissions of PM<sub>2.5</sub> 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:

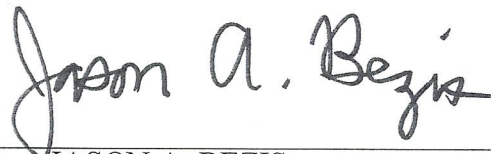
12 a. strike the “¢” symbol and replace it with the “%” symbol in the 2020 sales tax  
13 measure ballot question (Paragraph 74.)

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 30<sup>th</sup>, 2019  
19

20 Respectfully submitted,

21 

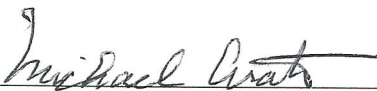
22  
23 \_\_\_\_\_  
24 JASON A. BEZIS  
25 Law Offices of Jason A. Bezis  
26 Attorney for Petitioners  
27  
28

1  
2 **VERIFICATION**

3 I, Michael Arata (also known as James M. Arata), am a registered voter in Contra Costa  
4 County and a petitioner in this action. All facts alleged in the above petition, not otherwise  
5 supported by citations to the record, exhibits or other documents, are true of my own personal  
6 knowledge, unless otherwise so stated.

7 I declare under penalty of perjury under the laws of the State of California that the  
8 foregoing is true and correct.

9 Executed this 30<sup>th</sup> day of December, 2019, in Contra Costa County, California.  
10

11  
12   
13 \_\_\_\_\_  
14 MICHAEL ARATA (a.k.a. JAMES M. ARATA)  
15 (VOTER REGISTRATION NAME)  
16

17 **VERIFICATION**

18 I, Richard S. Colman, am a registered voter in Contra Costa County and a petitioner in  
19 this action. All facts alleged in the above petition, not otherwise supported by citations to the  
20 record, exhibits or other documents, are true of my own personal knowledge, unless otherwise so  
21 stated.

22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct.

24 Executed this 30<sup>th</sup> day of December, 2019, in Contra Costa County, California.  
25  
26  
27  
28

\_\_\_\_\_  
RICHARD S. COLMAN



1 LAW OFFICES OF JASON A. BEZIS  
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7 Attorney for Petitioners

FILED

2019 DEC 30 P 3 37

CLERK OF SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

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

PER LOCAL RULE, THIS  
CASE IS ASSIGNED TO  
DEPT 12 FOR ALL  
PURPOSES.

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.: **N 19 - 2489 -**

**PETITIONERS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
PETITION FOR WRIT OF MANDATE;  
SUPPORTING MEMO OF POINTS AND  
AUTHORITIES; SUPPORTING  
DECLARATION OF AUTHENTICITY**

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

**Filed: December 30, 2019**



1           Petitioners hereby request that the Court take judicial notice of the following facts and  
2 documents:

3           1.       Pursuant to Evidence Code § 452(b), of the Contra Costa Transportation Authority  
4 (hereinafter “CCTA”) Ordinance 19-03, adopted by the CCTA board at its October 30, 2019  
5 meeting. In support thereof, attached hereto as Exhibit A is a true and correct copy of said  
6 document, as downloaded from CCTA’s official internet website (ten pages).

7           2.       Pursuant to Evidence Code § 452(b), of the Contra Costa Transportation Authority  
8 Resolution 19-55-P, adopted by the CCTA board at its October 30, 2019 meeting. In support  
9 thereof, attached hereto as Exhibit B is a true and correct copy of said document, as downloaded  
10 from CCTA’s official internet website (five pages).

11          3.       Pursuant to Evidence Code § 452(b), of the Contra Costa County Board of Supervisors  
12 Ordinance 2019-33, adopted by the Board of Supervisors at its November 19, 2019 meeting. In  
13 support thereof, attached hereto as Exhibit C is a true and correct copy of said document, as  
14 downloaded from Board of Supervisors’ official internet website (three pages).

15          4.       Pursuant to Evidence Code § 452(h), of the Measure X ballot question and “County  
16 Counsel’s Impartial Analysis of Measure X” that appeared in the Contra Costa County voter  
17 information guide for November 2016 election. In support thereof, attached hereto as Exhibit D  
18 is a true and correct copy of said document (one page).

19          5.       Pursuant to Evidence Code § 452(h), of the “COUNTY COUNSEL’S ANALYSIS OF  
20 CONTRA COSTA TRANSPORTATION AUTHORITY ORDINANCE PROPOSING A  
21 SALES TAX” that the Registrar of Voters distributed by e-mail on December 16, 2019. In  
22 support thereof, attached hereto as Exhibit E is a true and correct copy of said document (one  
23 page).

24          6.       Pursuant to Evidence Code § 452(h), of the “COUNTY COUNSEL’S ANALYSIS OF  
25 CONTRA COSTA TRANSPORTATION AUTHORITY ORDINANCE PROPOSING A  
26 SALES TAX” that bears a stamp in its top right corner that says “RECEIVED DEC 18 2019  
27 CONTRA COSTA COUNTY ELECTIONS.” In support thereof, attached hereto as Exhibit F is  
28 a true and correct copy of said document (one page).

1 7. Pursuant to Evidence Code § 452(b), of the CCTA 2020 Transportation Expenditure Plan  
2 (hereinafter "TEP"), adopted by the CCTA board as part of Ordinance 19-02 its October 30,  
3 2019 meeting. In support thereof, attached hereto as Exhibit G is a true and correct copy of  
4 relevant excerpts of said document (cover page, pp. 4-5, p. 12, p. 42, p. 45), as downloaded from  
5 CCTA's official internet website (six pages).

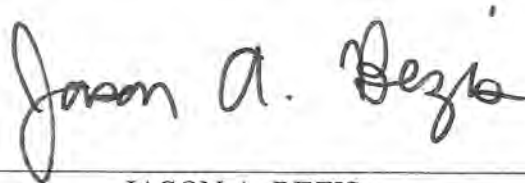
6 8. Pursuant to Evidence Code § 452(h), of CCTA's "Comprehensive Annual Financial  
7 Report" for the fiscal year ended June 30, 2019. In support thereof, attached hereto as Exhibit H  
8 is a true and correct copy of the cover page and page 45 of said document, as downloaded from  
9 CCTA's official internet website (two-page excerpt).

10 9. Pursuant to Evidence Code § 452(h), of CCTA's "Draft Environmental Impact Report  
11 State Clearinghouse #2017022054." In support thereof, attached hereto as Exhibit I is a true and  
12 correct copy of the cover page and pages 2.1-19, 2.1-21, and 2.1-23 of said document, as  
13 downloaded from CCTA's official internet website (two-page excerpt).

14 10. Pursuant to Evidence Code § 452(h), of the County Elections Division's "Guide to Filing  
15 Measure Arguments for County, Cities, School, and Special Districts 2020 Contra Costa  
16 Elections." In support thereof, attached hereto as Exhibit J is a true and correct copy of the full  
17 document, as downloaded from the County Elections Division's official internet website  
18 (fourteen pages).

19 11. Pursuant to Evidence Code § 452(h), of the County Elections Division's "MARCH 3,  
20 2020 PRIMARY ELECTION MEASURES" list. In support thereof, attached hereto as Exhibit  
21 K is a true and correct copy of the full document, as downloaded from the County Elections  
22 Division's official internet website (three pages).

23 Respectfully submitted,

24  
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27 Dated: December 30, 2019

28  
JASON A. BEZIS  
Law Offices of Jason A. Bezis  
Attorney for Petitioners



1 **DECLARATION OF AUTHENTICITY**

2 **DECLARATION OF JASON A. BEZIS**

3 I, Jason A. Bezis, declare as follows:

4 1. I am an attorney licensed to practice in the State of California. I am attorney for  
5 Petitioners in this case. I have personal knowledge of the facts stated in this declaration and am  
6 competent to testify as to them if called as a witness.

7 2. The attached Exhibit A is a true and correct copy of CCTA Ordinance 19-03 that I  
8 personally downloaded in electronic form from the official internet website of the Contra Costa  
9 Transportation Authority (hereinafter "CCTA") at:

10 [https://ccta.granicus.com/MetaViewer.php?view\\_id=1&clip\\_id=490&meta\\_id=47163](https://ccta.granicus.com/MetaViewer.php?view_id=1&clip_id=490&meta_id=47163)

11 3. The attached Exhibit B is a true and correct copy of CCTA Resolution 19-55-P that I  
12 personally downloaded in electronic form from the official CCTA internet website at:

13 [https://ccta.granicus.com/MetaViewer.php?view\\_id=1&clip\\_id=490&meta\\_id=47165](https://ccta.granicus.com/MetaViewer.php?view_id=1&clip_id=490&meta_id=47165)

14 4. The attached Exhibit C is a true and correct copy of Contra Costa County Board of  
15 Supervisors Ordinance No. 2019-33 that I personally downloaded in electronic form from the  
16 official internet website of the Contra Costa County Board of Supervisors at:

17 [http://64.166.146.245/mindocs/2019/BOS/20191119\\_1367/minutes/996%5F111919%20C%2E12%20Ord%2E%202019%2D33%2Epdf](http://64.166.146.245/mindocs/2019/BOS/20191119_1367/minutes/996%5F111919%20C%2E12%20Ord%2E%202019%2D33%2Epdf)

19 5. The attached Exhibit D is a true and correct copy of page CC-9009-X1 (also known as  
20 page CC 097-14) of the Contra Costa County voter information guide/sample ballot booklet for  
21 the November 2016 election. It includes the CCTA Measure X ballot question and County  
22 Counsel's Impartial Analysis of Measure X. This is a true and correct copy of the excerpted  
23 page from the voter information guide/sample ballot booklet that I personally received by U.S.  
24 mail from the County Registrar of Voters in 2016.

25 6. The attached Exhibit E is a true and correct copy of the version of "COUNTY  
26 COUNSEL'S ANALYSIS OF CONTRA COSTA TRANSPORTATION AUTHORITY  
27 ORDINANCE PROPOSING A SALES TAX" that County Elections Division staff  
28 ([candidate.services@vote.ccounty.us](mailto:candidate.services@vote.ccounty.us)) transmitted to me as an attachment (electronic file name  
"IA - CCTA Sales Tax.pdf") by e-mail (to my e-mail address at [jbezis@yahoo.com](mailto:jbezis@yahoo.com)) with the

1 message “Attached is the Impartial Analysis for CCTA Sales Tax – Measure J” on December 16,  
2 2019 at 1:25 p.m.

3 7. The attached Exhibit F is a true and correct copy of the version of “COUNTY  
4 COUNSEL’S ANALYSIS OF CONTRA COSTA TRANSPORTATION AUTHORITY  
5 ORDINANCE PROPOSING A SALES TAX” bearing in its top right corner “RECEIVED DEC  
6 18 2019 CONTRA COSTA COUNTY ELECTIONS” that I found in the CCTA ballot measure  
7 documents folder when I visited the County Elections Division office at 555 Escobar Street,  
8 Martinez on December 20, 2019.

9 8. The attached Exhibit G is a true and correct copy of relevant excerpted pages of CCTA’s  
10 “2020 Transportation Expenditure Plan” adopted through Ordinance 19-02 at the CCTA October  
11 30, 2019 board meeting that I personally downloaded in electronic form from the official internet  
12 website of the Contra Costa Transportation Authority (hereinafter “CCTA”) at:

13 [https://ccta.granicus.com/MetaViewer.php?view\\_id=1&clip\\_id=490&meta\\_id=47161](https://ccta.granicus.com/MetaViewer.php?view_id=1&clip_id=490&meta_id=47161)

14 9. The attached Exhibit H is a true and correct copy of relevant excerpted pages of CCTA’s  
15 “Comprehensive Annual Financial Report” for the fiscal year ended June 30, 2019 that I  
16 personally downloaded in electronic form from the official internet website of the Contra Costa  
17 Transportation Authority (hereinafter “CCTA”) at:

18 [https://www.ccta.net/wp-content/uploads/2019/12/Contra-Costa-Transportation-Authority-  
19 CAFR-FY2019-final-11-25-2019.pdf](https://www.ccta.net/wp-content/uploads/2019/12/Contra-Costa-Transportation-Authority-CAFR-FY2019-final-11-25-2019.pdf)

20 10. The attached Exhibit I is a true and correct copy of relevant excerpted pages of CCTA’s  
21 “Draft Environmental Impact Report State Clearinghouse #2017022054” that I personally  
22 downloaded in electronic form from the official internet website of the Contra Costa

23 Transportation Authority (hereinafter “CCTA”) at: [https://2017ctpupdate.net/wp-  
24 content/uploads/2017\\_CTP-DEIR\\_links\\_20170620.pdf](https://2017ctpupdate.net/wp-content/uploads/2017_CTP-DEIR_links_20170620.pdf)

25 11. The attached Exhibit J is a true and correct copy of the County Elections Division’s  
26 “Guide to Filing Measure Arguments for County, Cities, School, and Special Districts 2020  
27 Contra Costa Elections” that I personally downloaded in electronic form from the official

28 internet website of the County Elections Division at: [https://www.cocovote.us/wp-  
content/uploads/2020\\_Guide-to-Filing-Arguments-and-Rebuttals.pdf](https://www.cocovote.us/wp-content/uploads/2020_Guide-to-Filing-Arguments-and-Rebuttals.pdf)

1 12. The attached Exhibit K is a true and correct copy of the County Elections Division's  
2 "MARCH 3, 2020 PRIMARY ELECTION MEASURES" list that I personally downloaded in  
3 electronic form from the official internet website of the County Elections Division at:  
4 <https://www.cocovote.us/wp-content/uploads/Measure-Wording-List-11.pdf>

5 I declare under penalty of perjury pursuant to the laws of the State of California that the  
6 foregoing is true and correct. Executed on this 30<sup>th</sup> day of December, 2019, at Lafayette,  
7 California.

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14 JASON A. BEZIS

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# Exhibit A



## ORDINANCE 19-03

### AN ORDINANCE OF THE CONTRA COSTA TRANSPORTATION AUTHORITY IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

**WHEREAS**, Chapter 5 of Division 19 of the Public Utilities Code (PUC) and Part 1.6 of Division 2 of the Revenue and Taxation Code authorize the Contra Costa Transportation Authority (Authority) to impose a retail transactions and use tax in the incorporated and unincorporated territory of Contra Costa County if the tax ordinance is adopted by a two-thirds vote of the Authority Board and imposition of the tax is approved by two-thirds of electors voting on the measure and a Transportation Expenditure Plan (TEP) is adopted; and

**WHEREAS**, PUC Section 7291 of Revenue and Taxation Code authorizes the Authority to impose a transactions and use tax for the support of Countywide Transportation programs at a rate of no more than one-half of one cent that would, in combination with all taxes imposed pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code, exceed the limit established in PUC Section 7251.1; and

**WHEREAS**, the Authority, Contra Costa County Board of Supervisors, and all of the City/Town Councils representing both a majority of the Cities/Towns in Contra Costa County and a majority of the population residing in the incorporated areas of Contra Costa County adopted a TEP in accordance with PUC Section 180206.

#### **NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:**

- 1) Section 1.     TITLE. This ordinance shall be known as the 2020 Transactions and Use Tax Ordinance. The Contra Costa Transportation Authority hereinafter shall be called the "Authority". This ordinance shall be applicable in the incorporated and unincorporated territory of the County of Contra Costa, which shall be referred to herein as "District";
  
- 2) Section 2.     OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below;



- 3) Section 3. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:
- A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Chapter 5 of Division 19 of the PUC, which authorizes the Authority to adopt this tax ordinance, which shall be operative if a two-thirds majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose;
  - B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code;
  - C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the California Department of Tax and Fee Administration (CDTFA) in a manner that adapts itself as fully practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the CDTFA in administering and collecting the California State Sales and Use Taxes;
  - D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance; and
  - E. Nothing in this ordinance is intended to modify, repeal, or alter ordinances previously adopted by the Authority. The provisions of this ordinance shall apply solely to the transactions and use tax adopted herein.
- 4) Section 4. CONTRACT WITH STATE. Prior to the operative date, the Authority shall contract with the CDTFA to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the Authority shall not have contracted with the CDTFA prior to the operative date, it shall nevertheless so

contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract;

- 5) Section 5. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the District at the rate of an additional one-half of one cent until June 30, 2055, which tax shall be imposed, in part, concurrently with the existing one-half percent tax until the existing tax expires, of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance;
- 6) Section 6. PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the CDTFA;
- 7) Section 7. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the District of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of an additional one-half of one cent until June 30, 2055, which tax shall be imposed, in part, concurrently with the existing one-half percent tax until the existing tax expires, of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made;
- 8) Section 8. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein;
- 9) Section 9. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- A. Wherever the State of California is named or referred to as the taxing agency, the name of this Authority shall be substituted therefor. However, the substitution shall not be made when:
1. The word "State" is used as a part of the title of the State Controller, State Treasurer, Victim Compensation and Government Claims Board, CDTFA, State Treasury, or the Constitution of the State of California;
  2. The result of that substitution would require action to be taken by or against this Authority or any agency, officer, or employee thereof rather than by or against the CDTFA, in performing the functions incident to the administration or operation of this Ordinance;
  3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
    - a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property, which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or
    - b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property, which would not be subject to tax by the State under the said provision of that code.
  4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- B. The word "District" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.
1. "A retailer engaged in business in the District shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this State or for delivery in the State by the retailer and all persons related to the retailer that

exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

10) Section 10. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance;

11) Section 11. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax, the amount of any sales tax or use tax imposed by the State of California or by any city/town, city/town and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax; and

B. There are exempted from the computation of the amount of transactions tax, the gross receipts, from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made, and directly and exclusively, in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government;

2. Sales of property to be used outside the District which is shipped to a point outside the District, pursuant to the contract of sale, by delivery to such point, by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the District shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the PUC, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-District address and by a declaration

under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

- b. With respect to commercial vehicles, by registration to a place of business out-of-District and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.
  3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance;
  4. A lease of tangible personal property, which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance; and
  5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.
- C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this District of tangible personal property:
1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance;
  2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California;

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance;
  4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease, which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance;
  5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised;
  6. Except as provided in subparagraph (7), a retailer engaged in business in the District shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the District or participates within the District in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the District or through any representative, agent, canvasser, solicitor, subsidiary, or person in the District under the authority of the retailer; and
  7. "A retailer engaged in business in the District" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the PUC, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the District.
- D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the

Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

- 12) Section 12. BONDING AUTHORITY. This section incorporates by reference the provisions of PUC Sections 180200 (“Pay-as-you-go” financing) and 180250 through 180264. This ordinance authorizes the Authority to issue limited tax bonds to finance capital outlay expenditures as may be provided for in the adopted TEP, payable from the proceeds of the tax. In accordance with PUC Section 180250(b), the maximum bonded indebtedness, which may be outstanding at any one time shall be an amount equal to the sum of the principal of, and interest on, the bonds, but not-to-exceed the estimated proceeds of the tax, as determined by the plan. The amount of bonds outstanding at any one time does not include the amount of bonds, refunding bonds, or bond anticipation notes for which funds necessary for the payment thereof have been set aside for that purpose in a trust or escrow account;
- 13) Section 13. ANNUAL APPROPRIATIONS LIMIT. Article XIII(B) of the California Constitution requires the establishment of an annual appropriations limit for certain governmental entities. The Authority for Fiscal Year (FY) 2019-20 has been established at \$146,000,000. The appropriations limit shall be subject to adjustment as provided by law. All expenditures of the tax revenues imposed in this ordinance are subject to the appropriations limit of the Authority;
- 14) Section 14. USE OF PROCEEDS. The proceeds of the transaction and use tax imposed by this ordinance shall be used solely for the projects and purposes set forth in the 2020 TEP, as it may be amended from time to time, and for the administration thereof;
- 15) Section 15. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance;
- 16) Section 16. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the Authority, or against any officer of the State or the Authority, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected;

17) Section 17. COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

The Authority finds that the approval of this ordinance is not a “project” and, alternatively, is exempt from CEQA. The ordinance is intended to provide a funding mechanism for future projects and programs related to the Authority’s provision of transportation services. The ordinance does not commit the Authority to any particular project, program, or capital improvement. Accordingly, the Authority hereby finds that, under CEQA Guidelines Section 15378(b)(4), adoption of this ordinance is not a project subject to the requirements of CEQA because the ordinance is merely “[t]he creation of [a] government funding mechanism or other fiscal activity which do[es] not involve any commitment to any specific project, which may result in a potentially significant physical impact on the environment.” (Cal. Code Regs., tit. 14, Section 15378, subd. (b)(4); see also *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments* 179 Cal.App.4th 113, 123.) Further, because the ordinance does not authorize the construction of any projects that may result in any direct or indirect physical change in the environment and is subject to further discretionary approvals, including the pre-conditions found in PUC Section 180206(b), approving the ordinance is not an approval that “commits the agency to a definite course of action.” (CEQA Guidelines Section 15352.) The timing, design, and approval of individual projects to be funded by the ordinance are dependent on funding availability, need, and CEQA review. Thus, the ordinance has no potential for causing a significant effect on the environment and is exempt from further review under CEQA. (CEQA Guidelines Section 15061(b)(3).);

18) Section 18. REQUEST FOR ELECTION. The Authority hereby requests the Contra Costa County Board of Supervisors to place this ordinance before the voters for approval on the March 3, 2020 ballot. The proposition to be placed on the ballot shall read substantially as follows:

To:

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



shall the measure implementing a Transportation Expenditure Plan, levying a 1/2¢ sales tax, providing an estimated \$103,000,000 for local transportation annually for 35 years that the State cannot take, requiring fiscal accountability, and funds directly benefiting Contra Costa County residents, be adopted?

- 19) Section 19. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby;
- 20) Section 20. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the District transactions and use taxes and shall take effect immediately or as soon thereafter as the tax may be lawfully imposed;
- 21) Section 21. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire on June 30, 2055.

PASSED AND ADOPTED by the Contra Costa Transportation Authority Board of Directors in Walnut Creek, State of California, on October 30, 2019, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

Robert Taylor, Chair

**This Ordinance 19-03 was entered into at a special meeting of the Contra Costa Transportation Authority Board held on October 30, 2019, in Walnut Creek, California, and shall become effective as provided above.**

Attest:

---

Tarienne Grover, Clerk of the Board

# Exhibit B



**RESOLUTION 19-55-P**

**RE:     REQUESTING THE CONTRA COSTA COUNTY BOARD OF SUPERVISORS TO  
CALL AND CONSOLIDATE A SPECIAL ELECTION, SUBMITTING TO THE  
QUALIFIED VOTERS A BALLOT MEASURE SEEKING APPROVAL OF A ONE-HALF  
OF ONE CENT TRANSACTIONS AND USE TAX**

**WHEREAS**, Chapter 5 of Division 19 of the Public Utilities Code (PUC) and Part 1.6 of Division 2 of the Revenue and Taxation Code authorizes the Contra Costa Transportation Authority (Authority) to impose a retail transactions and use tax in the incorporated and unincorporated territory of a county if the tax ordinance is adopted by a two-thirds vote of the Authority Board and imposition of the tax is approved by two-thirds of electors voting on the measure and a Transportation Expenditure Plan (TEP) is adopted; and

**WHEREAS**, PUC Section 7291 of the Revenue and Taxation Code authorizes the Authority to impose a transactions and use tax for the support of Countywide Transportation programs at a rate of no more than one-half of one cent that would, in combination with all taxes imposed pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code, exceed the limit established in PUC Section 7251.1; and

**WHEREAS**, the Authority currently imposes a retail 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-half of one cent on the sale of tangible personal property and the storage, use, or other consumption of such property; and

**WHEREAS**, the Authority, Contra Costa County Board of Supervisors, and all of the City/Town Councils representing both a majority of the Cities/Towns in Contra Costa County and a majority of the population residing in the incorporated areas of Contra Costa County adopted a TEP in accordance with PUC Section 180206; and

**WHEREAS**, on October 30, 2019, the Authority held a public special meeting after due notice regarding the adoption of Ordinance 19-03 proposing a retail transactions and use tax in the incorporated and unincorporated territory of Contra Costa County, which was adopted; and

**WHEREAS**, PUC Section 180201 authorizes the Authority to request the Contra Costa County Board of Supervisors to call a special election for the purpose of submitting Ordinance 19-03 to the qualified electors; and

**WHEREAS**, PUC Section 180203 provides that Contra Costa County shall conduct the special election called by the Contra Costa County Board of Supervisors in the same manner provided by law for the conduct of special elections by Contra Costa County; and

**WHEREAS**, the Authority desires to request that the Contra Costa County Board of Supervisors call and order a special election to be consolidated with the statewide general election to be held on Tuesday, March 3, 2020; to request the Contra Costa County Board of Supervisors to take any and all necessary steps to conduct the consolidated election; and to order a special election on Ordinance 19-03 and consolidate the special election of the ordinance with the statewide special election to be held on March 3, 2020.

**THEREFORE, NOW, BE, IT RESOLVED**, that the Contra Costa Transportation Authority hereby:

- 1) Section 1. Findings. The Authority finds that the foregoing recitals are true and correct and are hereby incorporated and adopted as findings and determinations by the Authority as if fully set forth herein;
- 2) Section 2. Call, Consolidation and Conduct of Election.
  - a) Pursuant to PUC Sections 180201 and 180203, the Authority calls and requests that the Contra Costa County Board of Supervisors call a special election for the purpose of submitting Ordinance 19-03 to the qualified electors;
  - b) Pursuant to California Elections Code Section 10400 *et seq*, the Authority hereby requests that the Contra Costa County Board of Supervisors consent to the consolidation of the election for Ordinance 19-03 with the statewide General Election to be held on Tuesday, March 3, 2020. The consolidated election shall be held and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and closed, ballots counted and returned, returns canvassed, results declared, certificates of election issued, and all other proceedings incidental to and connected with the election shall be regulated and done by Contra Costa County in accordance with the provisions of law regulating the regularly scheduled statewide General Election, including but not limited to, California Elections Code Section 10418;

- c) The Contra Costa County Board of Supervisors is requested to issue instructions to the Contra Costa County Elections Official to take any and all steps necessary for the holding of the consolidated election, including preparation of arguments for and against the measure and the impartial analysis, canvassing the returns of that election with respect to the votes cast in Contra Costa County and certifying the results to the Authority;
  - d) The Authority recognizes that additional costs will be incurred by Contra Costa County by reason of this consolidation and agrees to reimburse Contra Costa County for all costs; and
  - e) The Clerk of the Board is hereby authorized and directed to cooperate with the Contra Costa County Elections Official and to follow the procedures and meet all deadlines established by Contra Costa County.
- 3) Section 3. Sample Ballot and Voter Information Guide. Pursuant to PUC Section 180203, the sample ballot to be mailed to the voters, pursuant to Section 13303 of the Elections Code, shall provide the full proposition, as set forth in Section 5 of this resolution, and the voter information guide shall include the entire adopted TEP attached hereto as Exhibit A.
- 4) Section 4. Submission of Proposed Transactions and Use Tax Ordinance. Pursuant to Government Code Section 53724, any other applicable requirements of State law, and as otherwise set forth herein, the Authority hereby orders Ordinance 19-03 attached hereto as Exhibit B and by this reference incorporated herein, and made an operative part hereof, to be submitted to the qualified voters of the incorporated and unincorporated territory of the Contra Costa County at the statewide election to be held on Tuesday, March 3, 2020. The Authority approved Ordinance 19-03 by a two-thirds vote of all Commissioners of the Authority Board. Ordinance 19-03 shall become effective if a majority of the qualified voters of the incorporated and unincorporated territory of Contra Costa County voting on the ballot measure set forth in Section 5 below vote in favor of the ballot measure;
- 5) Section 5. Ballot Measure. In addition to any other matters required by law, there shall be presented to the voters the question printed substantially as follows:

Measure ____:		
<p>To:</p> <ul style="list-style-type: none"> <li>• Reduce congestion and fix bottlenecks on highways and major roads;</li> <li>• Make commutes faster and more predictable;</li> <li>• Improve the frequency, reliability, accessibility, cleanliness, and safety of buses, ferries, and BART;</li> <li>• Improve air quality;</li> <li>• Repave roads;</li> </ul> <p>shall the measure implementing a Transportation Expenditure Plan, levying a 1/2¢ sales tax, providing an estimated \$103,000,000 for local transportation annually for 35 years that the State cannot take, requiring fiscal accountability, and funds directly benefiting Contra Costa County residents, be adopted?</p>	YES	
	NO	

6) Section 6. Notice and Publication of Ballot Measure.

- a. The Clerk of the Board shall, not later than the 88<sup>th</sup> day prior to the special election to be held on Tuesday, March 3, 2020, file with the Contra Costa County Board of Supervisors and the Contra Costa County Elections Official a certified copy of this resolution; and
- b. The Clerk of the Board is authorized and directed to give notice required by law.

7) Section 7. California Environmental Quality Act of 1970 (CEQA). The approval of this resolution is not a “project” and, alternatively, is exempt from CEQA. The transactions

and use tax to be submitted to the voters is a special tax that will be used to fund programs identified in the TEP; it is not a commitment to any particular action. Thus, it is not a CEQA “approval” that “commits” the agency to a definite course of action. (State CEQA Guidelines Section 15352). Further, under CEQA Guidelines Section 15378(b)(4), the tax is not a project within the meaning of CEQA because, as the tax is merely “[t]he creation of [a] government funding mechanism or other fiscal activity which do[es] not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.” (Cal. Code Regs., tit. 14, Section 15378, subd. (b)(4).) The timing, design, and approval of individual projects to be funded by the tax (if adopted by the voters) are dependent on funding availability, need, and CEQA review. Thus, the adoption of this resolution has no potential for causing a significant effect on the environment and is, therefore, exempt from further review under CEQA. (State CEQA Guidelines Section 15061 (b)(3).);

- 8) Section 8. Severability. If any provision or clause of this resolution, the measure proposed by the resolution, or any application of any of the foregoing to any person or circumstance is held invalid, unconstitutional, or otherwise repealed by act of law, such invalidity shall not affect any other provisions or clauses of the same, which can be given effect without the invalid provision, clause, or application. To this end, the provisions and clauses of this resolution and the proposed measure are hereby declared to be severable; and
- 9) Section 9. Effective Date. This resolution shall take effect immediately on its adoption.

This resolution was entered into at a special meeting of the Contra Costa Transportation Authority Board held on October 30, 2019 in Walnut Creek, California by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Robert Taylor, Chair

Attest:

---

Tarienne Grover, Clerk of the Board

# Exhibit C



**ORDINANCE NO. 2019-33**  
**(Calling of Special Election for Voter Approval to Augment Local Sales Tax for Transportation Purposes)**

The Contra Costa County Board of Supervisors ordains as follows:

**SECTION I. SUMMARY.** This ordinance calls a special election, at the request of the Contra Costa Transportation Authority (the Authority), for the purpose of submitting to the voters for approval an additional one-half of one percent sales tax for the transportation projects and programs described in the tax ordinance and county transportation expenditure plan adopted by the Authority on October 30, 2019.

**SECTION II. RECITALS AND FINDINGS.** This ordinance is made with reference to the following recitals and findings:

Local highway and transportation improvements in Contra Costa County are needed to address countywide mobility needs and alleviate traffic congestion that threatens the economic viability of the area and adversely impacts the quality of life in the County.

To manage current and future local transportation maintenance and improvement needs, local jurisdictions need to develop and implement local funding programs that go significantly beyond current federal and state funding, which is inadequate to resolve these problems.

It is in the public interest, under the Local Transportation Authority and Improvement Act (Public Utilities Code Section 180000 and following), to allow the voters in Contra Costa County to implement a new retail transactions and use tax (sales tax) ordinance to raise additional local revenues for a transportation expenditure plan that funds transportation improvements and maintenance and meets local transportation needs in a timely manner.

In 1988, voters in Contra Costa County passed Measure C, which created a one-half cent sales tax for 20 years to support transportation programs and projects. In 2004, voters approved Measure J, which extended the transportation sales tax for an additional 25 years beyond the previous expiration date.

On August 28, 2019, the Authority authorized the release of a proposed Transportation Expenditure Plan, *A Transformative Plan for Contra Costa's Future*,

**ORDINANCE NO. 2019-33**

*2020 Transportation Expenditure Plan*, to the County, cities and towns to consider, among other matters, establishing an additional countywide one-half of one percent sales tax for 35 years to increase the funding of transportation projects, subject to approval by the qualified electors on the March 3, 2020 ballot.

All of Contra Costa County's nineteen cities and towns representing 100 percent of the incorporated area population, and the County Board of Supervisors, have approved the Transportation Expenditure Plan prior to its final approval by the Authority Board.

On October 30, 2019, the Authority Board approved the Transportation Expenditure Plan and requested that the Contra Costa County Board of Supervisors call a special election for the purpose of submitting Authority Ordinance No. 19-03, authorizing the additional one-half of one percent sales tax, to voters on the March 3, 2020 ballot.

**SECTION III. CALL OF SPECIAL ELECTION.** At the request of the Authority, pursuant to Public Utilities Code sections 180201 and 180203, the Board of Supervisors hereby calls a special election for the purpose of submitting the following proposition to the voters of the incorporated and unincorporated territory of Contra Costa County for approval:

"To:

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

shall the measure implementing a Transportation Expenditure Plan, levying a 1/2¢ sales tax, providing an estimated \$103,000,000 for local transportation annually for 35 years that the State cannot take, requiring fiscal accountability, and funds directly benefiting Contra Costa County residents, be adopted?"

**SECTION IV. CONSOLIDATION.** As requested by the Authority in Authority Resolution 19-55-P, the election shall be consolidated with the statewide primary election to be held on Tuesday, March 3, 2020.

**ORDINANCE NO. 2019-33**

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000054

**SECTION V. CONDUCT OF ELECTION.** Pursuant to Public Utilities Code Section 180203(b), the County Clerk (Elections Clerk) shall conduct this election in the same manner as provided by law for the conduct of special elections by a county.

**SECTION VI. SAMPLE BALLOT AND VOTER HANDBOOK.** Pursuant to Public Utilities Code Section 180203(c), the sample ballot to be mailed to the voters shall contain the full proposition, as set forth in Section III of this ordinance, and the voter information handbook shall include the entire adopted county transportation expenditure plan and the tax ordinance (Authority Ordinance No. 19-03) referred to in Section II of this ordinance.

**SECTION VII. ELECTION COST.** Pursuant to Public Utilities Code section 180203(a) and Authority Resolution 19-55-P, the Authority shall reimburse the County for all costs of conducting this election, including those relating to consolidation of the election.

**SECTION VIII. EFFECTIVE DATE.** This ordinance becomes effective immediately upon passage and within 15 days after passage shall be published once with the names of supervisors voting for and against it in the EAST BAY TIMES, a newspaper published in this county.

PASSED on November 19, 2019, by the following vote:

AYES: *Gioia, Andersen, Burgis, Mitchoff, Glover*  
NOES: *None*  
ABSENT: *None*  
ABSTAIN: *None*

ATTEST: David Twa, Clerk of the Board  
of Supervisors and County Administrator

  
Board Chair

By:   
Deputy Clerk



TLG:  
H:\2019\Conservation and Development\CCTA tax election ordinance.doc

**ORDINANCE NO. 2019-33**

# Exhibit D

**MEASURE X  
CONTRA COSTA TRANSPORTATION AUTHORITY  
DISTRICT**

To implement a Transportation Expenditure Plan to continue:

- Repairing potholes/fixing roads;
- Improving BART capacity/reliability
- Improving Highways 680, 80, 24, and 4;
- Enhancing bus/transit including for seniors and people with disabilities;
- Increasing bicycle/pedestrian safety;
- Improving air quality;
- Reducing traffic;

shall voters adopt the ordinance augmenting the sales tax by ½% raising ninety-seven million dollars for transportation improvements annually for 30 years with independent oversight, audits, and all money benefitting local residents?

**COUNTY COUNSEL'S IMPARTIAL ANALYSIS OF  
MEASURE X**

The governing body of the Contra Costa Transportation Authority ("CCTA") has proposed a measure asking voters to approve an additional one-half of one percent (0.5%) retail transactions and use tax – a sales tax – to fund certain transportation improvements in Contra Costa County.

The sales tax would be collected in the incorporated and unincorporated areas of Contra Costa County, from April 1, 2017, until March 31, 2047. The proceeds from this sales tax would supplement CCTA's existing one-half of one percent (0.5%) sales tax, which will continue to be collected until March 31, 2034.

According to the measure, proceeds from the sales tax would be used to "implement a Transportation Expenditure Plan to continue repairing potholes/fixing roads; improving BART capacity/reliability; improving Highways 680, 80, 24, and 4; enhancing bus/transit including for seniors and people with disabilities; increasing bicycle/pedestrian safety; improving air quality; [and] reducing traffic." Sales tax proceeds may only be used for the projects and purposes specified in CCTA's Transportation Expenditure Plan ("TEP"), which is included in the Voter Information Handbook, and any future amendments to the TEP. According to the TEP, 26.79% of the tax proceeds will fund BART, bus, ferry, and train networks; 23.79% of the tax proceeds will fund fixing local streets and roads; 21.98% of the tax proceeds will fund building sustainable communities and protecting the environment; 20.71% of the tax proceeds will fund reducing congestion and smoothing traffic; 6.23% of the tax proceeds will fund transportation for children, seniors,

and people with disabilities; and 0.5% of the tax proceeds will fund administrative costs.

Approval of this measure also would authorize CCTA to issue limited tax bonds to finance projects described in the TEP. The maximum bonded indebtedness may not exceed the estimated proceeds of the sales tax.

According to the TEP, CCTA's Public Oversight Committee will provide oversight of all expenditures of the sales tax proceeds and will report to the public. This committee will review annual audits, the allocation of the tax proceeds, the performance of projects and programs in the TEP, and compliance by local jurisdictions. Expenditures of sales tax proceeds also would be subject to annual independent audits.

Two-thirds of those voting on the ballot measure must approve the measure for it to pass.

A "yes" vote is a vote in favor of authorizing this 0.5% sales tax.

A "no" vote is a vote against authorizing this 0.5% sales tax.

# Exhibit E

**COUNTY COUNSEL’S ANALYSIS OF  
CONTRA COSTA TRANSPORTATION AUTHORITY ORDINANCE  
PROPOSING A SALES TAX**

The governing body of the Contra Costa Transportation Authority (“CCTA”) has proposed a measure asking voters to approve an additional one-half of one percent (0.5%) retail transactions and use tax – a sales tax – to fund certain transportation improvements in Contra Costa County.

The sales tax would be collected in the incorporated and unincorporated areas of Contra Costa County from July 1, 2020, until June 30, 2055. The proceeds from this sales tax would supplement CCTA’s existing one-half of one percent (0.5%) sales tax, which will continue to be collected until March 31, 2034.

According to the measure, proceeds from the sales tax would be used to reduce congestion and fix bottlenecks on highways and major roads; make commutes faster and more predictable; improve the frequency, reliability, accessibility, cleanliness, and safety of buses, ferries, and BART; improve air quality; and repave roads. Sales tax proceeds may only be used for the projects and purposes specified in CCTA’s Transportation Expenditure Plan (“TEP”), which is included in the Voter Information Handbook, and any future amendments to the TEP. According to the TEP, 41.1% of the tax proceeds will be used to relieve congestion on highways, interchanges, and major roads; 54.9% of the tax proceeds will be used to improve transit and transportation countywide; 3.0% of the tax proceeds will fund transportation planning, facilities and services; and 1.0% of the tax proceeds will fund administrative costs.

Approval of this measure also would authorize CCTA to issue limited tax bonds to finance projects described in the TEP. The maximum bonded indebtedness may not exceed the estimated proceeds of the sales tax.

According to the TEP, CCTA’s Public Oversight Committee will provide oversight of all expenditures of the sales tax proceeds and will report to the public. This committee will review annual audits, the allocation of the tax proceeds, the performance of projects and programs in the TEP, and compliance by local jurisdictions. Expenditures of sales tax proceeds also would be subject to annual independent audits.

Two-thirds of those voting on the ballot measure must approve the measure for it to pass.

A “yes” vote is a vote in favor of authorizing this 0.5% sales tax.

A “no” vote is a vote against authorizing this 0.5% sales tax.

# Exhibit F



**COUNTY COUNSEL'S ANALYSIS OF  
CONTRA COSTA TRANSPORTATION AUTHORITY ORDINANCE  
PROPOSING A SALES TAX**

The governing body of the Contra Costa Transportation Authority ("CCTA") has proposed a measure asking voters to approve a retail transactions and use tax – a sales tax – to fund certain transportation improvements in Contra Costa County. State law authorizes CCTA to adopt an ordinance proposing a one-half of one percent (0.5%) sales tax.

The sales tax would be collected in the incorporated and unincorporated areas of Contra Costa County from July 1, 2020, until June 30, 2055. The proceeds from this sales tax would supplement CCTA's existing one-half of one percent (0.5%) sales tax, which will continue to be collected until March 31, 2034.

According to the measure, proceeds from the sales tax would be used to reduce congestion and fix bottlenecks on highways and major roads; make commutes faster and more predictable; improve the frequency, reliability, accessibility, cleanliness, and safety of buses, ferries, and BART; improve air quality; and repave roads. Sales tax proceeds may only be used for the projects and purposes specified in CCTA's Transportation Expenditure Plan ("TEP"), which is included in the Voter Information Handbook, and any future amendments to the TEP. According to the TEP, 41.1% of the tax proceeds will be used to relieve congestion on highways, interchanges, and major roads; 54.9% of the tax proceeds will be used to improve transit and transportation countywide; 3.0% of the tax proceeds will fund transportation planning, facilities and services; and 1.0% of the tax proceeds will fund administrative costs.

Approval of this measure also would authorize CCTA to issue limited tax bonds to finance projects described in the TEP. The maximum bonded indebtedness may not exceed the estimated proceeds of the sales tax.

According to the TEP, CCTA's Public Oversight Committee will provide oversight of all expenditures of the sales tax proceeds and will report to the public. This committee will review annual audits, the allocation of the tax proceeds, the performance of projects and programs in the TEP, and compliance by local jurisdictions. Expenditures of sales tax proceeds also would be subject to annual independent audits.

Two-thirds of those voting on the ballot measure must approve the measure for it to pass.

A "yes" vote is a vote in favor of authorizing this 0.5% sales tax.

A "no" vote is a vote against authorizing this 0.5% sales tax.

# Exhibit G



CONTRA COSTA  
transportation  
authority

# A TRANSFORMATIVE PLAN FOR CONTRA COSTA'S FUTURE

2020 Transportation Expenditure Plan



000063

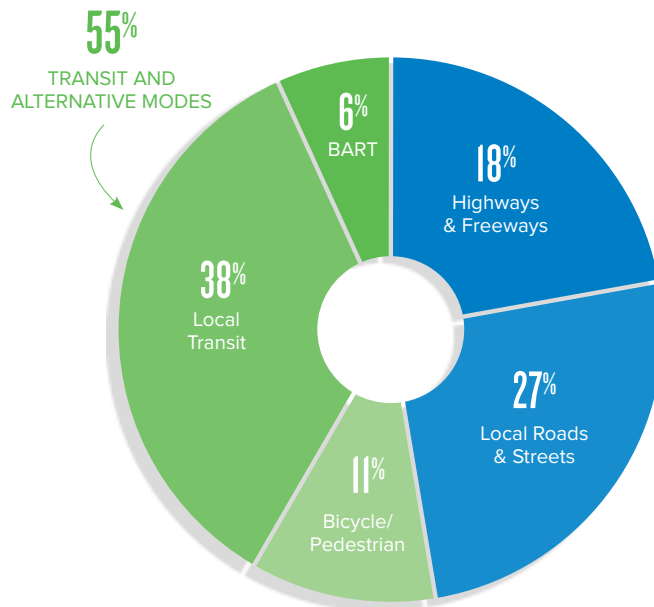
## TRANSPORTATION EXPENDITURE PLAN FUNDING SUMMARY

FUNDING CATEGORIES	SUBTOTALS	
	\$ (millions)*	%
<b>RELIEVING CONGESTION ON HIGHWAYS, INTERCHANGES, AND MAJOR ROADS</b>	<b>\$1,484</b>	<b>41.1</b>
<b>Improve State Route 242 (SR-242), Highway 4, Transit, and eBART Corridor</b>	<b>705</b>	<b>19.5</b>
Relieve Congestion and Improve Access to Jobs Along Highway 4 and SR-242	200	5.5
Improve Local Access to Highway 4 and Byron Airport	150	4.2
East County Transit Extension to Brentwood and Connectivity to Transit, Rail, and Parking	100	2.8
Improve Traffic Flow on Major Roads in East County	107	3.0
Enhance Ferry Service and Commuter Rail in East and Central County	50	1.4
Improve Transit Reliability Along SR-242, Highway 4, and Vasco Road	50	1.4
Additional eBART Train Cars	28	0.8
Seamless Connected Transportation Options	20	0.6
<b>Modernize I-680, Highway 24, Transit, and BART Corridor</b>	<b>536</b>	<b>14.9</b>
Relieve Congestion, Ease Bottlenecks, and Improve Local Access Along the I-680 Corridor	200	5.5
Improve Traffic Flow on Major Roads in the Central County and Lamorinda	145	4.0
Improve Transit Reliability along the I-680 and Highway 24 Corridors	50	1.4
Provide Greater Access to BART Stations Along I-680 and Highway 24	49	1.4
Improve Traffic Flow on Highway 24 and Modernize the Old Bores of Caldecott Tunnel	35	1.0
Improve Traffic Flow on Major Roads in San Ramon Valley	32	0.9
Seamless Connected Transportation Options	25	0.7
<b>Enhance I-80, I-580 (Richmond-San Rafael Bridge), Transit, and BART Corridor</b>	<b>243</b>	<b>6.7</b>
Improve Transit Reliability Along the I-80 Corridor	90	2.5
Relieve Congestion and Improve Local Access Along the I-80 Corridor	57	1.6
Improve Traffic Flow on Major Roads in West County	38	1.1
Enhance Ferry Service and Commuter Rail in West County	34	0.9
Improve Traffic Flow and Local Access to Richmond-San Rafael Bridge Along I-580 and Richmond Parkway	19	0.5
Seamless Connected Transportation Options	5	0.1
<b>IMPROVING TRANSIT AND TRANSPORTATION COUNTYWIDE IN ALL OUR COMMUNITIES</b>	<b>\$1,980</b>	<b>54.9</b>
Modernize Local Roads and Improve Access to Job Centers and Housing	628	17.4
Provide Convenient and Reliable Transit Services in Central, East, and Southwest Contra Costa	392	10.9
Increase Bus Services and Reliability in West Contra Costa	250	6.9
Improve Walking and Biking on Streets and Trails	215	6.0
Accessible Transportation for Seniors, Veterans, and People with Disabilities	180	5.0
Cleaner, Safer BART	120	3.3
Safe Transportation for Youth and Students	104	2.9
Reduce and Reverse Commutes	54	1.5
Reduce Emissions and Improve Air Quality	37	1.0
<b>SUBTOTAL</b>	<b>\$3,464</b>	<b>96%</b>
Transportation Planning, Facilities & Services	\$108	3.0
Administration	\$36	1.0
<b>TOTAL</b>	<b>\$3,608</b>	<b>100%</b>

\*Funding amounts are rounded

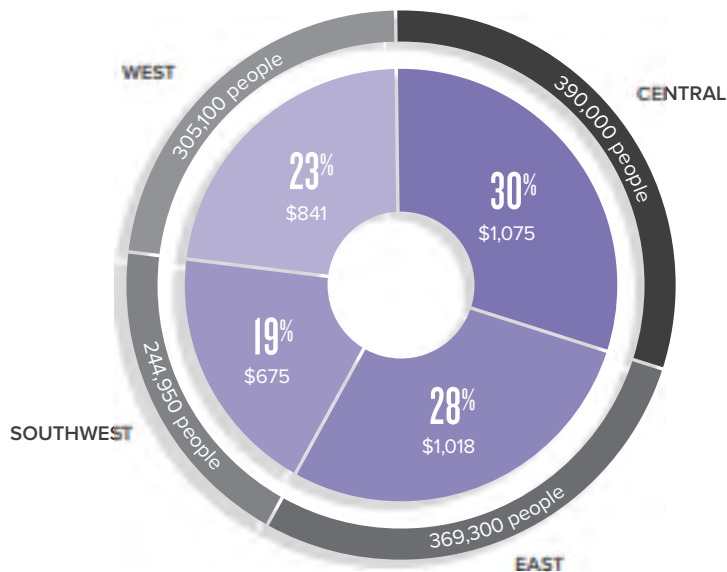
BART	Bicycle/ Pedestrian	Local Transit	Local Roads & Streets	Highways & Freeways
<b>\$197</b>	<b>\$363</b>	<b>\$1,333</b>	<b>\$925</b>	<b>\$647</b>
<b>6%</b>	<b>11%</b>	<b>38%</b>	<b>27%</b>	<b>18%</b>

### EXPENDITURES BY FACILITY TYPE AND MODE



NOTE: Percentages do not include Transportation Planning and Administration

### EXPENDITURES BY SUBREGION AND POPULATION



\* Population based on Association of Bay Area Governments (ABAG) Projections 2013 for year 2037  
\$ in millions

## COMMITMENT TO PERFORMANCE

The 2020 Transportation Expenditure Plan (TEP) will be governed by strong performance criteria against which funding, projects, and programming will be evaluated and scored to ensure maximum contribution to the guiding principles and goals of the Plan. Guidelines will be developed through meaningful community engagement and engagement with cities and towns, Contra Costa County, Regional Transportation Planning Committees, and the Public Oversight Committee to establish the performance criteria for evaluation of programs identified in the Policy Statements. In addition, the Plan will meet the Governor's Executive Order B-16-2012 to reduce transportation-related GHG emissions to 80% below 1990 levels by 2050. To achieve this, CCTA commits to a goal of accelerating zero emission vehicle (ZEV) penetration and a 15% reduction in vehicle-miles traveled (VMTs) per capita.

## ACHIEVING INTENDED OUTCOMES

The 2020 TEP was created for Contra Costa County residents, businesses, and travelers by the communities and people it serves. Key stakeholder groups were convened and community outreach conducted to understand what guiding principles, priorities, outcomes, and results are most important to the residents and businesses of Contra Costa County.

CCTA is fully committed to an outcomes-based approach that includes measurable performance targets for all principles and criteria. The TEP presents a suite of transportation solutions that align with guiding principles and will offer a transportation system that supports a vibrant, modern, equitable, and livable Contra Costa County.

CCTA will ensure funding in the TEP will achieve the outcomes identified in the 2017 Countywide Transportation Plan (CTP). The TEP offers equitable transportation opportunities for all residents of Contra Costa. In evaluating detailed funding proposals, CCTA will ensure that expenditures benefit those living in Communities of Concern and for minority and low-income residents.

Every project with total costs of more than \$10 million will undergo a performance analysis and review prior to funding being allocated. Implemented projects and programs will also undergo a thorough analysis of their performance to initiate program modification where needed and/or changes in evaluation methods.

A Public Oversight Committee will provide input for developing specific performance criteria by which projects can be evaluated and measured. In this way, county taxpayers can be assured that the funding is spent responsibly to meet the county's transportation goals.

## TAXPAYER SAFEGUARDS

Over the past thirty years, CCTA has operated under a system of rigorous taxpayer safeguards to protect the county's investments and to ensure that transportation sales tax revenue is invested wisely, equitably, and transparently. CCTA consistently achieves the highest standards in its governmental accounting and financial reporting and ensures full accountability in its programs and projects.

With the 2020 TEP, CCTA is fully committed to continuing our strong accountability to Contra Costa taxpayers through many safeguards:

- CCTA will continue to publish an annual budget and strategic delivery plan that estimates expected transportation sales tax receipts, other anticipated revenue, and planned expenditures for the year.
- CCTA's Public Oversight Committee will continue to provide diligent oversight of all CCTA expenditures and report its oversight activities and findings to the public through annual audits that focus on the allocation of funding, project performance, tracking of TEP goals, local jurisdiction compliance, and growth management performance.
- CCTA will routinely inform, communicate with, and engage its partner organizations, advisory committees, and the County's residents and businesses to ensure that its programs and projects are fully transparent and best meet the needs of its residents.
- CCTA will strive to balance the needs of all people and areas of Contra Costa County to support an equitable and sustainable transportation system for all, while ensuring proportionally greater benefits to Communities of Concern and low-income residents.
- CCTA's regional transportation planning committees will continue to ensure cohesion with local and subregion planning and implementation efforts and adherence to adopted policies.

In July 2019, CCTA was the proud recipient of Contra Costa Taxpayers Association Silver Medal Award for Good Governance.



include a benchmarking of the Committee's activities and Charter with other best-in-class oversight committees. Amendments to this Charter shall be proposed by the POC and adopted or rejected by the Authority Board.

The POC replaces the Authority's existing Citizens Advisory Committee (CAC).

### Advisory Committees

The Authority will continue the committees that were established as part of the Transportation Partnership Commission organization as well as other committees that have been utilized by the Authority to advise and assist in policy development and implementation. The committees include:

The RTPCs that were established to develop transportation plans on a geographic basis for subareas of the County, and

- The Technical Coordinating Committee (TCC) that will serve as the Authority's technical advisory committee
- Paratransit Coordinating Council (PCC)
- The Countywide Bicycle and Pedestrian Advisory Committee (CBPAC)
- Bus Transit Coordinating Committee (BTCC)

## IMPLEMENTING GUIDELINES

This TEP is guided by principles that ensure the revenue generated by the sales tax is spent only for the purposes outlined in this TEP in the most efficient and effective manner possible, consistent with serving the transportation needs of Contra Costa County. The following Implementing Guidelines shall govern the administration of sales tax revenues by the Authority. Additional detail for certain Implementing Guidelines is found elsewhere in this TEP.

### Duration of the TEP

The duration of the TEP shall be for 35 years from July 1, 2020, through June 30, 2055.

### Administration of the Plan

#### 1. Funds Only Projects and Programs in the TEP

Funds collected under this Measure may only be spent for purposes identified in the TEP, as

it may be amended by the Authority governing body. Identification of Projects or Programs in the Plan does not ensure their implementation. As authorized, the Authority may amend or delete Projects and Programs identified in the Plan to provide for the use of additional federal, state, and local funds, to account for unexpected revenue, to maintain consistency with the current Contra Costa Countywide Transportation Plan (CTP), to take into consideration unforeseen circumstances, and to account for impacts, alternatives, and potential mitigation determined during review under the California Environmental Quality Act (CEQA) at such time as each project and program is proposed for approval.

#### 2. All Decisions Made in Public Process

The Authority is given the fiduciary duty of administering the transportation sales tax proceeds in accordance with all applicable laws and with the TEP. Activities of the Authority will be conducted in public according to state law, through publicly noticed meetings. The annual budgets of Authority, strategic delivery plans, and annual reports will all be prepared for public review. The interest of the public will be further protected by the POC, described previously in the TEP.

#### 3. Salary and Administration Cost Caps

Revenues may be expended by the Authority for salaries, wages, benefits, overhead, and those services, including contractual services, necessary to administer the Measure. However, in no case shall the expenditures for the salaries and benefits of the staff necessary to perform administrative functions for the Authority exceed one percent (1%) of revenues from the Measure. The allocated costs of Authority staff who directly implement specific projects or programs are not included in the administrative costs.

#### 4. Expenditure Plan Amendments Require Majority Support

The Authority may review and propose amendments to the TEP and the GMP to provide for the use of additional federal, state, and local funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances. Affected RTPCs and the Public Oversight Committee (POC) will participate in the development of the proposed amendment(s). A supermajority (66%) vote of the Authority Board is required to approve an amendment. Any amendment to the TEP that is administrative or less than \$50 million to the Expenditure Plan will require a 45-day period



amended, 2) verify that the project is included in the Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), and 3) require the project sponsor to complete a performance-based review of project alternatives prior to the selection of a preferred alternative. Said performance-based review will include, but not necessarily be limited to, an analysis of the project impacts on greenhouse gas (GHG) emissions, vehicle-miles traveled (VMT), goods movement effectiveness, travel mode share, delay (by mode), safety, maintenance of the transportation system, impact on displacement, affordable housing, social equity, any other environmental effects, and consistency with adopted Authority plans. The Authority may require the evaluation of other performance criteria depending on the specific need and purpose of the project. The Authority will perform review and independent verification of performance-based review submitted by project sponsors.

The Authority is committed to meet the Governor's Executive Order B-16-2012 to reduce transportation-related GHG emissions to 80% below 1990 levels by 2050 and will establish overall VMT per capita and GHG goals countywide. The Authority will expect project sponsors to identify and select a project alternative that reduces GHG emissions as well as VMT per capita to meet the Authority's adopted countywide VMT and GHG goals. Limited exceptions will be identified and a process created to select a project alternative that does not decrease VMT and GHG sufficiently but has other substantial benefits. The Authority will require the project sponsors that select a project alternative that does not decrease VMT and GHG sufficiently to make findings for an exception and require participation in a VMT mitigation program to be developed by the Authority.

Funding for projects that do not decrease VMT and GHG sufficiently will not be allocated until the Authority develops a VMT mitigation program. The VMT mitigation program will define the limited exceptions, substantial benefits, and process to determine adequate findings for those exceptions. The purpose of the VMT Mitigation Program will be to fund projects and programs that reduce VMT, GHG emissions, and traffic congestion in Contra Costa County. The Authority will also prioritize and reward high performing projects by leveraging additional regional and other funding sources. The Authority shall employ a public process to develop and adopt detailed guidelines for evaluating project performance and applying performance criteria in the review and selection of a

preferred project alternative no later than October 1, 2022. The performance criteria will include measurable performance targets and be developed per Section 43.

There will be additional performance-based reviews for actions in five categories of expenditure: Improve Walking and Biking on Streets and Trails, Countywide Major Road Improvement Program, Reduce Emissions and Improve Air Quality, Seamless Connected Transportation Options, and Reduce and Reverse Commutes. The additional review guidelines are outlined in Sections 31-35 of these Implementing Guidelines.

#### **17. Countywide Transportation Plan**

State law allows each county in the San Francisco Bay Area that is subject to the jurisdiction of the regional transportation planning agency to prepare a CTP for the county and cities/towns within the county. Both Measure C and Measure J also require the Authority to prepare and periodically update a CTP for Contra Costa County. State law also created an interdependent relationship between the CTP and regional planning agency. Each CTP must consider the region's most recently adopted Regional Transportation Plan (RTP) and Sustainable Communities Strategy (SCS) while the adopted CTPs must form the "primary basis" for the next RTP and SCS. The Authority shall follow applicable statutes and the most current guidelines for preparing the CTP, as established and periodically updated by the regional transportation planning agency. The Authority shall also use the CTP to convey the Authority's investment priorities, consistent with the long-range vision of the RTP and SCS.

#### **18. Complete Streets**

The Authority has adopted a policy requiring all recipients of funding through this TEP to consider and accommodate, wherever possible, the needs of all users in the planning, design, construction, reconstruction, rehabilitation, and maintenance of the transportation system.

#### **19. Road Traffic Safety**

The Authority has adopted a policy requiring all recipients of funding through this TEP shall, wherever possible, systemically incorporate street design elements that quantifiably reduce the risk of traffic-related deaths and severe injuries in the public right-of-way and accommodate the needs of all users in the planning, design, construction, reconstruction, rehabilitation, and maintenance of the transportation system.



# Exhibit H



CONTRA COSTA  
**transportation  
authority**

# Comprehensive Annual Financial Report

Fiscal Year Ended June 30, 2019



**Contra Costa Transportation Authority**  
**2999 Oak Road, Suite 100 Walnut Creek, CA 94597**

**CONTRA COSTA TRANSPORTATION AUTHORITY**

Notes to Basic Financial Statements

June 30, 2019

**NOTE 6 – LONG-TERM DEBT (Continued)**

Fund or any liquidity facility. The total projected Measure J Sales Tax revenue, as reported in the 2016 Measure J Strategic Plan, is expected to approximate \$2.7 billion, which is sufficient to repay the estimated debt service, including net interest rate swap settlements, of \$655.9 million on the 2012, 2015, 2017, and 2018 Bonds.

**B. Annual Future Payments**

The following table presents the Authority’s aggregate annual amount of principal and interest payments required to amortize the outstanding debt (in thousands):

<b>Year ending</b>			
<b>June 30:</b>	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
2020	\$ 18,620	\$ 21,630	\$ 40,250
2021	21,060	20,728	41,788
2022	23,555	19,777	43,332
2023	26,220	18,728	44,948
2024	27,480	17,445	44,925
2025-2029	152,825	66,440	219,265
2030-2034	196,485	24,926	221,411
	<u>\$ 466,245</u>	<u>\$ 189,674</u>	<u>\$ 655,919</u>

**C. Swap Commitment**

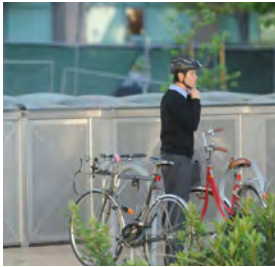
In fiscal year 2005, in order to protect itself against rising interest costs on the expected issuance of bonds, the Authority entered into forward commitment interest rate swap agreements with Bank of America, N.A. and Merrill Lynch Capital Services, Inc. (the Counterparties). An interest rate swap is a contractual agreement whereby the parties agree to exchange cash flows over a certain period of time. Beginning on September 23, 2009, the Authority was to pay a fixed rate of 3.6574% to the Counterparties, and the Counterparties would pay a floating rate to the Authority. The floating rate is expected to approximately equal the floating rate which the Authority will pay to the holders of its floating rate bonds, issued in 2012. Including anticipated ongoing fees associated with the floating rate bonds, the synthetic fixed rate which the Authority would pay was considered a very favorable rate in comparison with long-term interest rates.

On September 18, 2009, the Authority partially terminated \$100 million of an existing \$150 million floating-to-fixed swap with Merrill Lynch Capital Services, Inc. (Merrill Lynch) and simultaneously novated the remaining \$50 million notional amount to Bank of America, N.A. (“BofA”), who acquired Merrill Lynch. The partial termination resulted in an amended \$200 million floating-to-fixed swap with BofA, which relates to the Series 2012A Bonds.

On August 23, 2018, the Authority partially terminated \$100 million of the \$200 million floating-to-fixed swap with BofA. The partial termination resulted in an amended \$100 million floating-to-fixed swap with BofA, which relates to the 2018A Bonds. A summary of the terms of the interest rate swap agreement is presented below:

# Exhibit I

# 2017 Countywide Comprehensive Transportation Plan



## Draft Environmental Impact Report

State Clearinghouse #2017022054



June 16, 2017

Table 2.1-3: Summary of Modeling Results

Measure of Performance	Baseline (2013)	Modeled 2017 Conditions	2017 CTP (2040)
Vehicle Miles Traveled Per Capita	21.0	21.2	21.2
Percent Change from Baseline	—	1%	1%
Vehicle Hours of Delay	71,648	84,584	190,685
Percent Change from Baseline	—	18%	166%
Average Freeway Speeds	55.6	55.3	54.1
Percent Change from Baseline	—	0.5%	-2.7%
Average Arterial Speeds	34.2	34.1	33.4
Percent Change from Baseline	—	0.3%	-2.3%
Non-SOV Mode Share	41%	41%	42.1%
Percent Change from Baseline	—	no change	2.7%
Transit Ridership	101,033	113,381	157,391
Percent Change from Baseline	—	12%	55.8%

Source: Compiled modeling results included as Appendix D.

Because transportation impacts can be both regional and local, specific detailed analyses are most appropriate at the project level. Localized impacts of the 2017 CTP and its Investment Program would vary depending on the proximity to local and regional transportation improvements. Subsequent, project-specific transportation analyses that further assess each individual project's design improvements may be necessary to determine the extent of site-specific impacts and project-specific design requirements.

## Vehicle Miles Traveled per Capita (Criterion I)

**Trans-1:** New or expanded transportation facilities pursuant to the 2017 CTP would not result in an appreciable increase in per capita VMT when compared with the baseline condition. An appreciable increase in per capita VMT is defined as greater than 5 percent. (*Less than Significant*)

### 2017 CTP

Expected countywide population and employment growth will increase travel demand throughout Contra Costa and the rest of the Bay Area region.

The resulting increase in VMT will thus be a product of an increased population and job base, the relative distance of each vehicle trip (primarily a function of the distance between home and work), and individual choices regarding model of travel (i.e., the percent increase in drive-alone vehicles). The VMT per capita metric separates out the variable related to population increase. The distance between home and work, or other travel distances, is a function of land use. In this analysis, the land use assumptions for future conditions are "fixed," based on forecasts from ABAG's *Projections 2013* and the land use assumption of *Plan Bay Area*. This, the VMT/capita metric provides a telling measure of transportation mode choice.

**Table 2.1-4: VMT Per Capita, 2017 CTP Investment Program, Comparison**

Scenario	Total VMT	Vehicle Miles Traveled Per Capita
Baseline (2013)	22,040,884	21.0
2017 Modeled Condition	23,229,962	21.2
No Project (2040)	28,009,826	21.1
Investment Program 2017 CTP (2040)	28,119,444	21.2

Source: Compiled modeling results included as Appendix D.

For informational purposes only, when compared with a No Project 2040 scenario (with no additional investment in transportation or transit project other than those that have already been approved and funded), the increase in total VMT is nearly identical to the 2017 CTP, and the VMT per capita is slightly lower (at 21.2 VMT per capita). This comparison indicates that the relative balance in investments between freeway and roadway projects, and transit projects as proposed under the Investment Program does not differentiate between these mode choices substantially enough to modify overall travel behavior. Other social and economic factors, such as those described above, are therefore more likely to influence VMT per capita than are transportation investment pursuant to the Investment Program.

### Mitigation Measures

No mitigation measures are required.

### Vehicle Hours of Delay (Criterion 2)

**Trans-2:** Travelers on major roadways throughout Contra Costa County would experience an appreciable increase in total VHD as compared with the baseline condition. An appreciable increase in VHD is defined as greater than 5 percent. (*Significant and Unavoidable*)

### 2017 CTP

Regional roadways throughout Contra Costa will experience an appreciable increase in VHD as compared with the baseline condition. This worsening roadway congestion reflects the additional travel generated from future population and employment growth, which cannot sufficiently be accommodated by the limited financial resources available for improving the efficiency and capacity of the regional transportation system. This increase is projected to occur irrespective of implementation of the 2017 CTP. However, because these roadways will see an appreciable increase in VHD as compared with the baseline condition, this impact is considered significant and unavoidable.

### Analysis of the Investment Program

Even with the substantial investments in transportation and transit projects proposed pursuant to the 2017 CTP Investment Program, travelers on regional roadways throughout Contra Costa will experience an appreciable increase in VHD when compared with the baseline condition, as indicated in **Table 2.1-5**. Total hours of delay on the County roadway network are projected to increase by



Table 2.3-4: Countywide Emission Estimates for Criteria Pollutants (tons per day), 2017 CTP Investment Program			
	Baseline (2013)	No Project (2040)	2017 CTP Investment Program
ROG	8.71	2.23	2.21
% Change from Baseline		-74.4%	-74.6%
% Change from No Project			-0.9%
NO <sub>x</sub>	16.49	2.66	2.59
% Change from Baseline		-83.8%	-84.3%
% Change from No Project			-2.6%
CO	69.80	16.01	15.77
% Change from Baseline		-77.1%	-77.4%
% Change from No Project			-1.5%
PM <sub>2.5</sub>	0.76	0.65	0.65
% Change from Baseline		-14.5%	-14.5%
% Change from No Project			0%

Source: Compiled modeling results included as Appendix E.

Because individual Investment Program projects pursuant to the 2017 CTP are expected to occur within an overall context that will achieve an overall reduction in operational criteria pollutant emissions, and because the Investment Program's investments in TCMs are shown to contribute toward these emission reductions, the Investment Program's impacts are considered less than significant.

### Mitigation Measures

No mitigation measures are required.

### Particulate Matter Emissions (Criterion 4)

**Air-4:** New or expanded transportation facilities pursuant to the 2017 CTP would result in a net increase in emissions of PM<sub>10</sub> from on-road mobile sources (including entrained dust) as well as a net increase in emissions of PM<sub>2.5</sub> entrained dust, as compared with the baseline condition. (*Significant and Unavoidable*)

### 2017 CTP

New transportation projects pursuant to the 2017 CTP are expected to result in a net increase in air quality impacts related to particulate matter emissions as compared with the baseline condition. When compared with the baseline (year 2013) condition, PM<sub>10</sub> and PM<sub>2.5</sub> emissions from all mobile sources would increase by year 2040. The higher levels of particulate matter emissions in 2040 conditions are a result of these emissions being strongly influenced by projected growth in total VMT (which directly affects entrained roadway dust), with some contributions from tire and brake wear, and exhaust.

Particulate matter emissions from mobile sources are not expected to increase at the same rate as VMT due to the stringent emission controls that CARB has adopted for new vehicle engines,



# Exhibit J

# Guide to Filing Measure Arguments

FOR COUNTY, CITIES, SCHOOL, AND SPECIAL DISTRICTS



Photo Credit: Jerome Gibson

## 2020

**Contra Costa County Elections**  
555 Escobar Street, Martinez, CA 94553  
(925) 335-7800 | [www.cocovote.us](http://www.cocovote.us)

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## **DISCLAIMER**

This informational guide was developed in an effort to provide answers to questions frequently asked concerning the filing of measure arguments. It contains general information only and does not have the force or effect of law, regulations, or rule. In case of a conflict, the laws, regulations or rules apply. Persons using this guide accept responsibility for all legal standards and duties. For information on City measures, please contact the local City Clerk as guidelines may vary.

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## PURPOSE OF THIS GUIDE

This guide is intended to be a reference to political entities, interested organizations, and individuals on how they may participate in the process.

Generally, this guide applies for city measures. Cities may implement law differently than described in this guide. Regarding arguments for city measures, consult the City Clerk.

## WHAT IS PUBLISHED IN THE VOTER INFORMATION GUIDE

The following components comprise the information provided to voters in the Voter Information Guide:

### **Measure Wording**

The Measure Wording is a 75-word ballot question that appears on the Official Ballot and in the Voter Information Guide.

*Election Code 9051*

### **Impartial Analysis**

The County Counsel or City Attorney prepares an Impartial Analysis of a measure showing the effect of the measure on the existing law and the operation of the measure. The City Attorney prepares an Impartial Analysis of a city measure.

The Impartial Analysis may be up to 500 words.

*Election Code 9160, 9280, 9313, 9314, 9500*

### **Tax Rate Statement (if applicable)**

A Tax Rate Statement is supplied for each bond measure that creates a lien on a property within the jurisdiction. The Tax Rate Statement is prepared by the jurisdiction proposing the measure.

There is no word limit for Tax Rate Statements.

*Election Code 9401, 9402*

### **Fiscal Analysis (if applicable)**

The County Auditor-Controller may be requested to prepare a Fiscal Analysis by the Board of Supervisors or City Council.

The Fiscal Analysis Statement may be up to 500 words.

*Election Code 9160*

### **Arguments In Favor and Arguments Against a Measure**

Each Argument In Favor or Against may be up to 300 words.

*Election Code 9162, 9315*

## **Rebuttal Argument**

A Rebuttal Argument is a statement, which refutes an Argument In Favor or Argument Against a Measure.

Each Rebuttal Argument may be up to 250 words.

*Election Code 9167, 9317*

## **Full Text (optional)**

The full text of the measure being voted upon may be published, to provide voters information in addition to the 75-word measure. The full text is usually a resolution or ordinance that offers additional information regarding the measure.

There is no word limit for the full text.

## **Order of Appearance**

Arguments, Rebuttal Arguments, and analyses are printed in the Voter Information Guide and mailed to all registered voters in the jurisdiction who are eligible to vote for the particular measure.

*Election Code 13109*

The information appears in the following order:

1. Measure Wording
2. Impartial Analysis
3. Fiscal Analysis or Tax Rate Statement (if applicable)
4. Argument In Favor
5. Argument Against
6. Rebuttal to Argument In Favor
7. Rebuttal to Argument Against
8. Full Text (optional)

All content is translated into Spanish and Chinese and will appear in English, Spanish, and Chinese in that order.

## ARGUMENT SUBMISSION PROCESS

**Submit Arguments to:** Contra Costa County Elections Division  
555 Escobar Street  
Martinez, CA 94553

**Submissions must include:**

Hardcopies of the Arguments with wet signatures must be filed in person or by mail to the Elections Division at 555 Escobar Street Martinez, CA 94553. A faxed or electronic PDF of the Argument document (including signatures) may be submitted to meet the filing deadline but hardcopies with the wet signatures must be provided within three business days of the faxed or electronic submission.

The argument language must also be submitted electronically as an editable text file to [cfile@vote.cccounty.us](mailto:cfile@vote.cccounty.us) by the deadline.

The argument will be formatted for the Voter Information Guide to appear as closely as possible to the hardcopy submitted.

**Confidentiality:** Arguments, rebuttals and analyses are not disclosable until 5pm on the date they are due. At that time, the contents become public information.

**Withdrawal/Changes:** Arguments, rebuttals and analyses may be changed or withdrawn up until the submission deadline.

*Election Code 9163, 9316, 9317, 9601*

**Public Review:** Following the final deadline for filing documents, arguments and rebuttals are available at the Registrar of Voter's Office for a 10-day public review period.

Any challenges of the measure documents may be sought from the Superior Court to require amendments or deletions through a Writ of Mandate or injunction. A Writ of Mandate or an injunction will be issued by the Superior Court upon clear and convincing proof that the material in question is false, misleading, or inconsistent.

Administrative challenges of arguments, rebuttals and analyses will not be accepted or entertained by the Registrar of Voters.

*Election Code 9190, 9295, 9380, 9509*

**Rebuttal Arguments:** Rebuttal Arguments In Favor or Against a Measure are filed with the Elections Division. The Registrar establishes the deadlines for the arguments for all elections in which multiple jurisdictions participate. Cities establish deadlines only when the election is not consolidated or combined with other entities. Arguments are not disclosable until the deadline.

Rebuttal Arguments are shared with those submitting Primary Arguments for purposes of drafting Rebuttal Arguments at the deadline.

Arguments In Favor and Arguments Against measures are sent immediately after the submission deadline to those arguing the opposite position for the purpose of preparing a Rebuttal Argument.

Rebuttal Arguments must be signed by the same authors of the original arguments in favor or against unless the original signers of the arguments authorize, in writing, others to sign the Rebuttal Arguments. A “Release for Rebuttal Argument” should be filed with the Rebuttal Arguments.

*Election Code 9167, 9285, 9317, 9504*

## WHO CAN SUBMIT AN ARGUMENT

The governing board (Board of Supervisors, School Board or Special District Board), any individual voter who is eligible to vote on the measure, a bona fide association of citizens, or any combination of these voters and associations may file a written Argument In Favor or Argument Against any county, school, or district measure placed on the ballot by the governing body or by initiative.

*Election Code 9120, 9162, 9501*

### What is a Bona Fide Association of Citizens?

A bona fide association of citizens is a recognized group of citizens bound together by a common interest or cause such as:

- A group or organization primarily formed as a committee to support or oppose a ballot measure.
- An organization that meets on a regular basis.

The individuals signing an argument on behalf of a bona fide association do not have to be eligible voters in the jurisdiction. A “Bona Fide Association of Citizens Filer Data Sheet” will be filed with the arguments.

### If More Than One Argument In Favor or Argument Against Is Filed

Only one Argument In Favor and one Argument Against any measure will be printed in the Voter Information Guide. If more than one Argument In Favor or more than one Argument Against any measure is filed, a single argument will be selected by the Registrar of Voters.

In selecting a single argument, the Registrar gives preference and priority, in order, to arguments submitted by:

1. Members of the governing board
2. The bona fide sponsors or proponents of the measure
3. Bona fide associations of citizens
4. Individual voters who are eligible to vote on the measure

If two or more parties representing the same type of body/association submit competing Arguments In Favor or Arguments Against the same measure, the Registrar will make a subjective assessment of the arguments. The assessment may include consideration of grammar, spelling, coherence, tone and the comprehensiveness of the argument.

Parties are encouraged to collaborate when multiple arguments are submitted.

*Election Code 9166, 9503*



## ARGUMENT & REBUTTAL FORMAT

- Submissions will be labeled with the type of argument being submitted in the heading title (ex. Argument in Favor of Measure A). This is not part of the word count.
- The heading for all arguments is standardized. Subheadings and deviations from the standardized heading will not be accepted.
- Arguments and rebuttal arguments, including the names and titles of the signers, must be typed.
- Documents will be printed as submitted. Spelling, punctuation and grammatical errors will not be corrected by the Elections Division.
- An argument or rebuttal argument must be written to address only one measure appearing on the ballot. An argument combining statements pertaining to more than one measure will not be accepted.
- No more than five names/titles will appear with any argument in the Voter Information Guide. If more than five signers are submitted, only the first five will be printed.
- All arguments and rebuttals must include an original signature of each signer. If not all signers sign on the same document, separate copies, bearing wet signatures, can be filed.
- No profanity or other objectionable language may appear in an argument.

*Election Code 9164, 9501*

### Argument Sample

<b>ARGUMENT IN FAVOR OF MEASURE _____</b>	
<b>ARGUMENT TEXT</b>	
<small>The undersigned Proponent(s) or Author(s) hereby state that such argument is true and correct to the best of their knowledge and belief.</small>	
Print Name _____	Print Name _____
Title _____	Title _____
Signature _____	Signature _____
Print Name _____	Print Name _____
Title _____	Title _____
Signature _____	Signature _____
Print Name _____	
Title _____	
Signature _____	

### Rebuttal Argument Sample

<b>REBUTTAL TO ARGUMENT AGAINST MEASURE _____</b>	
<b>ARGUMENT TEXT</b>	
<small>The undersigned Proponent(s) or Author(s) hereby state that such argument is true and correct to the best of their knowledge and belief.</small>	
Print Name _____	Print Name _____
Title _____	Title _____
Signature _____	Signature _____
Print Name _____	Print Name _____
Title _____	Title _____
Signature _____	Signature _____
Print Name _____	
Title _____	
Signature _____	

## LETTER ASSIGNMENTS

Each measure to appear on the ballot is assigned a letter for identification and reporting purposes.

### **Timeline for Assigning Measure Letters**

The Registrar of Voters assigns measure letters the Thursday (E-82) following the deadline to submit a measure (E-88).

### **Assignment of Letters**

- Letters are assigned based upon a random draw.
- All letters are included in the random draw.
- If, during the election, all letters have been used, lettering will continue to include e.g. “AA”, “BB”, etc.
- Unused letters will not carry over to the next election. Each election will begin with a new random drawing.

### **When a Jurisdiction Covers Two or More Counties**

When a jurisdiction covers two or more counties, the Registrar of Voters in each county will mutually agree to use the same letter for the measure.

### **Withdrawal of a Measure**

A legislative body may amend or withdraw its measure by filing a resolution stating the specifics concerning the amendment or withdrawal not later than 83 days before an election. An initiative or referendum measure may be withdrawn by filing a “Notice of Withdrawal” signed by all proponents.

*Election Code 9604, 9605*

## ATTACHMENT A - 2020 MEASURE KEY DATES

### March 3, 2020 Primary Election

<b>Filing Period</b>	
December 6 <i>E-88</i>	Last day to place a measure on the ballot
December 12 <i>E-82</i>	Local measure letter assigned
December 18 <i>E-76</i>	Deadline for Primary Arguments For/Against
December 23 <i>E-71</i>	Deadline for Rebuttal Arguments
January 2 <i>E-61</i>	Last day to file Writ of Mandate
January 23 <i>E-40</i>	Estimated Voter Information Guide mailing

### November 3, 2020 General Election

<b>Filing Period</b>	
August 7 <i>E-88</i>	Last day to place a measure on the ballot
August 13 <i>E-82</i>	Local measure letter assigned
August 19 <i>E-76</i>	Deadline for Primary Arguments For/Against
August 24 <i>E-71</i>	Deadline for Rebuttal Arguments
September 3 <i>E-61</i>	Last day to file Writ of Mandate
September 24 <i>E-40</i>	Estimated Voter Information Guide mailing



## ATTACHMENT B - WORD COUNT GUIDELINES

The following guidelines are for computing the word count for arguments. The authors' titles and names are not counted in the word count, only the text of the argument. The Registrar of Voters will make final determination of the word count.

*Election Code 9*

<b>Acronyms</b> Examples: UCLA, PTA, U.S.M.C.	one word
<b>Geographical Names</b> Examples: Contra Costa County Walnut Creek City of Pittsburg Bay Area	one word
<b>Districts with an Elected Board</b> Examples: Contra Costa Community College District Antioch Unified School District East Bay Regional Park District San Francisco Bay Area Rapid Transit District	one word
<b>Numbers/Numerical Combinations</b> Digits (1, 10, or 100, etc.) 1990-1991, 100%, etc. Spelled out (one, ten, or one hundred)	one word one word one for each word
<b>Dates</b> All digits (11/5/96) Word and digits (June 2, 1998)	one word one word
<b>Hyphenated Words</b> Hyphenated words that appear in any generally available standard reference dictionary, as determined by the Registrar of Voters, shall be counted as one word.	one word
<b>Punctuation</b>	not counted
<b>Telephone Numbers</b>	one word
<b>Email / Website Addresses</b>	one word



## ATTACHMENT C - IMPORTANT CONTACT INFORMATION

Main Number	(925) 335-7800	
Toll Free	(877) 335-7802	
Rosa Mena, Elections Processing Supervisor	(925) 335-7806	rosa.mena@vote.cccounty.us
Sara Brady, Elections Services Manager	(925) 335-7807	sara.brady@vote.cccounty.us
Scott Konopasek, Assistant Registrar of Voters	(925) 335-7800	scott.konopasek@vote.cccounty.us
Fax	(925) 335-7842	
Email	cfile@vote.cccounty.us	
Website	www.cocovote.us	

# Exhibit K



**MARCH 3, 2020 PRIMARY ELECTION**

**MEASURES**

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**MEASURE   T**

**Antioch Unified School District School Facilities Improvement District No. 2**

**55% required to pass**

To improve the quality of education at Antioch Schools by renovating classrooms, upgrading school safety and security systems, improving technology and energy efficiency, upgrading science labs, modernizing schools, and repairing / replacing roofs, shall School Facilities Improvement District #2 of the Antioch Unified School District issue \$105,000,000 in bonds at legal interest rates, raising an average of \$7,000,000 annually for 36 years, at a rate of 6 cents per \$100 of assessed value with independent oversight and accountability?

---

**MEASURE   L**

**Lafayette School District**

**2/3 required to pass**

To protect the quality of education and prevent deep cuts to Lafayette elementary and middle school programs in math, science, engineering, technology, reading, music, and the arts, maintain manageable class sizes to enhance student achievement, and attract and retain highly qualified teachers, shall Lafayette School District establish a \$290 parcel tax for 7 years only, providing \$3,011,360 annually in dedicated funding for neighborhood schools, with independent citizen oversight, an exemption for seniors, and all money staying local?

---

**MEASURE   M**

**Moraga School District**

**2/3 required to pass**

To maintain high quality elementary/intermediate schools, shall Moraga School District continue funding to support effective science, technology, engineering, math, arts and music programs; maintain manageable class sizes; keep schools safe; and attract and retain the best qualified teachers; by adopting a measure renewing funding at the current \$192 rate per parcel, providing \$1 million annually, until repealed by voters, with low-income senior exemptions, cost of living adjustments and independent oversight with all funds supporting Moraga students?

---

**MEASURE   R**

**West Contra Costa Unified School District**

**55% required to pass**

**WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT CLASSROOM MODERNIZATION AND SAFETY UPDATE MEASURE.** To repair, upgrade neighborhood schools, shall West Contra Costa Unified School District modernize core classrooms; provide safe, secure school environments, including updated technology and air conditioning, that improve academic achievement and provide relevant career pathways for all students, by issuing \$575 million of bonds, at legal rates, averaging \$34.48 million annually while bonds are outstanding, at 6¢ per \$100 assessed value, with strict citizens' oversight, annual audits and all money for local schools?

---

**MEASURE   J**

**Contra Costa Transportation Authority**

**2/3 required to pass**

To:

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

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

---

**MEASURE   A**

**Pleasant Hill Recreation & Park District**

**2/3 required to pass**

To improve parks and recreation for children, families and senior citizens; upgrade and replace deteriorating restrooms; improve safety / security; upgrade outdated plumbing and irrigation; and upgrade, construct, renovate, and expand parks / facilities; shall Pleasant Hill Recreation & Park District issue \$63,500,000 of bonds at legal rates, averaging \$3,400,000 collected annually while bonds are outstanding at a rate of approximately 1.9 cents per \$100 assessed value, with annual audits, independent citizens' oversight, no money for salaries and all funding staying local?

---

**MEASURE   Y**

**Town of Danville**

**Majority required to pass**

Shall Town Council Ordinance No. 2019-06 approving the Magee Preserve project, which creates 69 single family lots on approximately 29 acres of the 410 acre site, preserves the remaining 381 acres as permanent open space and dedicates hiking and biking trails for public use on the site, be adopted?

---

1 LAW OFFICES OF JASON A. BEZIS  
2 California State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 708-7073  
6 Bezis4Law@gmail.com  
7 Attorney for Petitioners

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

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

Petitioners,

vs.

DEBORAH COOPER, in her official capacity  
as ACTING 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,

Real Party in Interest.

CONTRA COSTA COUNTY BOARD OF  
SUPERVISORS,

Real Party in Interest.

Case No.: **N 19 - 2489 -**

**NOTICE OF EX-PARTE APPLICATION  
AND EX-PARTE APPLICATION FOR  
ORDER SHORTENING TIME;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
JASON A. BEZIS; EXHIBITS**

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

**Date: December 31, 2019**

**Time: 10:00 a.m.**

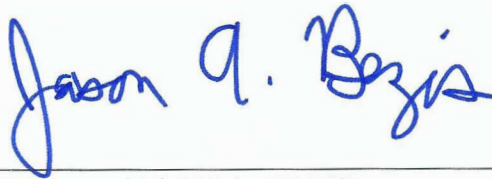
**Dept.: Department of the Supervising  
Judge of the Civil Division (presumably  
Dept. 39)**

//

1 TO RESPONDENTS: DEBORAH COOPER and SHARON L. ANDERSON AND THEIR  
2 ATTORNEYS AND TO REAL PARTIES IN INTEREST: CONTRA COSTA  
3 TRANSPORTATION AUTHORITY and CONTRA COSTA COUNTY BOARD OF  
4 SUPERVISORS AND THEIR ATTORNEYS:

5 PLEASE TAKE NOTICE THAT on December 31, 2019 at 10:00 A.M., or as soon  
6 thereafter as the matter can be heard, in the Department of the Supervising Judge of the Civil  
7 Division (presumably Dept. 39 – see <http://www.cc-courts.org/general/judicial-phone.aspx>) of  
8 the above-entitled Court located at 725 Court Street, Martinez, California, Petitioners MICHAEL  
9 ARATA and RICHARD S. COLMAN, will and do move the Court by ex-parte application for  
10 an Order shortening time for the Court to hold a trial setting conference in order to set an  
11 expedited briefing and hearing schedule for the petition for writ of mandate in the above-entitled  
12 action. This notice states that the appearance will take place in the Department of the  
13 Supervising Judge of the Civil Division because the petition has not yet been filed when this  
14 notice is given.

15 This ex-parte application will be based upon this Notice, the Memorandum of Points and  
16 Authorities in support thereof, the files and records of this case, the Declaration of Jason A.  
17 Bezis and exhibits attached thereto, and such other and further oral and documentary evidence as  
18 may be presented at the hearing.

19  
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22 

22 Dated: December 30, 2019

23 JASON A. BEZIS  
24 Law Offices of Jason A. Bezis  
25 Attorney for Petitioners

25 //  
26 //  
27 //  
28 //

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 This case involves the Contra Costa Transportation Authority's ballot measure, which has  
4 been placed on the ballot for the March 3, 2020 election. Petitioners are requesting ex-parte  
5 relief as they will suffer great and irreparable injury if the Court does not act immediately, in that  
6 election material production and mailing deadlines are rapidly approaching.

7  
8 **II. LEGAL ARGUMENT**

9 **Issuance of a Writ Will Not Interfere with the Conduct of the March 2020 Election**

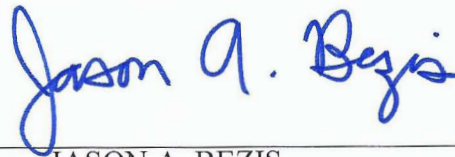
10 Issuance of any writ of mandate in early January 2020 concerning the Contra Costa  
11 Transportation Authority ballot measure would not substantially interfere with the conduct of the  
12 March 3, 2020 election. See attached Declaration of Jason A. Bezis. Exhibit 1 to the Bezis  
13 Declaration is a true and correct copy of a page titled "ATTACHMENT A - 2020 MEASURE  
14 KEY DATES" from the "Guide to Filing Measure Arguments for County, Cities, School, and  
15 Special Districts 2020 Contra Costa County Elections." In Exhibit 1, the Registrar of Voters  
16 states that January 2, 2020 is "Last day to file Writ of Mandate." In Exhibit 1, the Registrar of  
17 Voters also states that January 23, 2020 is the estimated date for Voter Information Guide  
18 mailing. Petitioners have filed the petition in this action on December 30, 2019, three days  
19 before January 2, 2020, which the Registrar of Voters characterizes as "Last day to file Writ of  
20 Mandate." Therefore, Petitioners believe that issuance of any Superior Court writ of mandate on  
21 or before January 6, 2020 or in the days immediately thereafter would not substantially interfere  
22 with the conduct of the March 3, 2020 election.

23 This Court has the power to issue an order shortening time for the Court to hold a trial  
24 setting conference in order to set an expedited briefing and hearing schedule for the petition for  
25 writ of mandate. See Local Rule 3.47, California Rule of Court 3.1200, et seq., Code of Civil  
26 Procedure section 1005. As an elections-related writ, this Petition is entitled to preferential,  
27 expedited hearing per Elections Code sections 9106 and 13314(a)(3).  
28

1 Petitioners propose that the Court set the writ of mandate hearing in the above-entitled  
2 action for Monday, January 6, 2020 at 10:00 a.m. in Department \_\_\_\_\_. Petitioners further  
3 propose that the Court order that any opposing papers or briefs by Respondents and Real Parties  
4 in Interest be filed with the Superior Court clerk before 3:00 p.m. on Friday, January 3, 2020 and  
5 served electronically upon Petitioners' attorney Jason Bezis at e-mail address  
6 Bezis4Law@gmail.com and upon other parties before 5:00 p.m. on Friday, January 3, 2020.  
7 Petitioners further propose that the Court order that Petitioners may electronically (by e-mail)  
8 serve a reply brief on opposing parties by 5:00 p.m. on Sunday, January 5, 2020, lodge the reply  
9 brief with the Court at the hearing on Monday, January 6, 2020, and file the reply brief with the  
10 Superior Court clerk on Monday, January 6, 2020.

11 Dated this December 30<sup>th</sup>, 2019

12 Respectfully submitted,

13  
14 

15  
16 \_\_\_\_\_  
17 JASON A. BEZIS

18 Law Offices of Jason Bezis  
19 Attorney for Petitioners

20 **DECLARATION OF JASON A. BEZIS**

21 I, Jason A. Bezis, declare:

- 22 1. That I am Petitioners' attorney in this action. I am over the age of 18 years. I have  
23 personal knowledge of the facts contained in this declaration, and if called upon to testify I could  
24 and would testify competently as to the truth of the facts stated herein.
- 25 2. I make this declaration in support of this ex-parte application for an order shortening time  
26 for the Court to hold a trial setting conference in order to set an expedited briefing and hearing  
27 schedule for the petition for writ of mandate.
- 28 3. Attached Exhibit 1 is a true and correct copy of a page titled "ATTACHMENT A - 2020  
MEASURE KEY DATES" from the "Guide to Filing Measure Arguments for County, Cities,  
School, and Special Districts 2020 Contra Costa County Elections" that is found on the Contra



1 Costa County Elections Division website at: <https://www.cocovote.us/wp->  
2 [content/uploads/2020\\_Guide-to-Filing-Arguments-and-Rebuttals.pdf](https://www.cocovote.us/wp-content/uploads/2020_Guide-to-Filing-Arguments-and-Rebuttals.pdf). Petitioners have filed the  
3 petition in this action on December 30, 2019, three days before January 2, 2020, which the  
4 Registrar of Voters characterizes as “Last day to file Writ of Mandate.”

5 4. I have personal knowledge of the statutory basis for granting priority to deciding this writ  
6 petition with an expedited briefing and hearing schedule. Elections Code § 13314(a)(3) says,  
7 “The action or appeal shall have priority over all other civil matters.” Furthermore, irreparable  
8 harm likely would result if an expedited briefing and hearing schedule were not set for this writ  
9 petition. If this writ petition were not decided before late January 2020, then the Court more  
10 likely could not issue it because the delay would more likely be deemed to substantially interfere  
11 with the conduct of the March 3, 2020 election.

12 5. Between 12:01 a.m. and 10:00 a.m. on December 30, 2019, I provided notice of the ex-  
13 parte application hearing to be held on December 31, 2019 at 10:00 a.m. before the Department  
14 of the Supervising Judge of the Civil Division to Respondents and Real Parties in Interest. I  
15 provided notice to Respondent DEBORAH COOPER by sending e-mails to Acting Registrar of  
16 Voters COOPER at [Debi.Cooper@cr.cccounty.us](mailto:Debi.Cooper@cr.cccounty.us) [555 Escobar Street, Martinez, (925) 335-  
17 7800], to Assistant Registrar of Voters Scott Konopasek at [scott.konopasek@vote.cccounty.us](mailto:scott.konopasek@vote.cccounty.us)  
18 [555 Escobar Street, Martinez, (925) 335-7800] to Assistant County Counsel Rebecca Hooley at  
19 [Rebecca.Hooley@cc.cccounty.us](mailto:Rebecca.Hooley@cc.cccounty.us), and to County Counsel Executive Secretary Eric Suitos at  
20 [Eric.Suitos@cc.cccounty.us](mailto:Eric.Suitos@cc.cccounty.us) containing this ex-part application as an attachment.

21 6. I provided notice to Respondent SHARON L. ANDERSON by sending e-mails  
22 containing this ex-parte application as an attachment to Assistant County Counsel Rebecca  
23 Hooley at [Rebecca.Hooley@cc.cccounty.us](mailto:Rebecca.Hooley@cc.cccounty.us) [651 Pine Street 9th Floor, Martinez, (925) 335-  
24 1800], and to County Counsel Executive Secretary Eric Suitos at [Eric.Suitos@cc.cccounty.us](mailto:Eric.Suitos@cc.cccounty.us)  
25 [651 Pine Street 9th Floor, Martinez, (925) 335-1800]. I also caused this ex-parte application to  
26 be faxed to the County Counsel’s office at (925) 646-1078.

27 7. I provided notice to Real Party in Interest CONTRA COSTA TRANSPORTATION  
28 AUTHORITY (CCTA) by sending e-mails containing this ex-parte application as an attachment  
to Executive Director Randell Iwasaki at [RIwasaki@ccta.net](mailto:RIwasaki@ccta.net) [2999 Oak Road, Suite 100, Walnut

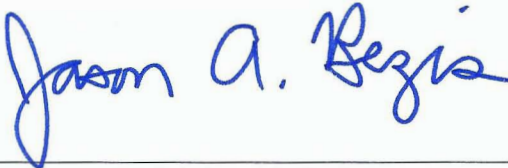


1 Creek, (925) 256-4700], CCTA Clerk of the Board Tarien Grover at [tgrover@ccta.net](mailto:tgrover@ccta.net) [2999  
2 Oak Road, Suite 100, Walnut Creek, (925) 256-4700] and CCTA counsel Mala Subramanian at  
3 [msubramanian@bbklaw.com](mailto:msubramanian@bbklaw.com) [2001 North Main St., Suite 390, Walnut Creek, (925) 977-3303].

4 8. I provided notice to Real Party in Interest CONTRA COSTA COUNTY BOARD OF  
5 SUPERVISORS by sending e-mails containing this ex-parte application as an attachment to the  
6 Board of Supervisors Clerk [651 Pine Street 1st Floor, Room 106, Martinez, (925) 335-1900] at  
7 [clerkoftheboard@cob.cccounty.us](mailto:clerkoftheboard@cob.cccounty.us), to Jami Napier, Chief Assistant Clerk of the Board at  
8 [Jami.Napier@cob.cccounty.us](mailto:Jami.Napier@cob.cccounty.us) [651 Pine Street 1st Floor, Room 106, Martinez, (925) 335-1900],  
9 to Assistant County Counsel Rebecca Hooley at [Rebecca.Hooley@cc.cccounty.us](mailto:Rebecca.Hooley@cc.cccounty.us), and to  
10 County Counsel Executive Secretary Eric Suits at [Eric.Suits@cc.cccounty.us](mailto:Eric.Suits@cc.cccounty.us).

11 Therefore, Petitioners have informed the opposing parties at least 24 hours before the December  
12 31, 2019 hearing where and when the application would be made, in compliance with California  
13 Rule of Court 3.1203. Petitioners expect opposition. The notice to opposing parties includes the  
14 relief sought, because a proposed hearing and briefing schedule is included in this application  
15 and in the proposed order.

16 9. I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct and that this Declaration is executed on December 30, 2019 at  
18 Lafayette, California.

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24 \_\_\_\_\_  
JASON A. BEZIS

# Exhibit 1

## ATTACHMENT A - 2020 MEASURE KEY DATES

### March 3, 2020 Primary Election

<b>Filing Period</b>	
December 6 <i>E-88</i>	Last day to place a measure on the ballot
December 12 <i>E-82</i>	Local measure letter assigned
December 18 <i>E-76</i>	Deadline for Primary Arguments For/Against
December 23 <i>E-71</i>	Deadline for Rebuttal Arguments
January 2 <i>E-61</i>	Last day to file Writ of Mandate
January 23 <i>E-40</i>	Estimated Voter Information Guide mailing

### November 3, 2020 General Election

<b>Filing Period</b>	
August 7 <i>E-88</i>	Last day to place a measure on the ballot
August 13 <i>E-82</i>	Local measure letter assigned
August 19 <i>E-76</i>	Deadline for Primary Arguments For/Against
August 24 <i>E-71</i>	Deadline for Rebuttal Arguments
September 3 <i>E-61</i>	Last day to file Writ of Mandate
September 24 <i>E-40</i>	Estimated Voter Information Guide mailing

1 LAW OFFICES OF JASON A. BEZIS  
2 California State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 708-7073  
6 Bezis4Law@gmail.com  
7 Attorney for Petitioners

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.: N19-2489

) **NOTICE OF ENTRY OF ORDER**  
) **SETTING EXPEDITED BRIEFING AND**  
) **HEARING SCHEDULE**

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

) Action Filed: December 30, 2019

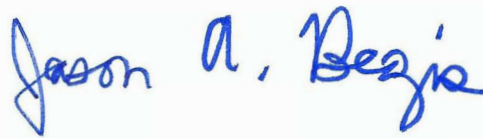
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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 31, 2019, the Court entered an Order Setting Expedited Briefing and Hearing Schedule for Writ of Mandate. A true and correct copy is attached as Exhibit A.

DATED: December 31, 2019

LAW OFFICES OF JASON A. BEZIS



By: \_\_\_\_\_

JASON A. BEZIS  
Attorney for Petitioners

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# EXHIBIT A

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# EXHIBIT A

1 LAW OFFICES OF JASON A. BEZIS  
2 California State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 708-7073  
6 Bezis4Law@gmail.com  
7 Attorney for Petitioners

FILED

2019 DEC 31 A 11:18

CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

CLERK

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.: *N19-2489*

~~PROPOSED~~ ORDER SETTING  
EXPEDITED BRIEFING AND HEARING  
SCHEDULE FOR WRIT OF MANDATE

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

Date: December 31, 2019

Time: 10:00 a.m.

Dept.: Department of the Supervising  
Judge of the Civil Division

//



1 The ex-parte application was heard by the Court on December 31, 2019, at 10:00 a.m. in  
2 Department 39 by the Hon. Edward Weil.

3 Attorney Jason A. Bezis appeared on behalf of Petitioners. Attorneys appeared for  
4 Respondents and Real Parties in Interest.

5 After consideration of the moving and any opposing papers, all papers and pleadings on  
6 file in this action, and the arguments of counsel:

7 The Court finds that this petition for writ of mandate is a priority matter pursuant to  
8 Elections Code §§ 9106 and 13314(a)(3) and that the issuance of any writ on or before January 6,  
9 2020 will not substantially interfere with the conduct of the March 3, 2020 election.

10 IT IS HEREBY ORDERED that the writ of mandate hearing in the above-entitled action  
11 is set for Monday, January 6, 2020 at 10:00 a.m. in Department 12. Any opposing papers or  
12 briefs by Respondents and Real Parties in Interest should be filed with the Superior Court clerk  
13 before 3:00 p.m. on Friday, January 3, 2020 and served electronically upon Petitioners' attorney  
14 Jason Bezis at e-mail address Bezis4Law@gmail.com and upon other parties before 5:00 p.m. on  
15 Friday, January 3, 2020. ~~Petitioners may electronically (by e-mail) serve a reply brief on~~  
16 ~~opposing parties by 5:00 p.m. on Sunday, January 5, 2020, lodge the reply brief with the Court at~~  
17 ~~the hearing on Monday, January 6, 2020, and file the reply brief with the Superior Court clerk on~~  
18 ~~Monday, January 6, 2020.~~ *No reply*

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25 **EDWARD WEIL**

26 Dated: December 31, 2019

27 JUDGE OF THE SUPERIOR COURT  
*Presiding Judge*

28 *Per CCP 635*



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**PROOF OF SERVICE**

*Michael Arata, et al. v. Deborah Cooper, et al.*  
Contra Costa County Superior Court Case No. N19-2489

At the time of service, I was over 18 years of age and not a party to this action. My business address is 3661-B Mosswood Drive, Lafayette, CA 94549-3509.

On December 31, 2019, I served true copies of the following document(s) described as:

**NOTICE OF ENTRY OF ORDER SETTING EXPEDITED BRIEFING AND HEARING SCHEDULE FOR WRIT OF MANDATE**

on the interested parties in this action as follows:

Thomas L. Geiger  
Assistant County Counsel  
COUNTY OF CONTRA COSTA  
[Thomas.Geiger@cc.cccounty.us](mailto:Thomas.Geiger@cc.cccounty.us)  
Attorney for Deborah Cooper, Sharon L. Anderson and Contra Costa County Board of Supervisors

Jason D. Kaune  
Hilary J. Gibson  
NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP  
[jkaune@nmgovlaw.com](mailto:jkaune@nmgovlaw.com); [hgibson@nmgovlaw.com](mailto:hgibson@nmgovlaw.com);  
Attorneys for Contra Costa Transportation Authority

**BY ELECTRONIC SERVICE:** I served the document(s) on the persons listed above to the e-mail addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 31, 2019, at Lafayette, California.



---

JASON A. BEZIS

1 SHARON L. ANDERSON (SBN 94814)  
County Counsel  
2 THOMAS L. GEIGER (SBN 199729)  
Assistant County Counsel  
3 COUNTY OF CONTRA COSTA  
651 Pine Street, 9th Floor  
4 Martinez, California 94553  
Telephone: (925) 335-1800  
5 Facsimile: (925) 646-1078

FILED  
JAN 03 2020  
K. JENSEN CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By \_\_\_\_\_  
A. Stewart, Deputy Clerk

6 Attorneys for  
Contra Costa County Acting Clerk-Recorder Deborah Cooper,  
7 Contra Costa County Counsel Sharon L. Anderson,  
Contra Costa County Board of Supervisors  
8

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF CONTRA COSTA

11  
12 MICHAEL ARATA,  
RICHARD S. COLMAN

13 Petitioners,

14  
15 v.

16 DEBORAH COOPER,  
SHARON L. ANDERSON

17 Respondents;  
18

19  
20 CONTRA COSTA  
TRANSPORTATION AUTHORITY,  
CONTRA COSTA COUNTY BOARD  
21 OF SUPERVISORS

22 Real Parties in Interest.  
23  
24

Case No. N 19-2488

**DECLARATION OF  
CONTRA COSTA COUNTY  
ASSISTANT REGISTRAR OF  
VOTERS SCOTT O. KONOPASEK**

Date: January 6, 2020  
Time: 10:00 a.m.  
Dept.: 12

25 I, Scott O. Konopasek, declare:

26 1. I am the Assistant Registrar of Voters for Contra Costa County. In this  
27 capacity, I am responsible for directing all activities of the Elections Division of the Office  
28 of the Contra Costa County Clerk-Recorder.

1           2.    The March 3, 2020 Presidential Primary is the most complex election in a  
2 four-year election cycle. There are 27 elective offices, with a total of 128 candidates for the  
3 various offices, that will be appearing on ballots. Voters will also decide one state  
4 proposition and seven local measures in Contra Costa County.

5           3.    The Elections Division is responsible for printing the official ballots for the  
6 primary election. Federal law requires that all ballots be translated into Spanish and  
7 Chinese, which results in a three card set, front and back, to present the contents of a single  
8 voter's official ballot. The Elections Division will print approximately 3,600,000 ballot  
9 cards for the primary election at a cost of \$650,000.

10          4.    Contra Costa County has 857 voting precincts. Each of the 857 voting  
11 precincts has at least one unique version of style of ballot. Styles are determined by the  
12 number of contests in a precinct resulting in approximately 900 ballot styles. Because this  
13 is a partisan primary, there are eight variations of each ballot style in each precinct  
14 containing each party's presidential and central committee candidates.

15          5.    Official ballots were submitted to the printer for printing on December 31,  
16 2019. The submission to the printer was a pdf document consisting of approximately  
17 21,000 pages. The printer has received the pdf submission and, as of the date of this  
18 declaration, the official ballots are in production and are being printed. A true and correct  
19 copy of a sample official ballot showing the Contra Costa Transportation Authority's sales  
20 tax measure is attached as Exhibit A.

21          6.    The first ballots for military and overseas voters must be mailed by January  
22 17, 2020, as required by federal law. Approximately 500,000 ballots will be mailed to  
23 voters on February 3, 2020.

24          7.    The Elections Division also is responsible for printing the voter information  
25 guide. The voter information guide is a separate publication with different requirements  
26 and production timelines.

27          8.    Printing of the voter information guides is scheduled to begin on January 6,  
28 2020. The estimated cost of printing and mailing the voter information guides is more than

1 \$2,000,000.

2 9. It takes approximately five weeks to lay out and format the voter information  
3 guide. There are 40 variations of the voter information guide to be printed. All 40 variants  
4 have been formatted. Once all 40 variants are formatted, the printer creates a booklet for  
5 each variant. The printer has prepared all the booklets for final verification by the Elections  
6 Division. All voter information guides are ready to be printed upon final signoff by the  
7 Elections Division.

8 10. Voter information guides will be mailed to each of the approximately 650,000  
9 individual voters in Contra Costa County on or about January 23, 2020.

10 11. Each voter information guide contains seven mandatory informational pages,  
11 eight sample ballot facsimile pages, four or five candidate statements pages, 56 pages of the  
12 spending plan for the Contra Costa Transportation Authority's half-cent sales tax measure,  
13 and between zero and seven pages of arguments for and against local measures.

14 12. The voter information guide also includes County Counsel's impartial  
15 analyses for different local measures. A true and correct copy of County Counsel's  
16 impartial analysis for the proposed Contra Costa Transportation Authority's sales tax  
17 measure is attached as Exhibit B.

18 13. Federal law requires all pages in a voter information guide to be published in  
19 Spanish and Chinese, resulting in page counts of between 220 pages and 250 pages for each  
20 voter information guide. The voter information guides are produced by ballot style and are  
21 custom to each voter.

22 14. The issuance of the writ requested by this petition will substantially interfere  
23 with the printing of official election materials. The sales tax measure proposed by the  
24 Contra Costa Transportation Authority will appear on every ballot in Contra Costa County.  
25 Any changes to the sales tax measure will affect all voters and all ballots. All ballots will  
26 have to be reformatted and reprinted, at a cost of \$650,000. All voter information guides  
27 will have to be reformatted.

28 15. The sales tax measure proposed by the Contra Costa Transportation Authority

1 was assigned the letter J. The measure was assigned this letter in a drawing held on  
2 December 12, 2019. The drawing was publicly noticed and open for public observation.  
3 The drawing was also live-streamed.

4 16. The drawing proceeded as follows: Each letter of the alphabet was written on  
5 a separate tag and inserted into a covered container. The container was shaken vigorously  
6 in order to mix the tags thoroughly. The container was then opened and the tags removed  
7 at random one at a time. As each was removed, the letter on the tag was written down next  
8 to the measure to which the letter was assigned. The drawing was held in accordance with  
9 the Elections Division's policies. A true and correct copy of the Elections Division's 2020  
10 Guide to Filing Measure Arguments, which includes the Elections Division's policies for  
11 assigning letters on page 6, is attached as Exhibit C.

12 17. There are seven local measures in the March 3, 2020, primary election. A true  
13 and correct copy of the seven local measures in the March 3, 2020, primary election is  
14 attached as Exhibit D.

15 18. No voter in Contra Costa County will vote on all seven local measures  
16 because each local measure is sponsored by a different jurisdiction. The order of local  
17 measures on ballots will vary from ballot style to ballot style. The result is that local  
18 measures do not appear together or sequentially on ballots. When one jurisdiction sponsors  
19 more than one local measure (which is not the case in this election), then the measures of  
20 that jurisdiction are placed in alphabetical order on the ballot. The Contra Costa  
21 Transportation Authority's sales tax measure is the only local measure that will appear on  
22 all Contra Costa County ballots.

23 19. The 10-calendar-day public examination period for the letters assigned to local  
24 measures was December 12, 2019, through December 22, 2019.

25 20. The 10-calendar-day public examination period for examining the impartial  
26 analysis prepared for the Contra Costa Transportation Authority's sales tax measure was  
27 December 18, 2019, through December 28, 2019.

28 21. The 10-calendar-day public examination period for examining the arguments

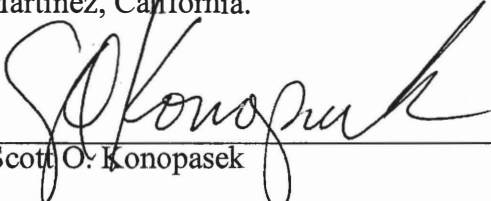
1 for and against local measures was December 18, 2019, through December 28, 2019.

2 22. The 10-calendar-day public examination period for examining rebuttal  
3 arguments for local measures was December 23, 2019, through January 2, 2020.

4 If called upon to testify as a witness, I can competently testify to the matters stated  
5 herein on my own personal knowledge.

6 I declare under penalty of perjury under the laws of the State of California that the  
7 foregoing is true and correct.

8 Executed January 3, 2020, at Martinez, California.

9   
10 Scott O. Konopasek

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13795

Ballot 169 - Type 169 - English / Spanish / Chinese - 3/3 - DEMOCRATIC - BRHL102.0

CONTRA COSTA TRANSPORTATION AUTHORITY  
AUTORIDAD DE TRANSPORTE DE CONTRA COSTA

J

To:

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

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

Con el fin de:

- reducir la congestión vehicular y solucionar los embotellamientos en las autopistas y las carreteras principales;
- trasladarse al trabajo de manera más rápida y previsible;
- mejorar la frecuencia, confianza, acceso, limpieza y seguridad de los autobuses, los ferries y el transporte público rápido del área de la bahía (Bay Area Rapid Transit, BART);
- mejorar la calidad del aire, y
- volver a pavimentar las carreteras.

¿Debería adoptarse la iniciativa de ley que implementa un Plan de gastos de transporte con el que se impone un impuesto sobre las ventas de ½ ¢ para generar un aproximado de \$103,000,000 anuales para el transporte local por 35 años, que el estado no puede tomar y para lo que se requiere una responsabilidad fiscal y que los fondos beneficien de manera directa a los residentes del condado de Contra Costa?

為：

- 減少高速公路和主要道路的擁堵情況以及整改瓶頸路段；
- 使通勤時間變得更快以及更加容易預測；
- 提高巴士、渡輪以及灣區捷運系統 (Bay Area Rapid Transit, BART) 的發車頻率、可靠性、可及性、清潔度以及安全性；
- 改善空氣品質；
- 重新鋪設道路；

是否應通過執行交通運輸支出計劃 (Transportation Expenditure Plan) 的議案 (徵收半美分消費稅，預計每年為當地交通提供\$103,000,000，持續35年，州不得挪用，要求財政問責，且資金直接造福於Contra Costa縣居民)？

Yes / 是

No / 否

EXHIBIT A

VOTE BOTH SIDES OF BALLOT  
VOTE EN AMBOS LADOS DE LA BALOTA  
請在選票的雙面投票

000115

DA  
12/31/19

**MEASURE J  
CONTRA COSTA TRANSPORTATION AUTHORITY**

To:

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

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

Two-thirds of those voting on the ballot measure must approve the measure for it to pass.

A "yes" vote is a vote in favor of authorizing this 0.5% sales tax.

A "no" vote is a vote against authorizing this 0.5% sales tax.

**COUNTY COUNSEL'S IMPARTIAL ANALYSIS OF  
MEASURE J**

The governing body of the Contra Costa Transportation Authority ("CCTA") has proposed a measure asking voters to approve a retail transactions and use tax – a sales tax – to fund certain transportation improvements in Contra Costa County. State law authorizes CCTA to adopt an ordinance proposing a one-half of one percent (0.5%) sales tax.

The sales tax would be collected in the incorporated and unincorporated areas of Contra Costa County from July 1, 2020, until June 30, 2055. The proceeds from this sales tax would supplement CCTA's existing one-half of one percent (0.5%) sales tax, which will continue to be collected until March 31, 2034.

According to the measure, proceeds from the sales tax would be used to reduce congestion and fix bottlenecks on highways and major roads; make commutes faster and more predictable; improve the frequency, reliability, accessibility, cleanliness, and safety of buses, ferries, and BART; improve air quality; and repave roads. Sales tax proceeds may only be used for the projects and purposes specified in CCTA's Transportation Expenditure Plan ("TEP"), which is included in the Voter Information Handbook, and any future amendments to the TEP. According to the TEP, 41.1% of the tax proceeds will be used to relieve congestion on highways, interchanges, and major roads; 54.9% of the tax proceeds will be used to improve transit and transportation countywide; 3.0% of the tax proceeds will fund transportation planning, facilities and services; and 1.0% of the tax proceeds will fund administrative costs.

Approval of this measure also would authorize CCTA to issue limited tax bonds to finance projects described in the TEP. The maximum bonded indebtedness may not exceed the estimated proceeds of the sales tax.

According to the TEP, CCTA's Public Oversight Committee will provide oversight of all expenditures of the sales tax proceeds and will report to the public. This committee will review annual audits, the allocation of the tax proceeds, the performance of projects and programs in the TEP, and compliance by local jurisdictions. Expenditures of sales tax proceeds also would be subject to annual independent audits.



# Guide to Filing Measure Arguments

FOR COUNTY, CITIES, SCHOOL, AND SPECIAL DISTRICTS

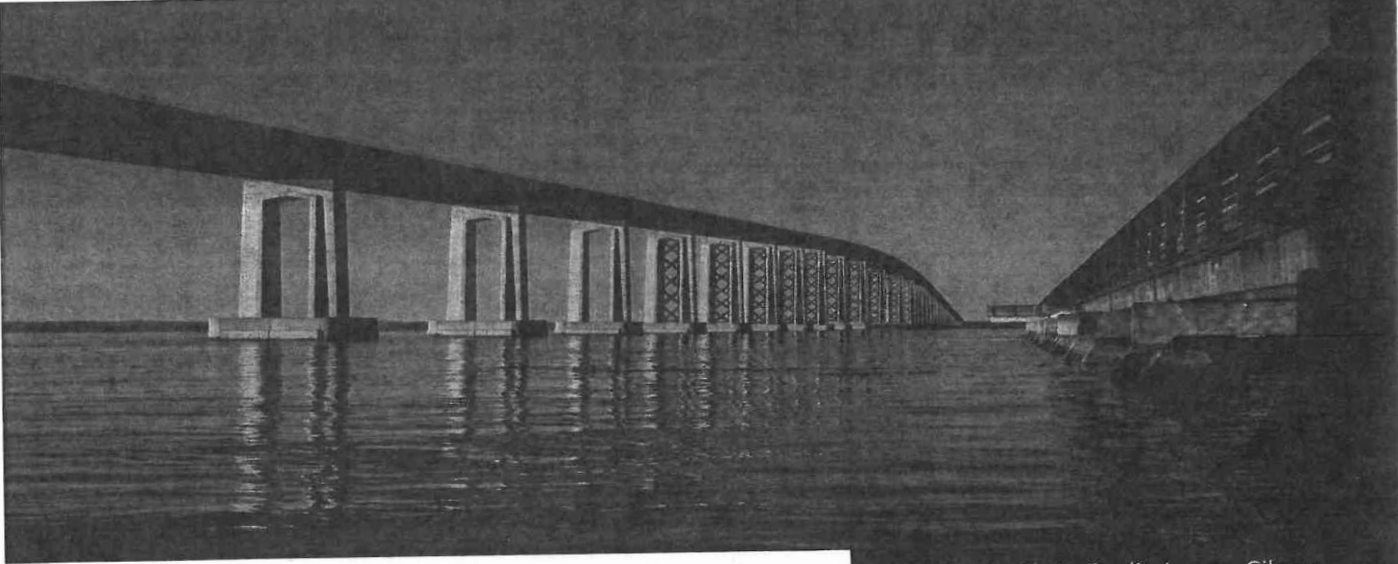


Photo Credit: Jerome Gibson

## 2020

Contra Costa County Elections  
555 Escobar Street, Martinez, CA 94553  
(925) 335-7800 | [www.cocovote.us](http://www.cocovote.us)

### EXHIBIT C

000117

## **DISCLAIMER**

This informational guide was developed in an effort to provide answers to questions frequently asked concerning the filing of measure arguments. It contains general information only and does not have the force or effect of law, regulations, or rule. In case of a conflict, the laws, regulations or rules apply. Persons using this guide accept responsibility for all legal standards and duties. For information on City measures, please contact the local City Clerk as guidelines may vary.

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## PURPOSE OF THIS GUIDE

This guide is intended to be a reference to political entities, interested organizations, and individuals on how they may participate in the process.

Generally, this guide applies for city measures. Cities may implement law differently than described in this guide. Regarding arguments for city measures, consult the City Clerk.

## WHAT IS PUBLISHED IN THE VOTER INFORMATION GUIDE

The following components comprise the information provided to voters in the Voter Information Guide:

### **Measure Wording**

The Measure  
Information Guide.

*Election Code 9051*

### **Impartial Analysis**

The County Counsel or City Attorney prepares an Impartial Analysis of a measure showing the effect of the measure on the existing law and the operation of the measure. The City Attorney prepares an Impartial Analysis of a city measure.

The Impartial Analysis may be up to 500 words.

*Election Code 9160, 9280, 9313, 9314, 9500*

### **Tax Rate Statement (if applicable)**

A Tax Rate Statement is supplied for each bond measure that creates a lien on a property within the jurisdiction. The Tax Rate Statement is prepared by the jurisdiction proposing the measure.

There is no word limit for Tax Rate Statements.

*Election Code 9401, 9402*

### **Fiscal Analysis (if applicable)**

The County Auditor-Controller may be requested to prepare a Fiscal Analysis by the Board of Supervisors or City Council.

The Fiscal Analysis Statement may be up to 500 words.

*Election Code 9160*

### **Arguments In Favor and Arguments Against a Measure**

Each Argument In Favor or Against may be up to 300 words.

*Election Code 9162, 9315*

### **Rebuttal Argument**

A Rebuttal Argument is a statement, which refutes an Argument In Favor or Argument Against a Measure.

Each Rebuttal Argument may be up to 250 words.

*Election Code 9167, 9317*

### **Full Text (optional)**

The full text of the measure being voted upon may be published, to provide voters information in addition to the 75-word measure. The full text is usually a resolution or ordinance that offers additional information regarding the measure.

There is no word limit for the full text.

### **Order of Appearance**

Arguments, Rebuttal Arguments, and analyses are printed in the Voter Information Guide and mailed to all registered voters in the jurisdiction who are eligible to vote for the particular measure.

*Election Code 13109*

The information appears in the following order:

1. Measure Wording
2. Impartial Analysis
3. Fiscal Analysis or Tax Rate Statement (if applicable)
4. Argument In Favor
5. Argument Against
6. Rebuttal to Argument In Favor
7. Rebuttal to Argument Against
8. Full Text (optional)

All content is translated into Spanish and Chinese and will appear in English, Spanish, and Chinese in that order.

## ARGUMENT SUBMISSION PROCESS

**Submit Arguments to:** Contra Costa County Elections Division  
555 Escobar Street  
Martinez, CA 94553

**Submissions must include:**

Hardcopies of the Arguments with wet signatures must be filed in person or by mail to the Elections Division at 555 Escobar Street Martinez, CA 94553. A faxed or electronic PDF of the Argument document (including signatures) may be submitted to meet the filing deadline but hardcopies with the wet signatures must be provided within three business days of the faxed or electronic submission.

The argument language must also be submitted electronically as an editable text file to [cfile@vote.cccounty.us](mailto:cfile@vote.cccounty.us) by the deadline.

The argument will be formatted for the Voter Information Guide to appear as closely as possible to the hardcopy submitted.

**Confidentiality:** Arguments, rebuttals and analyses are not disclosable until 5pm on the date they are due. At that time, the contents become public information.

**Withdrawal/Changes:** Arguments, rebuttals and analyses may be changed or withdrawn up until the submission deadline.

*Election Code 9163, 9316, 9317, 9601*

**Public Review:** Following the final deadline for filing documents, arguments and rebuttals are available at the Registrar of Voter's Office for a 10-day public review period.

Any challenges of the measure documents may be sought from the Superior Court to require amendments or deletions through a Writ of Mandamus will be issued by the Superior Court upon clear and convincing proof that the material in question is false, misleading, or inconsistent.

Administrative challenges of arguments, rebuttals and analyses will not be accepted or entertained by the Registrar of Voters.

*Election Code 9190, 9295, 9380, 9509*

**Rebuttal Arguments:** Rebuttal Arguments In Favor or Against a Measure are filed with the Elections Division. The Registrar establishes the deadlines for the arguments for all elections in which multiple jurisdictions participate. Cities establish deadlines only when the election is not consolidated or combined with other entities. Arguments are not disclosable until the deadline.

Rebuttal Arguments are shared with those submitting Primary Arguments for purposes of drafting Rebuttal Arguments at the deadline.

Arguments In Favor and Arguments Against measures are sent immediately after the submission deadline to those arguing the opposite position for the purpose of preparing a Rebuttal Argument.

Rebuttal Arguments must be signed by the same authors of the original arguments in favor or against unless the original signers of the arguments authorize, in writing, others to sign the Rebuttal Arguments. A "Release for Rebuttal Argument" should be filed with the Rebuttal Arguments.

*Election Code 9167, 9285, 9317, 9504*

## WHO CAN SUBMIT AN ARGUMENT

The governing board (Board of Supervisors, School Board or Special District Board), any individual voter who is eligible to vote on the measure, a bona fide association of citizens, or any combination of these voters and associations may file a written Argument In Favor or Argument Against any county, school, or district measure placed on the ballot by the governing body or by initiative.

*Election Code 9120, 9162, 9501*

### What is a Bona Fide Association of Citizens?

A bona fide association of citizens is a recognized group of citizens bound together by a common interest or cause such as:

- A group or organization primarily formed as a committee to support or oppose a ballot measure.
- An organization that meets on a regular basis.

The individuals signing an argument on behalf of a bona fide association do not have to be eligible voters in the jurisdiction. A "Bona Fide Association of Citizens Filer Data Sheet" will be filed with the arguments.

### If More Than One Argument In Favor or Argument Against Is Filed

Only one Argument In Favor and one Argument Against any measure will be printed in the Voter Information Guide. If more than one Argument In Favor or more than one Argument Against any measure is filed, a single argument will be selected by the Registrar of Voters.

In selecting a single argument, the Registrar gives preference and priority, in order, to arguments submitted by:

1. Members of the governing board
2. The bona fide sponsors or proponents of the measure
3. Bona fide associations of citizens
4. Individual voters who are eligible to vote on the measure

If two or more parties representing the same type of body/association submit competing Arguments In Favor or Arguments Against the same measure, the Registrar will make a subjective assessment of the arguments. The assessment may include consideration of grammar, spelling, coherence, tone and the comprehensiveness of the argument.

Parties are encouraged to collaborate when multiple arguments are submitted.

*Election Code 9166, 9503*

# ARGUMENT & REBUTTAL FORMAT

- Submissions will be labeled with the type of argument being submitted in the heading title (ex. Argument in Favor of Measure A). This is not part of the word count.
- The heading for all arguments is standardized. Subheadings and deviations from the standardized heading will not be accepted.
- Arguments and rebuttal arguments, including the names and titles of the signers, must be typed.
- Documents will be printed as submitted. Spelling, punctuation and grammatical errors will not be corrected by the Elections Division.
- An argument or rebuttal argument must be written to address only one measure appearing on the ballot. An argument combining  
accepted.
- No more than five names/titles will appear with any argument in the Voter Information Guide. If more than five signers are submitted, only the first five will be printed.
- All arguments and rebuttals must include an original signature of each signer. If not all signers sign on the same document, separate copies, bearing wet signatures, can be filed.
- No profanity or other objectionable language may appear in an argument.

*Election Code 9164, 9501*

## Argument Sample

**ARGUMENT IN FAVOR  
OF MEASURE \_\_\_\_**

**ARGUMENT  
TEXT**

The undersigned Proponent(s) or Author(s) hereby state that such argument is true and correct to the best of their knowledge and belief.

Print Name _____	Print Name _____
Title _____	Title _____
Signature _____	Signature _____
Print Name _____	Print Name _____
Title _____	Title _____
Signature _____	Signature _____
Print Name _____	
Title _____	
Signature _____	

## Rebuttal Argument Sample

**REBUTTAL TO ARGUMENT AGAINST  
MEASURE \_\_\_\_**

**ARGUMENT  
TEXT**

The undersigned Proponent(s) or Author(s) hereby state that such argument is true and correct to the best of their knowledge and belief.

Print Name _____	Print Name _____
Title _____	Title _____
Signature _____	Signature _____
Print Name _____	Print Name _____
Title _____	Title _____
Signature _____	Signature _____
Print Name _____	
Title _____	
Signature _____	



## LETTER ASSIGNMENTS

Each measure to appear on the ballot is assigned a letter for identification and reporting purposes.

### **Timeline for Assigning Measure Letters**

The Registrar of Voters assigns measure letters the Thursday (E-82) following the deadline to submit a measure (E-88).

### **Assignment of Letters**

- Letters are assigned based upon a random draw.
- All letters are included in the random draw.
- If, during the election, all letters have been used, lettering will continue to include e.g. "AA", "BB", etc.
- Unused letters will not carry over to the next election. Each election will begin with a new random drawing.

### **When a Jurisdiction Covers Two or More Counties**

When a jurisdiction covers two or more counties, the Registrar of Voters in each county will mutually agree to use the same letter for the measure.

### **Withdrawal of a Measure**

A legislative body may amend or withdraw its measure by filing a resolution stating the specifics concerning the amendment or withdrawal not later than 83 days before an election. An initiative or referendum measure may be withdrawn by filing a "Notice of Withdrawal" signed by all proponents.

*Election Code 9604, 9605*

## ATTACHMENT A - 2020 MEASURE KEY DATES

### March 3, 2020 Primary Election

Filing Period	
December 6 <i>E-88</i>	Last day to place a measure on the ballot
December 12 <i>E-82</i>	Local measure letter assigned
December 18 <i>E-76</i>	Deadline for Primary Arguments For/Against
December 23 <i>E-71</i>	Deadline for Rebuttal Arguments
January 2 <i>E-61</i>	Last day to file Writ of Mandate
January 23 <i>E-40</i>	Estimated Voter Information Guide mailing

### November 3, 2020 Ge

Filing Period	
August 7 <i>E-88</i>	Last day to place a measure on the ballot
August 13 <i>E-82</i>	Local measure letter assigned
August 19 <i>E-76</i>	Deadline for Primary Arguments For/Against
August 24 <i>E-71</i>	Deadline for Rebuttal Arguments
September 3 <i>E-61</i>	Last day to file Writ of Mandate
September 24 <i>E-40</i>	Estimated Voter Information Guide mailing



## ATTACHMENT B - WORD COUNT GUIDELINES

The following guidelines are for computing the word count for arguments. The authors' titles and names are not counted in the word count, only the text of the argument. The Registrar of Voters will make final determination of the word count.

*Election Code 9*

<p><b>Acronyms</b> Examples: UCLA, PTA, U.S.M.C.</p>	one word
<p><b>Geographical Names</b> Examples: Contra Costa County Walnut Creek City of Pittsburg Bay Area</p>	one word
<p><b>Districts with an Elected Board</b> Examples: Contra Costa Community College District Antioch Unified School District East Bay Regional Park District San Francisco Bay Area Rapid Transit District</p>	one word
<p><b>Numbers/Numerical Combinations</b> Digits (1, 10, or 100, etc.) 1990-1991, 100%, etc. Spelled out (one, ten, or one hundred)</p>	one word one word one for each word
<p><b>Dates</b> All digits (11/5/96) Word and digits (June 2, 1998)</p>	one word one word
<p><b>Hyphenated Words</b> Hyphenated words that appear in any generally available standard reference dictionary, as determined by the Registrar of Voters, shall be counted as one word.</p>	one word
<p><b>Punctuation</b></p>	not counted
<p><b>Telephone Numbers</b></p>	one word
<p><b>Email / Website Addresses</b></p>	one word



## ATTACHMENT C - IMPORTANT CONTACT INFORMATION

Main Number	(925) 335-7800	
Toll Free	(877) 335-7802	
Rosa Mena, Elections Processing Supervisor	(925) 335-7806	rosa.mena@vote.cccounty.us
Sara Brady, Elections Services Manager	(925) 335-7807	sara.brady@vote.cccounty.us
Scott Konopasek, Assistant Registrar of Voters	(925) 335-7800	scott.konopasek@vote.cccounty.us
Fax	(925) 335-7842	
Email	cfile@vote.cccounty.us	
Website	www.cocovote.us	

**MARCH 3, 2020 PRIMARY ELECTION**  
**MEASURES**  
*As of 12/17/19*

---

**MEASURE   T**

**Antioch Unified School District School Facilities Improvement District No. 2**

**55% required to pass**

To improve the quality of education at Antioch Schools by renovating classrooms, upgrading school safety and security systems, improving technology and energy efficiency, upgrading science labs, modernizing schools, and repairing / replacing roofs, shall School Facilities Improvement District #2 of the Antioch Unified School District issue \$105,000,000 in bonds at legal interest rates, raising an average of \$7,000,000 annually for 36 years, at a rate of 6 cents per \$100 of assessed value with independent oversight and accountability?

---

**MEASURE   L**

**Lafayette School District**

**2/3 required to pass**

To protect the quality of education and prevent deep cuts to Lafayette elementary and middle school programs in math, science, engineering, technology, reading, music, and the arts, maintain manageable class sizes to enhance student achievement, and attract and retain highly qualified teachers, shall Lafayette School District establish a \$290 parcel tax for 7 years only, providing \$3,011,360 annually in dedicated funding for neighborhood schools, with independent citizen oversight, an exemption for seniors, and all money staying local?

---

**MEASURE   M**

**Moraga**

**2/3 required to pass**

To maintain high quality elementary/intermediate schools, shall Moraga School District continue funding to support effective science, technology, engineering, math, arts and music programs; maintain manageable class sizes; keep schools safe; and attract and retain the best qualified teachers; by adopting a measure renewing funding at the current \$192 rate per parcel, providing \$1 million annually, until repealed by voters, with low-income senior exemptions, cost of living adjustments and independent oversight with all funds supporting Moraga students?

---

**MEASURE   R**

**West Contra Costa Unified School District**

**55% required to pass**

**WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT CLASSROOM MODERNIZATION AND SAFETY UPDATE MEASURE.** To repair, upgrade neighborhood schools, shall West Contra Costa Unified School District modernize core classrooms; provide safe, secure school environments, including updated technology and air conditioning, that improve academic achievement and provide relevant career pathways for all students, by issuing \$575 million of bonds, at legal rates, averaging \$34.48 million annually while bonds are outstanding, at 6¢ per \$100 assessed value, with strict citizens' oversight, annual audits and all money for local schools?

---

**MEASURE   J**

**Contra Costa Transportation Authority**

**2/3 required to pass**

To:

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

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

---

**MEASURE   A**

**Pleasant Hill Recreation & Park District**

**2/3 required to pass**

To improve parks and recreation for children, families and senior citizens; upgrade and replace deteriorating restrooms; improve safety / security; upgrade outdated plumbing and irrigation; and upgrade, construct, renovate, and expand parks / facilities; shall Pleasant Hill Recreation & Park District issue \$63,500,000 of bonds at legal rates, averaging \$3,400,000 collected annually while bonds are outstanding at a rate of approximately 1.9 cents per \$100 assessed value, with annual audits, independent citizens' oversight, no money for salaries and all funding staying local?

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**MEASURE Y**

**Town of Danville**

**Majority required to pass**

Shall Town Council Ordinance No. 2019-06, rezoning a 410 acre parcel from agricultural preserve, general agricultural, and planned development district to a new planned development district and approving the Magee Preserve project, which creates 69 single family lots of approximately 29 acres of the 410 acre site, preserves the remaining 381 acres as permanent open space and dedicates easements for hiking and biking trails for public use on the site, be approved?

---

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9 CONTRA COSTA TRANSPORTATION AUTHORITY

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF CONTRA COSTA

13 MICHAEL ARATA and RICHARD S )  
COLMAN, )

14 )  
15 *Petitioners.* )

16 vs. )

17 DEBORAH COOPER, in her official capacity as )  
ACTING COUNTY CLERK-RECORDER AND )  
18 REGISTRAR OF VOTERS, and SHARON L. )

19 ANDERSON, in her official capacity as Contra )  
Costa County Counsel. )

20 *Respondents.* )

21 )  
22 CONTRA COSTA TRANSPORTATION )  
23 AUTHORITY, a special district )

24 *Real Party in Interest.* )

25 )  
26 CONTRA COSTA COUNTY BOARD OF )  
SUPERVISORS, )

27 *Real Party in Interest.* )

28 )

Case No.: N19-2489  
**REAL PARTY'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO PETITION FOR  
WRIT OF MANDATE**

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

**Date: January 6, 2020  
Time: 10:00 a.m.  
Dept.: 12  
Judge: Hon. Charles S. Treat**

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1 **I. INTRODUCTION.**

2 The ballot label<sup>1</sup> for Measure J, which will appear on the ballot in Contra Costa County  
3 (“County”) on March 3, 2020, represents an accurate and neutral summary of the measure’s operation  
4 and effect. Yet Petitioners in this incredibly late-filed action seek to have this Court rewrite the ballot  
5 label *after the ballots have already been printed*. Such action would be unprecedented, and *would*  
6 *require reprinting approximately 3,600,000 ballots*. Reprinting the ballots would cost the County  
7 \$650,000 and, without question, would illegally interfere with the timely printing and distribution of  
8 ballots and conduct of the election in violation of the Elections Code’s clear, black letter prohibition  
9 on such interference. (See Elec. Code § 13314(a)(2) [“A peremptory writ of mandate shall issue only  
10 upon proof . . . (B) That issuance of the writ will not substantially interfere with the conduct of the  
11 election”]; Elec. Code § 9190(b)(2) [“A peremptory writ of mandate or an injunction shall be issued  
12 only upon clear and convincing proof that . . . issuance of the writ or injunction will not substantially  
13 interfere with the printing or distribution of official election materials as provided by law” (emphasis  
14 added)].) Having sat on their hands for *two months after the adoption of the ballot label*, it is absurd  
15 for Petitioners to now demand that the County reprint the ballots at great expense, thereby  
16 jeopardizing County voters’ right to receive their ballots in a timely fashion. All of Petitioners’ claims  
17 related to the ballot measure letter designation and the wording of the ballot label (namely, the second,  
18 third, fourth, and fifth causes of action) must therefore be dismissed.<sup>2</sup>

19 In addition to being barred due to interference with the printing of ballots and conduct of the  
20 election, Petitioners’ claims related to the ballot label must be denied for a number of other reasons  
21 as well.

22 First, Petitioners’ claims are also barred by the statute of limitations. Pursuant to Elections  
23 Code § 9190, challenges to ballot materials must be filed “no later than the end of the 10-calendar

24 <sup>1</sup> The terms ballot “title,” “question,” “label,” and “statement” are used interchangeably (as Petitioners’  
25 acknowledge in their Petition for Writ of Mandate), and courts have found the same standards apply to all such  
26 materials, regardless of what they are called by the jurisdiction in question. (*See Yes on 25, Citizens for an On-*  
27 *Time Budget v. Superior Court* (2010) 189 Cal. App. 4th 1445, 1452-53 [citing cases]; see also *McDonough v.*  
28 *Superior Court* (2012) 204 Cal.App.4th 1169, 1174.) Although the Elections Code generally uses the term  
“question” for local measures, this memorandum will use the term “ballot label” for the sake of simplicity,  
since that is the primary terminology used by Petitioners in their Petition for Writ of Mandate.

<sup>2</sup> In the interest of avoiding redundancy with the County’s filing, Real Parties’ Opposition to the  
Petition for Writ of Mandate will address only Petitioners’ claims with respect to the ballot label.

1 day public examination period.” Here, the ballot label was adopted by the Contra Costa  
2 Transportation Authority (“CCTA”) on October 30, 2019 and the public examination period expired  
3 10 days later—yet this action was not filed until December 30, 2019, *two full months* after the ballot  
4 label was adopted by the CCTA. The Petition for Writ of Mandate was untimely filed and must be  
5 summarily dismissed.

6 Second, even assuming *arguendo* that their ballot label claim is not time barred, Petitioners’  
7 claims are entirely lacking in merit and do not come anywhere close to meeting the “clear and  
8 convincing” evidentiary burden required for a challenge to a ballot label. (See Elec. Code §  
9 9190(b)(2).) The ballot label is fair and accurate as drafted, and Petitioners have introduced no actual  
10 evidence to the contrary. Rather, they have merely argued that they disagree with the CCTA’s  
11 assessment of impacts that will result from Measure J’s passage, despite the fact that there is ample  
12 data to support the ballot label’s statements.

13 Accordingly, based on their fatally defective Petition and a complete lack of evidentiary  
14 support for the allegations therein, Petitioners are not entitled to any relief with respect to the ballot  
15 label.

## 16 **II. FACTUAL AND PROCEDURAL BACKGROUND.**

17 On October 30, 2019, CCTA adopted Ordinance 19-03, authorizing CCTA to impose a ½ cent  
18 sales tax increase if the tax ordinance is approved by two-thirds of the County’s voters. (Petitioners’  
19 Request for Judicial Notice (“Petitioners’ RJN”), Ex. A [CCTA Ordinance 19-03].) The ordinance  
20 provides that the proceeds of the tax shall be used “solely for the projects and purposes set forth in  
21 the 2020 TEP [Transportation Expenditure Plan], as it may be amended from time to time, and for  
22 the administration thereof.” (*Id.* at p. 1.4-10.) In turn, the 2020 TEP provides a list of funding  
23 categories for 1) “relieving congestion on highways, interchanges, and major roads,” and 2)  
24 “improving transit and transportation countywide in all our communities.” (Petitioners’ RJN, Ex. G  
25 at p. 4.) Within those two major categories of funding priorities, the 2020 TEP includes specific  
26 budget line items to accomplish these overarching goals, which include improvements to specified  
27 county roads intended to “improve traffic flow,” “relieve congestion,” and “improve local access,”  
28 and improving accessibility, reliability, and desirability of public transportation options by providing

1 “increase bus services,” “provid[ing] greater access to BART stations along I-680 and Highway 24,”  
2 providing “accessible transportation for seniors, veterans, and people with disabilities,” and providing  
3 a “cleaner, safer BART.” (*Id.*) The funding categories for the 2020 TEP also include a specific budget  
4 line item to “reduce emissions and improve air quality.” (*Id.*)

5 On the same date (October 30, 2019), the CCTA adopted Resolution 19-55-P, requesting that  
6 the County Board of Supervisors submit the proposed tax measure to the voters, and adopting the  
7 following ballot label for the measure:

8 To:

- 9 • Reduce congestion and fix bottlenecks on highways and major roads;
- 10 • Make commutes faster and more predictable;
- 11 • Improve the frequency, reliability, accessibility, cleanliness, and safety of  
12 buses, ferries, and BART;
- 13 • Improve air quality;
- 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  
17 for 35 years that the State cannot take, requiring fiscal accountability, and funds  
18 directly benefitting Contra Costa County residents, be adopted?

19 (Petitioners’ RJN, Ex. B.)

20 On November 19, 2019, the Board of Supervisors adopted Ordinance 2019-33 submitting the  
21 measure to the voters for the March 3, 2020 election with the ballot label adopted by CCTA at its  
22 October 30, 2019 meeting. (Petitioners’ RJN, Ex. C.) Pursuant to a standard, neutral process used by  
23 the Contra Costa County Elections Department, the measure was designated as Measure J on  
24 December 12, 2019. (Declaration of Assistant Registrar of Voters Scott O. Konopasek [“ROV Dec”],  
¶ 15.) The deadline for challenging the ballot label having long passed, the County commenced the  
process for printing the ballots for the March 3, 2020 election—which include the ballot letter  
designation and ballot label for Measure J—on December 31, 2019, and the official ballots are  
currently in production and being printed. (ROV Dec, ¶ 5.)

25 **III. ARGUMENT.**

26 **A. Any changes to the ballot label/measure letter designation would “substantially**  
27 **interfere” with the printing and distribution of ballot materials and the conduct**  
28 **of the election, and are therefore prohibited by the Elections Code.**

The Elections Code provides a path for electors to challenge ballot materials, but provides, in



1 no uncertain terms, that any challenges must be filed on an urgency basis. As Petitioners  
2 acknowledge, Elections Code section 13314(a)(2)(B) provides that a writ of mandate ordering  
3 changes to ballot materials may issue if, and only if, “issuance of the writ will not substantially  
4 interfere with the conduct of the election.” (Emphasis added.) In the same vein, Elections Code  
5 section 9190 provides that “A peremptory writ of mandate or an injunction shall be issued only upon  
6 clear and convincing proof that the material in question is false, misleading, or inconsistent with this  
7 chapter, and that issuance of the writ or injunction will not substantially interfere with the printing or  
8 distribution of official election materials as provided by law.” (Emphasis added.) In this way, the  
9 Elections Code balances the right of Petitioners to challenge ballot materials against the County’s  
10 legal mandate to print the ballots and other ballot materials and distribute them to County electors  
11 pursuant to a strict timeline established by law.

12         The legal timeline established for the printing and distribution of ballot materials is intended  
13 not only to ensure orderly and predictable preparation for County elections officials, but also to ensure  
14 that voters—including military and overseas voters—receive their ballots in a timely fashion and are  
15 able to review the relevant materials, cast their ballots, and return those ballots in time for their votes  
16 to be counted. The Elections Code’s clear mandate that changes to ballot materials may be ordered  
17 *only* in the event that such changes will not interfere with the printing and distribution of ballots or  
18 otherwise interfere with the conduct of the election protects from undue interference elections  
19 officials’ responsibility to conduct, and voters’ right to participate in, a fair and orderly election.

20         This mandate of non-interference is understood by elections officials, courts, and attorneys  
21 who practice in this area to mean that a challenge to ballot materials is timely only if it will be *decided*  
22 before the ballot materials are sent to the printer. (See, e.g., *McDonough v. Superior Court* (2012)  
23 204 Cal.App.4th 1169, 1173-74 [finding no substantial interference where the superior court had  
24 ruled, and court of appeal had issued a stay, *before materials were sent to the printer*].) Here,  
25 Petitioners’ challenge to the ballot label and measure letter designation was not even *filed* until the  
26 day before ballots were sent to the printer and the printing process will have been underway for days  
27 (if not already completed) by the time Petitioners have obtained a decision. (ROV Dec. at ¶ 14.)  
28 Without question, the issuance of a writ ordering changes to the ballot label will substantially interfere

1 with the printing of the official election materials. (ROV Dec. at ¶ 14.) These grounds alone require  
2 Petitioners' challenge to the ballot label and measure letter designation to be dismissed.

3 **B. The present action is untimely and barred by the statute of limitations; any**  
4 **challenge to a ballot label must be filed within 10 days of the label's adoption.**

5 The Elections Code provides that ballot materials are subject to a "public examination period,"  
6 and imposes a 10-day statute of limitations on challenges to ballot materials:

7 During the 10-calendar-day public examination period provided by this  
8 section, any voter of the jurisdiction in which the election is being held, or  
9 the county elections official, himself or herself, may seek a writ of mandate  
10 or an injunction requiring any or all of the materials to be amended or deleted.  
11 The writ of mandate or injunction request shall be filed no later than the end  
12 of the 10-calendar-day public examination period.

13 (Elec. Code § 9190; *see also McDonough, supra*, 204 Cal.App.4th at 1173 [applying the 10-day  
14 statute of limitations to a challenge to a ballot label].) Here, Petitioners have effectively conceded  
15 that this statute of limitations governs their challenge to the ballot label. (See Petition for Writ of  
16 Mandate; Declaratory Relief; Injunction ("PWOM") at p.4:10-11 [citing to Elec. Code § 9190 as  
17 authority for this Court's jurisdiction; *see also* PWOM at p. 2:1-5; PWOM at p. 19: ¶ 78 [citing  
18 *McDonough, supra*, which applies the 10-day statute of limitations to ballot label challenges].)<sup>3</sup> Yet  
19 they have failed to comply with the statute.

20 The CCTA adopted the ballot label on October 30, 2019. (See PWOM at p. 2:26-28;  
21 Petitioners' RJN, Ex. B at p. 1.5-8) As such, Petitioners' challenge was required to be filed no later

22 <sup>3</sup> Petitioners argue that their Petition for Writ of Mandate was timely filed because it was filed "three  
23 days before January 2, 2020, the date that the County Elections Division asserts as 'Last day to file Writ of  
24 Mandate' in its 'ATTACHMENT A - 2020 MEASURE KEY DATES' from the 'Guide to Filing Measure  
25 Arguments for County, Cities, School, and Special Districts 2020 Contra Costa County Elections.'" (See  
26 PWOM at p.3: 22-27.) As discussed herein, this is simply not how this works. There is no single, generally  
27 applicable deadline by which a petition for writ of mandate must be filed; rather the deadline differs depending  
28 on the material to be challenged, and is 10-days from the date the challenged material is filed. Petitioners'  
argument to the contrary appears wholly disingenuous, given that they have cited to the applicable statutory  
provisions and case law that clearly lays out the statute of limitations throughout their petition. Furthermore,  
as Petitioners' themselves acknowledge, the document they cite for this deadline is contained in a guide to  
filing measure *arguments*. (See PWOM at p. 3:25-27.) The table that contains this deadline pertains only to  
ballot *arguments*, and even a cursory examination of the table makes clear that January 2 is identified as the  
last day to file a challenge to ballot *arguments* because it is 10 days from the due date for the rebuttal argument,  
the last ballot argument to be filed. (Petitioners' RJN, Ex. J.) Given that Petitioners are not challenging a ballot  
argument, their apparent reliance on the County's representations about the last day to file a writ of mandate  
challenging a rebuttal argument is puzzling.

1 than November 11, 2019.<sup>4</sup> (Elec. Code § 9190; *see also* Govt. Code § 6800; Civ. Code § 10; Code  
2 Civ. Proc. § 12.) Petitioners’ lawsuit, however, was not filed until December 30, 2019. This action is,  
3 without question, untimely.<sup>5</sup>

4 It is axiomatic that a statute of limitations “completely bars” an action that is not brought  
5 within the statutory period. (*People v. Williams* (1999) 21 Cal. 4th 335, 341.) “Inasmuch as it  
6 ‘necessarily fix[es]’ a ‘definite period[] of time’ [citation], it operates conclusively across the board,  
7 and not flexibly on a case-by-case basis.” (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th  
8 1256, 1278 [omissions in original].) Thus, in addition to being barred by the indisputable interference  
9 with the conduct of the election (and without even getting to the lack of merit and total absence of  
10 clear and convincing evidence offered by Petitioners in this case), the challenge to the ballot label is  
11 completely barred by Petitioners’ failure to file within the prescribed 10-day period:

12 While the bar of the statute of limitations may be considered a harsh result  
13 where there is an otherwise meritorious cause of action, as a matter of policy,  
14 this defense operates conclusively across-the-board. It does so with respect  
15 to all causes of action, both those that do not have merit and also those that  
16 do.

17 (*Id.* at 1282 [internal quotations omitted].)

18 **C. Petitioners bear the burden by “clear and convincing proof” and yet have offered**  
19 **no evidence whatsoever that the ballot label is improper.**

20 The Elections Code sets a high bar for challenges to a ballot label, providing that “A  
21 peremptory writ of mandate or an injunction shall be issued only upon clear and convincing proof  
22 that the material in question is false, misleading, or inconsistent with the requirements of this chapter.”  
23 (Elec. Code § 9190(b)(2).) The “clear and convincing” evidentiary standard is considerably “more  
24 substantial than a mere preponderance of the evidence,” (*People v. McKee* (2010) 47 Cal.4th 1172,  
25 1189) mandating that “doubts are to be resolved in favor of [the ballot question’s] sufficiency,” and

26 <sup>4</sup> 10 days after October 30<sup>th</sup> is November 9<sup>th</sup>, which falls on a Saturday. The November 11<sup>th</sup>  
27 date assumes the deadline to file is extended to the next business day.

28 <sup>5</sup> Measure J, and the ballot label adopted by CCTA on October 30<sup>th</sup>, was subsequently  
submitted to the voters by the County Board of Supervisors on November 19, 2019 (See Petitioners’  
RJN, Ex. C.). Even assuming *arguendo* that the November 19<sup>th</sup> date the Board of Supervisors  
submitted the measure to the voters is the relevant date for the purpose of calculating the statute of  
limitations, any challenge to the ballot label was required to have been filed on or before November  
29, 2019.

1 that the language should only be altered if there is a clear showing that it does not comply with  
2 statutory requirements. (See *Perry v. Jordan* (1934) 34 Cal.2d 87, 94 [emphasis added].) “The  
3 standard, as defined by the Legislature, is necessarily a high one.” (*Huntington Beach City Council*  
4 *v. Sup. Ct.* (2002) 94 Cal.App.4th 1417, 1432.) As the Court stated in *Huntington Beach*,

5 [T]he Legislature went out of its way to emphasize the narrowness of the  
6 scope of any proper challenges by appending the word "only" in front of the  
7 heightened evidentiary standard. The operative language ... is: "A  
8 peremptory writ of mandate or an injunction shall be issued *only* upon clear  
and convincing proof that the material in question is false, misleading, or  
inconsistent with the requirements of this chapter . . . ." (Italics added.)

9 (*Id.* at 1428.)

10 Furthermore, “the drafter is afforded ‘considerable latitude’ in composing the ballot [label],  
11 and we must presume its language to be accurate. ‘Only in a clear case should a [label] so prepared  
12 be held insufficient. Stated another way, if reasonable minds differ as to the sufficiency of the [label],  
13 the [label] should be held to be sufficient.’” (*McDonough, supra*, 204 Cal.App.4th at 1174 [internal  
14 citations omitted]). “[T]he judiciary is not free to substitute its judgment” for that of the drafter, even  
15 if it believes the question should be framed another way.” *Martinez v. Superior Court* (2006) 142  
16 Cal.App.4th 1245, 1248.

17 **1. Describing the tax as a ½ ¢ sales tax is clear, accurate, and fully complies with the  
18 requirements of the Elections Code.**

19 Petitioners claim that the ballot label’s description of the tax as a “½¢ sales tax” is inconsistent  
20 with Elections Code section 13119(b) because it is not described in percentage form. Petitioners  
21 further claim that use of the cent symbol (“¢”) is somehow prejudicial. (PWOM at p. 17:28 & p. 18:  
22 1-7.) Both of these claims are nonsense.

23 Elections Code section 13119(b) provides that if a local ballot measure imposes a tax, the  
24 ballot label shall include, among other things, “the rate and duration of the tax to be levied.” However,  
25 nowhere does section 13119 state that the *only* way to describe the rate of tax is in percentage form.  
26 Further, contrary to Petitioners’ contentions, sales tax rates are commonly expressed as the number  
of cents, or fraction thereof, being added.

27 The California Attorney General’s titles and summaries for statewide measures have long  
28 expressed sales taxes in terms of cents or fractions thereof. In November 2012, Proposition 30

1 appeared on the statewide General Election Ballot. Among other things, Proposition 30 sought to  
2 increase the state sales tax rate for four years. In the impartial title and summary distributed to all  
3 registered voters, the Attorney General described the sales tax thusly:

4 “Increases sales and use tax by  $\frac{1}{4}$  cent for four years.”

5 (Real Party in Interest CCTA’s Request for Judicial Notice (“RPI’s RJN”), Ex. 5 at p. 12 [bolding  
6 added].) Proposition 133 appeared on the November 6, 1990 statewide General Election Ballot. It  
7 sought to increase the state sales tax to fund public safety programs. In the impartial title and  
8 summary distributed to all registered voters, the Attorney General described Proposition 133’s sales  
9 tax increase this way:

10 “Increases state sales and use taxes  $\frac{1}{2}$  cent for four years starting July 1, 1991...”

11 (RPI’s RJN, Ex. 6 at p. 40 [bolding added].)

12 “[T]he title and summary prepared by the Attorney General are presumed accurate,” and the  
13 convention used in CCTA’s ballot label simply follows the precedent established by the California  
14 Attorney General’s titles and summaries for describing sales tax increases. (See *Becerra v. Super. Ct.*  
15 (2017) 19 Cal.App.5th 967, 975.) Therefore, Petitioners are essentially asking this Court to find that  
16 the state Attorney General’s established method of describing sales tax increases is false and  
17 misleading.

18 Local governments and the courts also commonly explain sale tax increases in terms of cents  
19 rather than percentages. The ballot materials for multiple prior local sales tax measures have  
20 described the rate of tax in the context of cents. (See, e.g., *Jarvis v. Padilla* (2016) 62 Cal.4th 486,  
21 534 n. 21 [quoting ballot questions in the City of Richmond and the City of Whittier that each  
22 referenced a “*half-cent* sales tax increase” (emphasis added)].) Multiple judicial decisions similarly  
23 refer to sale tax increases in terms of cents rather than percentages. (See, e.g., *Hoogasian Flowers,*  
24 *Inc. v. Bd. of Equalization* (1994) 23 Cal.App.4th 1264, 1268 [describing authorization to impose a  
25 sales tax increase of 0.25% under former Rev. & Tax. Code § 7286.1 as a “*quarter-cent* sales tax”];  
26 *Silicon Valley Taxpayers’ Assn. v. Garner* (2013) 216 Cal.App.4th 402, 404 [describing Santa Clara  
27 County Measure A (Nov. 2012) as “10-year *one-eighth of a cent* sales tax increase” (emphasis  
28 added)].)

1 In Petitioners' view, neither Attorney General, nor local governments, nor the California  
2 courts of appeal know how to properly identify and describe the rate of a sales tax increase. This is  
3 a ridiculous contention that is apparently based solely upon Petitioner's hyper-literal and unsupported  
4 reading of Elections Code section 13119(b). There is simply nothing in that code section requiring  
5 the rate of increase to be described in percentage terms. Furthermore, even the dictionary definition  
6 of "rate" does not imply such a requirement. To the contrary, the dictionary definition contemplates  
7 measurement in terms of *payment or price*—which is exactly what an expression in cents provides.<sup>6</sup>  
8 Given the standard way the Attorney General, local governments, and the courts have long described  
9 sales tax increases, there is absolutely no risk that voters will be misled by describing the tax increase  
10 in cent, as opposed to percentage, terms. Petitioner has not met his burden on this point, so the relief  
11 sought from this Court cannot be granted.

12 Finally, Petitioner's claim that the "¢" symbol is prejudicial is again based on pure conjecture.  
13 California courts long ago held that the complete *absence* of a monetary symbol does not invalidate  
14 a tax. (*Howard v. Judson* (1948) 86 Cal.App.2d 128, 132 [absence of dollar sign does not invalidate  
15 the amount of a tax assessment].) If a tax cannot be invalidated due to a *lack* of a monetary symbol,  
16 it is impossible to argue that *inclusion* of such a symbol is somehow misleading.

17 Furthermore, the Legislative Analyst commonly uses the "¢" symbol when describing the  
18 fiscal effects of state ballot measures as part of the state Voter Information Guide distributed to all  
19 registered voters. For example, for Proposition 29 (Jun. 2012), the Legislative Analyst described  
20 existing state taxes on cigarettes as totaling "87¢" with "10¢" going to the state General Fund. (RPI's  
21 RJN, Ex. 7 at p. 13; [bolding added].) Under Elections Code section 9087(b), the Legislative  
22 Analyst's analysis of a ballot measure "shall be written in clear and concise terms, so as to be easily  
23 understood by the average voter." By making use of the "¢" symbol in impartial analyses included  
24 in the state Voter Information Guide, the Legislative Analyst presumably has determined that the "¢"  
25 symbol is "easily understood by the average voter." Petitioner has offered no evidence whatsoever  
26 to the contrary on this point, and his argument must be rejected.

27 \_\_\_\_\_  
28 <sup>6</sup> "Rate" is defined as "a quantity, amount, or degree of something measured per unit of something  
else; an amount of payment or charge based on another amount; [and] a charge, payment, or price fixed  
according to a ratio, scale, or standard." (<https://www.merriam-webster.com/dictionary/rate>)

1           **2. The other statements challenged by Petitioners are neither false, misleading, nor**  
2           **biased.**

3           As explained in *Martinez, supra*, the CCTA has broad discretion to draft its ballot question as  
4 it sees fit, so long as it is accurate and conveys the nature of the measure. *Martinez* involved a  
5 proposed city charter amendment to increase councilmember term limits from two to three terms. The  
6 Los Angeles City Council adopted the following ballot label: “Shall the Charter be amended and  
7 ordinance adopted to: change Councilmember term limits to three terms.” (*Martinez, supra*, 142  
8 Cal.App.4th at 1247). Petitioners in *Martinez* took issue with the word “change,” arguing that the  
9 word should be changed to “lengthened” to better describe the nature of the charter amendment. (*Id.*  
10 at 1247.) The trial court agreed and ordered that the word “change” be replaced with the word  
11 “lengthened,” reasoning that the latter was “more specific.” (*Id.*) The court of appeal reversed,  
12 explaining:

13           The question could be more complete, and thus more informative, by noting that the  
14 measure increased the number of terms a council member could serve from two to  
15 three; we presume that is the effect the respondent court was trying to reach by  
16 inserting what it described as “more specific” language. But the completeness of a  
17 ballot question is not the test ... To comply with the election statutes, the ballot title  
18 need not be the “most accurate,” “most comprehensive,” or “fairest” that a skilled  
19 wordsmith might imagine. The title need only contain words that are neither false,  
20 misleading, nor partial. The title adopted by the city council meets that standard, and  
21 the judiciary is not free to substitute its judgment given its deferential standard of  
22 review.

23 (*Id.* at 1248 [emphasis added].)

24           Here, as was the case in *Martinez*, Petitioners have provided absolutely no evidence—let alone  
25 clear and convincing evidence—that any aspect of the ballot label is false, misleading, biased, or  
26 otherwise inconsistent with the requirements of the Elections Code. Rather, at the end of the day,  
27 Petitioners claim boils down to a quibble that CCTA did not draft the ballot label exactly as Petitioners  
28 themselves would have written it and that, in their opinion, the ballot label can be improved by making  
their suggested changes. This is not the standard, and ordering changes based on such an argument  
would be highly improper. The CCTA’s reasoned judgement as to the content of the ballot label must  
be given appropriate deference, and no changes may be ordered unless this Court finds that Petitioners  
have proved by clear and convincing evidence that the ballot question is false, misleading, or biased.

          Petitioners allege that the statements that Measure J funds will be used to “Reduce  
congestion,” “Make commutes faster and more predictable,” and “Improve air quality” are false.



1 (PWOM at p. 20: ¶¶ 80, 81, 82.) However, Petitioners acknowledge that their arguments rely *solely*  
2 on inferences drawn from the Draft Environmental Impact Report (2017 DEIR) prepared for the 2017  
3 Countywide Transportation Plan (2017 CTP), rather than on any analysis of the 2020 Transportation  
4 Expenditure Plan (2020 TEP). (PWOM p.11-12: ¶ 46.) However, the proceeds of Measure J must be  
5 used “solely for the projects and purposes set forth in the 2020 TEP [Transportation Expenditure  
6 Plan].” (Petitioners’ RJN, Ex. A [CCTA Ordinance 19-03] at p. 1.4-10.) While the 2020 TEP is built  
7 around the CTP, there are additional strategies in the TEP that were not part of the CTP. These more  
8 aggressive strategies are anticipated to further alleviate issues relating to congestion and commute  
9 times, and to further improve air quality. (See RPI’s RJN, Ex. 2 at slides 13-15 [Presentation of  
10 Performance Analysis of the Proposed 2020 TEP, showing significant improvements to 2040 vehicle  
11 performance and GhG in a scenario *with* the 2020 TEP v. a scenario *without* the 2020 TEP].).  
12 Therefore, although the Petition argues that the DEIR is relevant because the 2017 CTP and 2020  
13 TEP share the same intended “outcomes,” (*id.*), the reality is that DEIR addresses a *different* plan that  
14 incorporates *different* strategies for addressing the very issues (congestion, commute times, and air  
15 quality) that form the basis for Petitioners’ challenge to the ballot label language. As such, the 2017  
16 DEIR simply cannot be considered evidence of whether statements about the impact of *Measure J*  
17 are accurate. For this reason alone, Petitioners fail to carry their burden of proof.

18         Indeed, the *relevant* supporting documents provide clear, unequivocal support for the  
19 accuracy of the challenged statements. The purpose of Measure J is to levy a tax to fund the  
20 “transportation projects and programs described in the tax ordinance and county transportation  
21 expenditure plan adopted by the Authority on October 30, 2019,” i.e., the 2020 TEP. (Petitioners’  
22 RJN, Ex. C at p. 1 [County Ordinance No. 2019-33].) Indeed the measure was put on the ballot  
23 *specifically* to “alleviate traffic congestion that threatens the economic viability of the area and  
24 adversely impacts the quality of life in the County.” (*Id.*) In turn, the 2020 TEP expressly includes  
25 specific budget line items related to reducing congestion, improving commutes, and improving air  
26 quality. (Petitioners’ RJN, Ex. G at p.4.) Telling voters that this is what the tax proceeds will be used  
27 for is therefore completely accurate and entirely beyond reproach.



1 More specifically, the guiding principles the CCTA used to develop the 2020 TEP include  
2 that the “CCTA is committed to funding an outcomes-based program that includes thoughtful projects  
3 that will relieve congestion countywide,” that “[f]unding will focus on making traveling through  
4 Contra Costa County faster, more reliable, and more predictable by, for example, reducing travel  
5 times and moving more people with fewer cars,” and that the “CCTA commits to improving the air  
6 quality in our communities by funding projects and programs that relieve congestion, reduce vehicle  
7 miles traveled (VMT) per capita, and reduce GHG.” (RPI RJN, Ex. 4 [2020 Transportation  
8 Expenditure Plan, attached as Exhibit 1 to CCTA Ord. 19-02], page 2 of 2020 TEP.)

9 The 2020 TEP further states that it is committed to “all projects meet[ing] performance targets  
10 for reduced traffic” and “shortened commute times,” that it “focuses on innovative strategies and new  
11 technologies that will relieve congestion, . . . protect the environment,” and “smooth traffic flow and  
12 reduce congestion.” (*Id.* at 3.) The 2020 TEP therefore includes a budget for specific goals including  
13 a broad category of numerous goals, to which 41.1% (\$1,484,000,000) of its funds are budgeted for  
14 “Relieving Congestion on Highways, Interchanges, and Major Roads.” (*Id.* at 4.) The TEP further  
15 notes that projects implementing the TEP will “serve to . . . reduce congestion on every major  
16 transportation corridor in the county.” (*Id.* at 11.) An 11-page section of the TEP describes how it  
17 would spend \$1.48 billion on a variety of specific improvement for “Relieving Congestion on  
18 Highways, Interchanges, and Major Roads.” (*Id.* at 16-26.) The TEP further describes \$1.98 billion  
19 that would be invested in projects and programs to “Reduce Emissions and Improve Air Quality.”  
20 (*Id.* at 27.) As such, the 2020 TEP—which is the document that forms the backbone of Measure J by  
21 determining how its proceeds will be spent—clearly and unequivocally supports the factual accuracy  
22 of the ballot label.

23 However, even assuming *arguendo* that the 2017 DEIR is somehow relevant (which as  
24 discussed *supra*, it is not), Petitioners’ challenges to the ballot label relies on cherry-picked statistics,  
25 mischaracterizations, and misstatements regarding the 2017 DEIR.

26 Petitioners first argue that the “overall number of vehicle miles traveled” (VMT) in Contra  
27 Costa County “increases from 23 million in 2017 to 28 million in 2040,” which the Petition contends  
28 would “*suggest* more congestion,” which it claims is consistent with a projected 166% increase in

1 another statistical measure called vehicle hours of delay (VHD) and a projected decline in average  
2 freeway speeds. (PWOM p. 20: ¶¶ 80, 81 (*italics added*)). However, this argument omits a critical  
3 component of the analysis.

4         The 2017 DEIR’s findings explain that *total* VMT will indeed increase from 23 million to 28  
5 million by 2040 (the statistic quoted in the Petition)—but the DEIR explains the increase is due to a  
6 significant projected increase in the population and jobs in Contra Costa. (“Expected countywide  
7 population and employment growth will increase travel demand throughout Contra Costa and the rest  
8 of the Bay Area region. The resulting increase in VMT will thus be a product of an increased  
9 population and job base, the relative distance of each vehicle trip (primarily a function of the distance  
10 between home and work), and individual choices regarding mode of travel (i.e., the percent increase  
11 in drive-alone vehicles.”).) (RPI’s RJN, Ex. 1 [2017 CTP DEIR findings] at p. 1.)

12         However, the 2017 DEIR explains that the 2017 CTP would cause improved road conditions,  
13 and that the projected 2040 VHD would be *higher* without the proposed improvements described in  
14 the 2017 CTP. Specifically, the projected 2040 VHD without the improvements in the 2017 CTP  
15 would be 252,584, whereas the projected VHD with the investments would be 190,685. (RPI’s RJN,  
16 Ex. 1 [p. 2.1-19, Table 2.1-3; p. 2.1-22, Table 2.1-5].) Further, the DEIR does show, as Petitioners  
17 allege, a 166% increase in VHD by 2040 for the Transportation Investment scenario. (RPI’s RJN, Ex.  
18 1 at p.2.1-19, Table 2.1-3) However, Petitioners once again mislead by failing to provide the full  
19 story. As shown on page 2.1-22 in Table 2.1-5, the 2040 VHD *without* the transportation investments  
20 (referred to as “No Project” scenario) would be a *252% increase* as compared to baseline. (RPI’s  
21 RJN, Ex. 1.) Therefore, the transportation investments in the CTP as compared to the No Project  
22 would provide *significant congestion relief* and result in 24.5% reduction in VHD.

23         Petitioners’ claims with respect to average freeway and arterial speeds suffer from the same  
24 flaw—the average freeway and arterial speed in 2040 *without* the transportation investments in the  
25 CTP or No Project scenario are 51.6 and 33.3 mph, respectively, whereas the average speed with  
26 transportation investments in 2040 would result in 54.1 and 33.4 for freeways and arterials, which is  
27 increase 4.8% and 0.3%, respectively. (RPI’s RJN, Ex 1 at p. 2.1-25, Table 2.1-6.) As such, the 2017  
28 DEIR concluded that the investments made by the 2017 CTP would cause *increases* in freeway and

1 arterial road speeds. (RPI's RJN, Ex. 1 [compare p. 3.1-15, Table 3.1-4 with p. 2.1-25, Table 2.1-6]).  
2 In other words, although overall "congestion" will increase due to normal population and job growth,  
3 the 2017 CTP improvements studied by the DEIR will reduce that congestion. Accordingly, the 2017  
4 DEIR finds that not implementing the 2017 CTP "would result in a more substantial impact to vehicle  
5 miles traveled per capita; vehicle hours of delay; average speeds . . ." (RPI's RJN, Ex. 1 [2017 CTP  
6 DEIR Findings] at p. 128.)

7 Similarly, Petitioners' have misrepresented the findings of the 2017 DEIR with respect air  
8 quality. Petitioners allege that the statement that Measure J funds will be used to "Improve air quality"  
9 is untrue because two air pollutants, PM<sub>10</sub> and PM<sub>2.5</sub>, are projected to increase over time. (PWOM p.  
10 20-21: ¶ 82.) As with the statements discussed *supra*, the Petition cites the 2017 DEIR as "evidence"  
11 that statements made in the Measure J ballot label are false, even though the 2017 CTP DEIR did not  
12 analyze the specific improvements identified in the 2020 TEP.

13 First, with respect to the two cherry-picked pollutants cited in the Petition, the DEIR finds that  
14 that although "population and employment growth will contribute to an increase in countywide  
15 particulate matter emissions that cannot be fully avoided," measures to be considered pursuant to the  
16 2017 CTP in fact "would reduce significant particulate matter emissions from mobile sources." (RPI's  
17 RJN, Ex. 1 at p. 2.3-25 [emphasis added].)

18 Second, the 2017 CTP DEIR establishes that the 2017 CTP would reduce several other key  
19 air pollutant levels from where they otherwise would be if no measures are implemented, including  
20 reductions in: reactive organic gases (ROG); oxides of nitrogen(NO<sub>x</sub>); carbon monoxide(CO); and  
21 toxic air contaminants ("TAC," including diesel particulate matter, 1,3-butadiene, and benzene). (See  
22 RPI's RJN, Ex. 1 [2017 CTP DEIR Findings] at 16 ("relative to the 2040 No Project scenario, the  
23 Investment Program would achieve an even greater overall reduction in criteria pollutant  
24 emissions."); RPI's RJN, Ex. 1 at p. 2.3-23, Table 2.3-4; *id.* at p. 2.3-1 (definitions); *id.* at p. 2.3-27  
25 ("Relative to the 2040 No Project scenario, the Investment Program would achieve an even greater  
26 overall reduction in TAC emissions").) In fact, the Petition itself at ¶ 82 *concedes* that the DEIR  
27 shows that the 2017 CTP will improve air quality, but simply quibbles over the *degree* to which air  
28 quality would be improved. (See PWOM at p. 20-21: ¶ 82 [conceding that there are "very large air

1 quality improvements from the CTP Investment Program,” but arguing that the “CTP Alternative was  
2 only responsible for a tiny share of air quality improvements”].

3 Consequently, even if the 2017 DEIR were somehow relevant to the accuracy of the Measure  
4 J ballot label (which it is not), it does nothing to support Petitioners’ argument, since the 2017 DEIR  
5 actually finds that specified road improvements will *reduce* overall congestion and commute times  
6 and will *improve* air quality. The DEIR therefore provides absolutely no evidence (let alone clear and  
7 convincing evidence) that the challenged statements are false, misleading, or biased.


8 **IV. CONCLUSION**

9 Petitioners’ claims regarding the ballot label are entirely without merit, but worse yet, they  
10 are beyond untimely. The ballot question was adopted at the end of October, and Petitioners’ decision  
11 to wait until the eleventh hour to challenge it is inexcusable. Their delay and disregard for the clear  
12 timing requirements established by the Elections Code must not be rewarded by ordering a change  
13 after the ballots have already been printed, which would be in clear violation of black letter law, and  
14 would cause extreme hardship to the County and its voters and interfere with their right to a fair  
15 election. Petitioners’ claims related to the measure letter designation and ballot label (i.e., the second  
16 through fifth causes of action) must be summarily dismissed.

17 Respectfully submitted,

18 Dated: January 3, 2020

NIELSEN MERKSAMER  
PARRINELLO GROSS & LEONI LLP

20 By:   
21 Hilary J. Gibson  
22 *Attorneys for Real Party in Interest*

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1 *Arata v. Cooper*  
2 Contra Costa Superior Court Case # N19-2489

3 **PROOF OF SERVICE**

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

5 I am a citizen of the United States employed in the County of Marin. I am  
6 over the age of 18 and not a party to the within cause of action. My business  
7 address is 2350 Kerner Blvd., Suite 250, San Rafael, California. I am readily  
8 familiar with my employer's practices for collection and processing of  
9 correspondence for mailing with the United States Postal Service and for pickup by  
10 Federal Express.

11 On January 3, 2020, I served a true copy of the foregoing **REAL PARTY'S  
12 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO  
13 PETITION FOR WRIT OF MANDATE** on the following parties in said action,  
14 by serving:

15 Jason A. Bezis, Esq.  
16 Law Offices of Jason A. Bezis  
17 3661-B Mosswood Drive  
18 Lafayette, CA 94549-3509  
19  
20 Tel: (925) 708-7073  
21 Email: [Bezis4Law@gmail.com](mailto:Bezis4Law@gmail.com)

22 *Attorneys for Petitioners*  
23 Michael Arata and Richard S. Colman

24 Thomas L. Geiger, Esq.  
25 Assistant County Counsel  
26 County of Contra Costa  
27 651 Pine Street 9th Floor  
28 9th Floor  
Martinez, CA 94553

Phone: 925-335-1800  
Fax: 925-646-1078  
Email: [Thomas.Geiger@cc.cccounty.us](mailto:Thomas.Geiger@cc.cccounty.us)

*Attorneys for Respondents*  
Deborah Cooper, Sharon L. Anderson and  
*Real Party in Interest*  
Contra Costa County Board of Supervisors

29  **BY ELECTRONIC SERVICE:** By transmitting by email to the above  
30 party(ies) at the above email addresses.

31  **BY OVERNIGHT DELIVERY: (COURTESY COPY)**  
32 **FEDERAL EXPRESS:** By following ordinary business practices and placing  
33 for pickup by FEDERAL EXPRESS at 2350 Kerner Blvd., Suite 250,  
34 California 94901 copies of the above documents in an envelope or package  
35 designated by FEDERAL EXPRESS with delivery fees paid or provided for.

36 Executed in San Rafael, California, on January 3, 2020.

I declare under penalty of perjury, that the foregoing is true and correct.



Michael A. Columbo

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12 FAX (415) 388-6874

13 *Attorneys for Real Party in Interest*

14 CONTRA COSTA TRANSPORTATION AUTHORITY

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF CONTRA COSTA

17 MICHAEL ARATA and RICHARD S )  
18 COLMAN, )

19 *Petitioners,* )

20 vs. )

21 DEBORAH COOPER, in her official capacity as )  
22 ACTING COUNTY CLERK-RECORDER AND )  
23 REGISTRAR OF VOTERS, and SHARON L. )  
24 ANDERSON, in her official capacity as Contra )  
25 Costa County Counsel. )

26 *Respondents.* )

27 CONTRA COSTA TRANSPORTATION )  
28 AUTHORITY, a special district, )

*Real Party in Interest.* )

CONTRA COSTA COUNTY BOARD OF )  
SUPERVISORS, )

*Real Party in Interest.* )

Case No.: N19-2489

**REAL PARTY IN INTEREST'S  
REQUEST FOR JUDICIAL NOTICE;  
SUPPORTING DECLARATION OF  
MICHAEL A. COLUMBO**

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

**Date: January 6, 2020**

**Time: 10:00 a.m.**

**Dept.: 12**

**Judge: Hon. Charles S. Treat**

1 TO PETITIONERS & RESPONDENTS/DEFENDANTS AND THEIR ATTORNEYS OF  
2 RECORD:

3 YOU ARE HEREBY NOTIFIED THAT on the date and time set by the Court for hearing  
4 on Petitioner's Petition for Writ of Mandate, in Department 12 of the above-captioned Court,  
5 located at 725 Court Street, Martinez, California, Petitioner will request the Court to take judicial  
6 notice of the documents listed herein:

- 7 1. Excerpted pages from the 2017 County Transportation Plan Draft Environmental  
8 Impact Report (State Clearinghouse #2017022054) first issued by Contra Costa  
9 Transportation Authority in June 2017 and approved in September 2017 (a true and  
10 correct copy of which is attached as Exhibit 1, and which is available at the Contra  
11 Costa County Transportation Authority website located at  
12 <https://ccta.net/2018/10/18/environmental-impact-report-for-2017-ctp/>).<sup>1</sup>
- 13 2. The Contra Costa Transportation Authority's Performance Analysis of the Proposed  
14 2020 TEP – Preliminary Results, a presentation prepared under the  
15 direction/control of CCTA staff and submitted to the Contra Costa County Board of  
16 Supervisors on September 18, 2019 (a true and correct copy of which is attached as  
17 Exhibit 2).
- 18 3. Contra Costa County Ordinance No. 2019-33, passed on November 19, 2019,  
19 which submitted Measure J to the voters for the March 3, 2020 election (a true and  
20 correct copy of County Ordinance No. 2019-33 is attached here as Exhibit 3).
- 21 4. Contra Costa Transportation Authority Ordinance No. 19-02, which adopted and  
22 includes the 2020 Transportation Expenditure Plan (a true and correct copy of  
23 CCTA Ordinance No. 19-02 is attached here as Exhibit 4).

24  
25  
26 \_\_\_\_\_  
27 <sup>1</sup> To avoid burdening the Court with an unnecessarily voluminous filing, Petitioner has provided a  
28 link to the County's website, containing a copy of the complete document. At the Court's request, Petitioner  
will promptly submit a hard copy version of this document.



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5. The Voter Information Guide's Attorney General's Title and Summary for Proposition 30 in the November 2012 general election (a true and correct copy of the Title and Summary is attached here as Exhibit 5).
6. The Voter Information Guide's Attorney General's Title and Summary for Proposition 133 in the 1990 general election (a true and correct copy of the Title and Summary is attached here as Exhibit 6).
7. The June 2012 statewide election Voter Information Guide's Legislative Analyst's Analysis for Proposition 29 (a true and correct copy of the Analysis is attached here as Exhibit 7).

This Request is supported by the Declaration of Michael A. Columbo and the Points and Authorities attached hereto.

Respectfully submitted,

Dated: January 3, 2020

NIELSEN MERKSAMER  
PARRINELLO GROSS & LEONI LLP

By:   
Hilary J. Gibson  
*Attorney for Real Party in Interest*  
CONTRA COSTA TRANSPORTATION AUTHORITY

**Points and Authorities**

Judicial notice may be taken for each of the exhibits attached to this Request for Judicial Notice pursuant to Evidence Code section 452. Further, pursuant to Evidence Code section 453,

The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and:

- (a) Gives each adverse party sufficient notice of the request, through pleadings or otherwise, to prepare to meet the request; and
- (b) Furnishes the court with sufficient information to enable it to take judicial notice of this matter.

(See also declaration of Michael A. Columbo, filed herewith, providing verifying information regarding the subject materials.)

Judicial notice may be taken of the official acts of government agencies under Evidence Code § 452(c).<sup>2</sup> This includes documents published by the agency (*see Serrano v. Priest*, 5 Cal. 3d 584, 591 (1971); *Moore v. Superior Court*, 117 Cal. App. 4th 401, 407 n.5 (2004)), as well as the records and files of such agencies (*Wolfe v. State Farm Cas. & Ins. Co.*, 46 Cal. App. 4th 554, 567 n.16 (1996); *Fowler v. Howell*, 42 Cal. App. 4th 1746, 1750 (1996); *Hogen v. Valley Hospital*, 147 Cal. App. 3d 119, 125 (1983)). The official acts of a County are subject to judicial notice pursuant to this provision. (*Cruz v. County of Los Angeles* (1985) 173 Cal. App. 3d 1131, 1134 [“The scope of Evidence Code section 452, subdivision (c), which provides that judicial notice may be taken of ‘[official] acts of the legislative, executive, and judicial departments of the United States and of any state in the United States,’ includes judicial notice of official acts of a county”].)

Dated: January 3, 2020

Respectfully submitted,  
NIELSEN MERKSAMER  
PARRINELLO GROSS & LEONI LLP

By:   
Hilary J. Gibson  
Attorney for Real Party in Interest  
CONTRA COSTA TRANSPORTATION AUTHORITY

<sup>2</sup> All of the materials requested for judicial notice herein are subject to judicial notice pursuant to Evidence Code section 452(h) as well. ([A court may take judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy”].)

1 **Declaration of Michael A. Columbo**

2 **In Support of Request for Judicial Notice**

3 I, Michael A. Columbo, declare under penalty of perjury as follows:

4 1. I am one of the attorneys for the Real Party in Interest in this action.

5 2. On or about January 2, 2019, I visited the website of the Contra Costa  
6 Transportation Authority (<https://ccta.net/>) where I confirmed that the CCTA has posted copies of  
7 the 2017 CTP Draft Environmental Impact Report Chapter 2, 2017 CTP Draft Environmental  
8 Impact Report Chapter 3, and 2017 Environmental Impact Report Findings (State Clearinghouse  
9 #2917022054), issued by the Contra Costa Transportation Authority in 2017 (a copy of which is  
10 available at the Contra Costa Transportation Authority website located at [https://ccta.net/wp-](https://ccta.net/wp-content/uploads/2018/10/59496ddcafe67.pdf)  
11 [content/uploads/2018/10/59496ddcafe67.pdf](https://ccta.net/wp-content/uploads/2018/10/59496ddcafe67.pdf) [DEIR Chapter 2], [https://ccta.net/wp-](https://ccta.net/wp-content/uploads/2018/10/59496e1999545.pdf)  
12 [content/uploads/2018/10/59496e1999545.pdf](https://ccta.net/wp-content/uploads/2018/10/59496e1999545.pdf) [DEIR Chapter 3], and [https://ccta.net/wp-](https://ccta.net/wp-content/uploads/2018/10/59cea2ee81160.pdf)  
13 [content/uploads/2018/10/59cea2ee81160.pdf](https://ccta.net/wp-content/uploads/2018/10/59cea2ee81160.pdf) [EIR Findings])

14 3. On or about January 2, 2020, my colleague, Hilary J. Gibson, received a copy of the  
15 Contra Costa Transportation Authority's Performance Analysis of the Proposed 2020 TRP, from  
16 Linsey Willis, Director of External Affairs of the Contra Costa Transportation Authority (a true  
17 and correct copy of which is attached here as Exhibit 2).

18 4. On or about January 2, 2020, I visited the website of the Contra Costa County  
19 Board of Supervisors ([https://www.contracosta.ca.gov/4664/Board-Meeting-Agendas-and-](https://www.contracosta.ca.gov/4664/Board-Meeting-Agendas-and-Videos)  
20 [Videos](https://www.contracosta.ca.gov/4664/Board-Meeting-Agendas-and-Videos)), at the page for its meeting held on November 19,2019, where I downloaded:

21 A. Contra Costa County Ordinance No. 2019-33, passed on November 19,  
22 2019 and which submitted Measure J to the voters for the March 3, 2020 election (a  
23 true and correct copy of County Ordinance No. 2019-33 is attached here as Exhibit  
24 3).

25 B. Contra Costa Transportation Authority Ordinance No. 19-02, which adopted  
26 and includes the 2020 Transportation Expenditure Plan (a true and correct copy of  
27 CCTA Ordinance No. 19-02 is attached here as Exhibit 4).

1 5. On or about January 3, 2020, I visited the website of the California Secretary of State  
2 (<http://vigarchive.sos.ca.gov/2012/general/propositions/30/title-summary.htm>) where I  
3 downloaded the Attorney General's Title and Summary for Proposition 30 in the November 2012  
4 general election (a true and correct copy of the Title and Summary is attached here as Exhibit 5).

5 6. On or about January 3, 2020, I visited the website of the University of California Hastings  
6 Law School

7 ([https://repository.uchastings.edu/ca\\_ballot\\_props/1057/](https://repository.uchastings.edu/ca_ballot_props/1057/)), where I downloaded the Voter  
8 Information Guide's Attorney General's Title and Summary for Proposition 133 in the the 1990  
9 general election (a true and correct copy of the Title and Summary is attached here as Exhibit 6).

10 7. On or about January 3, 2020, I visited the website of the California Secretary of State  
11 (<http://vigarchive.sos.ca.gov/2012/primary/propositions/29/analysis.htm>) where I downloaded the  
12 June 2012 statewide election Voter Information Guide's Legislative Analyst Analysis for  
13 Proposition 29 (a true and correct copy of the Analysis is attached here as Exhibit 7).

14 I declare under penalty of perjury under the laws of the State of California that the  
15 foregoing is true and correct of my own personal knowledge except for those matters stated on  
16 information and belief and, as to those matters, I believe them to be true. If called as a witness, I  
17 could competently testify thereto.

18 Executed on January 3, 2020, at San Rafael, California.

19  
20 

21 MICHAEL A. COLUMBO

1 *Arata v. Cooper*  
2 Contra Costa Superior Court Case # N19-2489

3 **PROOF OF SERVICE**

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

5 I am a citizen of the United States employed in the County of Marin. I am  
6 over the age of 18 and not a party to the within cause of action. My business address  
7 is 2350 Kerner Blvd., Suite 250, San Rafael, California. I am readily familiar with  
8 my employer's practices for collection and processing of correspondence for mailing  
9 with the United States Postal Service and for pickup by Federal Express.

10 On January 3, 2020, I served a true copy of the foregoing **REAL PARTY IN**  
11 **INTEREST'S REQUEST FOR JUDICIAL NOTICE; SUPPORTING**  
12 **DECLARATION OF MICHAEL A COLUMBO** on the following parties in said  
13 action, by serving:

<p>14 Jason A. Bezis, Esq. 15 Law Offices of Jason A. Bezis 16 3661-B Mosswood Drive 17 Lafayette, CA 94549-3509 18 19 Tel: (925) 708-7073 20 Email: <a href="mailto:Bezis4Law@gmail.com">Bezis4Law@gmail.com</a> 21 22 <i>Attorneys for Petitioners</i> 23 Michael Arata and Richard S. Colman</p>	<p>24 Thomas L. Geiger, Esq. 25 Assistant County Counsel 26 County of Contra Costa 27 651 Pine Street 9th Floor 28 9th Floor Martinez, CA 94553  Phone: 925-335-1800 Fax: 925-646-1078 Email: <a href="mailto:Thomas.Geiger@cc.cccounty.us">Thomas.Geiger@cc.cccounty.us</a>  <i>Attorneys for Respondents</i> Deborah Cooper, Sharon L. Anderson and <i>Real Party in Interest</i> Contra Costa County Board of Supervisors</p>
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20  **BY ELECTRONIC SERVICE:** By transmitting by email to the above  
21 party(ies) at the above email addresses.

22  **BY OVERNIGHT DELIVERY: (COURTESY COPY)**  
23 **FEDERAL EXPRESS:** By following ordinary business practices and placing  
24 for pickup by FEDERAL EXPRESS at 2350 Kerner Blvd., Suite 250, California  
25 94901 copies of the above documents in an envelope or package designated by  
26 FEDERAL EXPRESS with delivery fees paid or provided for.

27 Executed in San Rafael, California, on January 3, 2020.

28 I declare under penalty of perjury, that the foregoing is true and correct.

  
\_\_\_\_\_  
Michael A. Columbo

1 SHARON L. ANDERSON (SBN 94814)  
County Counsel  
2 THOMAS L. GEIGER (SBN 199729)  
Assistant County Counsel  
3 COUNTY OF CONTRA COSTA  
651 Pine Street, 9th Floor  
4 Martinez, California 94553  
Telephone: (925) 335-1800  
5 Facsimile: (925) 646-1078

6 Attorneys for  
Contra Costa County Acting Clerk-Recorder Deborah Cooper,  
7 Contra Costa County Counsel Sharon L. Anderson,  
Contra Costa County Board of Supervisors  
8



9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF CONTRA COSTA

11  
12 MICHAEL ARATA,  
RICHARD S. COLMAN

13 Petitioners,

14  
15 v.

16 DEBORAH COOPER,  
SHARON L. ANDERSON

17 Respondents;  
18

19  
20 CONTRA COSTA  
TRANSPORTATION AUTHORITY,  
CONTRA COSTA COUNTY BOARD  
21 OF SUPERVISORS

22 Real Parties in Interest.  
23  
24  
25  
26  
27  
28

Case No. N19-2489

**OPPOSITION OF CONTRA COSTA  
COUNTY'S ACTING CLERK-  
RECORDER, COUNTY COUNSEL,  
AND BOARD OF SUPERVISORS TO  
PETITION FOR WRIT OF  
MANDATE**

Date: January 6, 2020  
Time: 10:00 a.m.  
Dept.: 12



1 **I. INTRODUCTION**

2 The Contra Costa County Acting Registrar of Voters, County Counsel, and Board of  
3 Supervisors oppose this petition for writ of mandate challenging certain elections materials  
4 associated with a half-cent sales tax proposed by the Contra Costa Transportation Authority  
5 (CCTA) to fund transportation improvements in Contra Costa County. The sales tax would  
6 be collected throughout the County from July 1, 2020, until June 30, 2055. The CCTA  
7 measure will be on the March 3, 2020, primary ballot. The petition must be denied in its  
8 entirety because it was not timely filed and because it does not meet the high standard for the  
9 issuance of a elections writ. Any changes ordered at this point in the elections process would  
10 substantially interfere with the printing of elections materials, which is already under way.

11 The petition seeks an order to compel changes to the ballot measure question and to  
12 change the letter assigned to the sales tax measure, the letter J. The petition is barred because  
13 the challenges to the ballot question and letter assignment were not brought within the 10-  
14 calendar-day time period specified by law. Moreover, the 3.6 million official ballots  
15 containing the ballot measure question and letter designation are in production and are being  
16 printed. An order requiring them to be reprinted would substantially interfere with the  
17 printing process and would cost an estimated \$650,000.

18 The petition also seeks an order changing the language of the County Counsel's  
19 impartial analysis of the half-cent sales tax ballot measure. The petition must be denied  
20 because there is no showing that the impartial analysis is false, misleading, or inconsistent  
21 with the requirements of the Elections Code. The impartial analysis complies with the law by  
22 describing the measure in general terms and providing its key components.

23 The impartial analysis, along with the ballot measure question and letter designation,  
24 are all contained in the voter information guide sent to all voters. An order directing changes  
25 to the guide would also substantially interfere with the printing process. The voter  
26 information guide is between 220 and 250 pages, and the guide would have to be reformatted  
27 for any changes. This untimely petition must be denied to allow the elections process to  
28 continue.

1 **II. ARGUMENT**

2 **A. The challenges to the ballot measure question and letter assignment are**  
3 **untimely, and any changes to the ballot question or letter assignment would**  
4 **substantially interfere with the printing of the official ballot and voter**  
5 **information guide.**

6 Elections Code section 9190 requires the County Elections Official  
7 elections materials available for public examination in the Elections Office “for a period of  
8 10 calendar days immediately following the deadline for submission of those materials.”  
9 (Elec. Code, § 9190(a).)<sup>1</sup> “During the 10-calendar-day public examination period provided  
10 by [section 9190], any voter of the jurisdiction in which the election is being held ... may seek  
11 a writ of mandate or an injunction requiring any or all of the materials to be amended or  
12 deleted. The writ of mandate or injunction request shall be filed no later than the end of the  
13 10-calendar-day public examination period.” (Elec. Code, § 9190(b)(1).)

14 A writ ordering changes to elections materials is subject to a two-part test: “A  
15 peremptory writ of mandate or an injunction shall be issued only upon clear and convincing  
16 proof that the material in question is false, misleading, or inconsistent with this chapter  
17 [Chapter 2 of Division 9 of the Elections Code], and that issuance of the writ or injunction  
18 will not substantially interfere with the printing or distribution of official election materials as  
19 provided by law.” (Elec. Code, § 9190(b)(2).)<sup>2</sup>

20 \_\_\_\_\_  
21 <sup>1</sup> Under Elections Code section 9190, the materials that must be made available for public examination include  
22 the County Counsel’s impartial analysis, written arguments for or against a measure, and rebuttal arguments. (Elec.  
23 Code, § 9190(a).) Elections Code section 9190 also refers to Elections Code section 9119, which applies only to  
initiatives. An initiative is where a petition is circulated to place an ordinance on the ballot. The election on the CCTA  
sales tax measure is not an initiative. (See Pub. Util. Code, § 180203.)

24 <sup>2</sup> Elections Code section 13314, cited throughout the petition (see, e.g., Petition, ¶ 15), does not apply to this  
25 case. Section 13314 governs writ petitions alleging that an error or omission has occurred, or is about to occur, in the  
26 placing of any name on, or in the printing of, an official election material. An example of an error or omission would  
27 be leaving a qualified candidate’s name off the ballot or misspelling a candidate’s name. An example of an error  
28 applicable to this case would be calling this measure a “parcel tax” measure, not a “sales tax” measure. An example of  
an omission applicable to this case would be omitting the name of the Contra Costa Transportation Authority, the sponsor  
of this measure, from the ballot. The petition does not allege that any errors are contained in the ballot language or that  
any omissions have occurred.



1 In this case, the challenge to the letter assignment is barred by the 10-calendar-day  
2 statute of limitations established by Elections Code section 9190. The sales tax ballot  
3 measure was assigned the letter J on December 12, 2019, the date when letters were assigned  
4 to all seven local measures in the March 3, 2020, primary election. (See Declaration of  
5 Contra Costa County Assistant Registrar of Voters Scott O. Konopasek (Konopasek Decl.),  
6 ¶ 19.) The 10-calendar-day period for examining the letters assigned to local measures was  
7 December 12, 2019, through December 22, 2019. The petition was not filed until December  
8 30, 2019 – eight days past the deadline for challenging the letter assignment.<sup>3</sup>

9 Changing the letter designation or ballot measure question will substantially interfere  
10 with the printing and distribution of the official ballots and voter information guide. The  
11 Elections Division will print approximately 3,600,000 ballot cards for the primary election at  
12 a cost of \$650,000. (Konopasek Decl., ¶ 3.) Official ballots were submitted to the printer  
13 for printing on December 31, 2019. The submission to the printer was a pdf document  
14 consisting of approximately 21,000 pages. The printer has received the pdf submission and  
15 the official ballots are in production and are being printed. (Konopasek Decl., ¶ 5.) The  
16 sales tax measure proposed by the Contra Costa Transportation Authority will appear on  
17 every ballot in Contra Costa County. Any changes to the sales tax measure will affect all  
18 voters and all ballots. All ballots will have to be reformatted and reprinted, at a cost of  
19 \$650,000. (Konopasek Decl., ¶ 14.) Any changes would also required the voter information  
20 guide to be reformatted. It takes approximately five weeks to lay out and format the voter  
21 information guide. (Konopasek Decl., ¶ 14.) There are 40 variations of the voter  
22 information guide to be printed. All 40 variants have been formatted. Once all 40 variants  
23 are formatted, the printer creates a booklet for each variant. The printer has prepared all the  
24 booklets for final verification by the Elections Division. All voter information guides are  
25 ready to be printed upon final signoff by the Elections Division. (Konopasek Decl., ¶ 9.)

---

26  
27 <sup>3</sup> The January 2, 2020, date listed in the 2020 Guide to Filing Measure Arguments at page A-1 (see Exhibit  
28 C to Konopasek Declaration) applies only to the deadline for challenging rebuttal arguments. Earlier deadlines apply  
to other elections materials. (See Konopasek Decl., ¶¶ 19-22.)

1           Moreover, petitioners have not established that the assignment of the letter J to the  
2 sales tax measure is false, misleading, or inconsistent with the Elections Code. In the March  
3 3, 2020, primary, seven local jurisdictions are sponsoring different measures. Each local  
4 measure was assigned a different letter, in accordance with Elections Code section 13116.  
5 There is no possibility of misleading the voters because no other local measure in the March  
6 3, 2020, primary election was assigned the letter J. (Konopasek Decl., ¶ 17, Exh. D.)<sup>4</sup>

7           Petitioners' argument that measures must be in alphabetical order has no applicability  
8 in this case. There are seven local measures in the March 3, 2020, primary election.  
9 (Konopasek Decl., ¶ 17.) Each local measure is sponsored by a different jurisdiction. The  
10 order of local measures on ballots will vary from ballot style to ballot style. The result is that  
11 local measures do not appear together or sequentially on ballots. When one jurisdiction  
12 sponsors more than one local measure (which is not the case in this election), then the  
13 measures of that jurisdiction are placed in alphabetical order on the ballot. (Konopasek Decl.,  
14 ¶ 18.) Here, since each local measure is sponsored by a different jurisdiction, the alphabetical  
15 order of that jurisdiction's single measure is the single letter assigned to that measure.  
16 Moreover, Elections Code section 13109 authorizes the Elections Official to vary the order of  
17 local measures on the ballot.

18           **B. The impartial analysis meets all legal requirements established by the**  
19           **Elections Code and case law.**

20           Elections Code section 9160 requires the County Counsel to prepare an impartial  
21 analysis for a local measure such as the sales tax proposed by CCTA. A writ to change an  
22 impartial analysis will issue *only* on clear and convincing proof that the impartial analysis is  
23 false, misleading, or inconsistent with the requirements of the Elections Code. (Elec. Code, §  
24 9295 (emphasis added); see *Huntington Beach City Council v. Superior Court* (2002) 94  
25 Cal.App.4th 1417, 1428.) “[T]he Legislature went out of its way to emphasize the scope of

26 \_\_\_\_\_  
27           <sup>4</sup> The purpose of Elections Code section 13116 is to avoid voter confusion in successive elections. (Elec.  
28 Code, § 13116(b).) The last time a CCTA measure was assigned the letter J was in 2004, which is 16 years and  
numerous election cycles ago.

1 narrowness of the scope of any proper challenges by appending the word ‘only’ in front of the  
2 heightened evidentiary standard.” (*Huntington Beach, supra*, 94 Cal.App.4th at p. 1428.)  
3 All reasonable doubts must be resolved in favor of upholding the analysis. (*People ex rel.*  
4 *Kerr v. County of Orange* (2003) 106 Cal.App.4th 914, 936, citing *Brennan v. Board of*  
5 *Supervisors* (1981) 125 Cal.App.3d 87, 96.)<sup>5</sup>

6 Under Elections Code section 9160, the impartial analysis must show “the effect of  
7 the measure on the existing law and the operation of the measure.” (Elec. Code, § 9160(b).)  
8 The courts have interpreted this language to mean that an impartial analysis must describe the  
9 measure in “general terms” and provide the measure’s “key components.” (*Kerr, supra*, 106  
10 Cal.App.4th at p. 936, citing *Horwath v. City of East Palo Alto* (1989) 212 Cal.App.3d 766,  
11 779.) An impartial analysis is not required to inform voters of the arguments for or against a  
12 measure, and is not required to include background facts and circumstances related to the  
13 measure. (*Owens v. County of Los Angeles* (2013) 220 Cal. App. 4th 107, 125.)

14 The analysis may not exceed 500 words. (Elec. Code, § 9160(b).) This word limit  
15 necessarily precludes an impartial analysis from discussing every issue related to a measure.  
16 (*Owens, supra*, 220 Cal. App. 4th at p. 126.) “It is obvious from the 500-word limitation in  
17 the statute that the county counsel is not required to write – indeed should not write – a law  
18 review article meditating on every last nuance and wrinkle posed by a ballot measure.  
19 Impartial analyses were not meant to be environmental impact reports. The 500-word limit  
20 poses the literary challenge of summarizing what might be a very complex measure into a  
21 report about the size of a small newspaper column.” (*Kerr, supra*, 106 Cal.App.4th at p.  
22 936.)

23 The County Counsel’s impartial analysis of the CCTA’s proposed half-cent sales tax  
24 measure meets all legal requirements established by the Elections Code and case law. (The  
25 impartial analysis that will be included in the voter information guide is Exhibit B of the  
26 Konopasek Declaration.) The impartial analysis explains “the operation of the measure” by

27 \_\_\_\_\_  
28 <sup>5</sup> Elections Code section 9106, cited in the petition, applies only to an impartial analysis prepared for an  
initiative, where a petition is circulated to place an ordinance on the ballot. This sales tax measure is not an initiative.

1 stating the following: “The sales tax would be collected in the incorporated and  
2 unincorporated area of Contra Costa County from July 1, 2020, until  
3 analysis further explains the operation of the measure by stating that two-thirds of those  
4 voting on the ballot measure must approve the measure for it to pass, and that a “yes” vote is  
5 a vote in favor of authorizing the 0.5% sales tax, while a “no” vote is a vote against  
6 authorizing the 0.5% sales tax.

7 The impartial analysis shows “the effect of the measure on the existing law” by  
8 stating that the “proceeds from this sales tax would supplement CCTA’s existing one-half of  
9 one percent (0.5%) sales tax, which will continue to be collected until March 31, 2034.” The  
10 analysis also describes the measure in “general terms” and provide the measure’s “key  
11 components” by describing how the proceeds of the sales tax will be used for transportation  
12 purposes, as well as stating that the measure authorizes CCTA to issue limited tax bonds to  
13 finance transportation projects. The analysis refers to the CCTA’s Transportation  
14 Expenditure Plan (TEP), which the CCTA is required to prepare pursuant to Public Utilities  
15 Code section 180206. This statute requires a local transportation authority to prepare a TEP  
16 “for the expenditure of the revenues expected to be derived from the tax” imposed by the  
17 transportation authority. (Pub. Util. Code, § 180206(a).) The impartial analysis further  
18 explains that there will be public oversight of the sales tax proceeds and that tax expenditures  
19 will be subject to annual independent audits.

20 Petitioners are not entitled to any of the changes they demand to the impartial  
21 analysis. They have not presented the “clear and convincing proof” required by Elections  
22 Code section 9295 that the impartial analysis is “false, misleading, or inconsistent with the  
23 requirements of the Elections Code.” (See *Huntington Beach, supra*, 94 Cal.App.4th at p.  
24 1428.) “Courts may intervene *only* if clear and convincing evidence shows the statement to  
25 be false or misleading.” (*Ibid.* (emphasis in original).) “In determining whether statements  
26 are false or misleading, courts look to whether the challenged statement is subject to  
27 verifiability, as distinct from ‘typical hyperbole and opinionated comments common to  
28 political debate.’” (*Ibid.*)

1           Petitioners first seek to have the word “additional” added to the impartial analysis to  
2 indicate that the proposed tax would be collected along with the CCTA’s existing sales tax.  
3 (Petition, ¶ 39.) But the impartial analysis already says this. It says that the new sales tax  
4 would be collected in the incorporated and unincorporated area of Contra Costa County from  
5 July 1, 2020, until June 30, 2055, and that the existing sales tax will continue to be collected  
6 until March 31, 2034. The word “additional” is unnecessary and its exclusion is not false or  
7 misleading.

8           Petitioners next seek to have the impartial analysis provide an estimate of debt service  
9 interest that CCTA may pay in the future. (Petition, ¶ 43.) The impartial analysis is not  
10 required to include background material that is based only on a guess of what might occur in  
11 the future. (See *Owens, supra*, 220 Cal. App. 4th 107 at p. 125.) The impartial analysis  
12 addresses the issue of bonding by stating that the measure authorizes CCTA to issue limited  
13 tax bonds, and that bonded indebtedness may not exceed the estimated proceeds of the sales  
14 tax.<sup>6</sup>

15           Petitioners further seek to have the phrases “reduce congestion” and “relieve  
16 congestion” removed from the impartial analysis. (Petition, ¶ 49.) The origin of these  
17 phrases are the ballot measure question and the TEP, respectively. Both were adopted by the  
18 CCTA. Petitioners seek their removal on the basis that they are “argumentative and  
19 inaccurate.” (Petition, 11:12.) “Argumentative and inaccurate,” however, is not the standard  
20 for issuing a writ. Petitioners do not and cannot argue that these phrases are false or  
21 misleading. (See *Huntington Beach, supra*, 94 Cal.App.4th at p. 1428.)

22           Finally, petitioners seek to amend the description of the TEP that is contained in the  
23 impartial analysis. (Petition, ¶ 51.) The impartial analysis states that sales tax proceeds may  
24 only be used for the projects and purposes specified in the TEP and any future amendments to  
25

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26           <sup>6</sup> By contrast, different requirements apply to the analysis of a state measure prepared by the Legislative  
27 Analyst’s Office. Elections Code section 9087 requires, among other things, that the Legislative Analyst include a fiscal  
28 analysis of the measure, and includes the parameters of the fiscal analysis. A fiscal analysis is not required by a County  
Counsel’s impartial analysis. Also, there is no word limit under Elections Code section 9087.

1 the TEP. Petitioners' demand is undercut by their admission that the CCTA's TEP is  
2 compliant with the minimal requirements of Public Utilities Code section 180206. (Petition,  
3 13:9-10.) If the TEP complies with state law and the impartial analysis describes the purpose  
4 of the TEP, then there is no legal basis for changing the description of the TEP in the  
5 impartial analysis. Moreover, the impartial analysis recognizes that the TEP is subject to  
6 future amendments, as specified in Public Utilities Code section 180207.<sup>7</sup>

7 **IV. OBJECTION TO LATE-FILED DECLARATIONS**


8 On January 3, 2020, Petitioners filed two declarations. The County objects to these  
9 two declarations on grounds they are untimely and not relevant to the petition. The  
10 declarations were also filed in violation of the California Rules of Court, which require  
11 declarations to accompany a petition for writ of mandate. (See Cal. Rules of Court, Rules  
12 3.1113(j), 3.1103(a)(2).)

13 **V. CONCLUSION**

14 For the above reasons, the petition should be denied in its entirety.

15 DATED: January 3, 2020

SHARON L. ANDERSON, County Counsel

17 By:   
18 Thomas L. Geiger, Assistant County Counsel  
19 Attorneys for Contra Costa County  
20  
21  
22  
23  
24

25 <sup>7</sup> The petition also is labeled as an action for declaratory relief, but no request for declaratory relief is stated  
26 in the petition's prayer for relief. As explained above, Petitioners' argument that measures must be in alphabetical order  
27 has no applicability in this case. Declaratory relief is inappropriate here. The purpose of a declaratory judgment is to  
28 set controversies at rest before they cause harm to the plaintiff, not to remedy harms that have already occurred. (*County  
of San Diego v. California* (2008) 164 Cal.App.4th 580, 607-608.) The declaratory relief cause of action, to the extent  
one exists, should be dismissed. (See, e.g., *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 752.)

**PROOF OF SERVICE**

**Re: Michael Arata, et al. v Deborah Cooper, et al.  
Contra Costa County Superior Court Case No. N19-2489**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Office of the County Counsel, 651 Pine Street, Ninth Floor, Martinez, CA 94553-1229. On January 3, 2020, I served the following document(s) by the method indicated below:

1. **Opposition of Contra Costa County’s Acting Clerk-Recorder, County Counsel, and Board of Supervisors to Petition for Writ of Mandate**
2. **Declaration of Contra Costa County Assistant Registrar of Voters Scott O. Konopasek**

By fax transmission on this date from fax number (925) 646-1078 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal.R.Ct. 2.301(3).

By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Martinez, California addressed as set forth below. I am readily familiar with Office of County Counsel’s practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

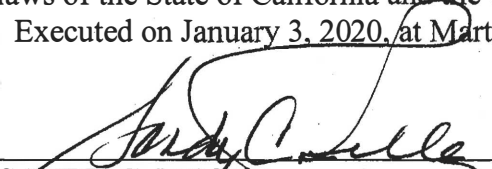
By personally delivering the document(s) listed above to the person(s) and at the addresses listed below.

By placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.

Law Offices of Jason A. Bezis, Esq.  
3661-B Mosswood Drive  
Lafayette, CA 94549-3509

*Attorneys for Petitioners*  
Michael Arata and Richard S.Colman

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the above is true and correct. Executed on January 3, 2020, at Martinez, California.

  
SANDY C. TELLEZ

1 LAW OFFICES OF JASON A. BEZIS  
2 California State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 708-7073  
6 Bezis4Law@gmail.com  
7 Attorney for Petitioners

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.: N19-2489

) **NOTICE OF ENTRY OF ORDER**  
) **SETTING EXPEDITED BRIEFING AND**  
) **HEARING SCHEDULE**

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

) Action Filed: December 30, 2019



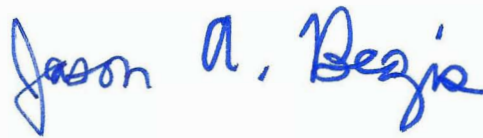
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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 31, 2019, the Court entered an Order Setting Expedited Briefing and Hearing Schedule for Writ of Mandate. A true and correct copy is attached as Exhibit A.

DATED: December 31, 2019

LAW OFFICES OF JASON A. BEZIS



By: \_\_\_\_\_

JASON A. BEZIS  
Attorney for Petitioners

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# EXHIBIT A

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# EXHIBIT A

1 LAW OFFICES OF JASON A. BEZIS  
2 California State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 708-7073  
6 Bezis4Law@gmail.com  
7 Attorney for Petitioners

FILED

2019 DEC 31 A 11:18

CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

DEPUTY CLERK

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.: *N19-2489*

~~PROPOSED~~ ORDER SETTING  
EXPEDITED BRIEFING AND HEARING  
SCHEDULE FOR WRIT OF MANDATE

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

Date: December 31, 2019

Time: 10:00 a.m.

Dept.: Department of the Supervising  
Judge of the Civil Division

//

1 The ex-parte application was heard by the Court on December 31, 2019, at 10:00 a.m. in  
2 Department 39 by the Hon. Edward Weil.

3 Attorney Jason A. Bezis appeared on behalf of Petitioners. Attorneys appeared for  
4 Respondents and Real Parties in Interest.

5 After consideration of the moving and any opposing papers, all papers and pleadings on  
6 file in this action, and the arguments of counsel:

7 The Court finds that this petition for writ of mandate is a priority matter pursuant to  
8 Elections Code §§ 9106 and 13314(a)(3) and that the issuance of any writ on or before January 6,  
9 2020 will not substantially interfere with the conduct of the March 3, 2020 election.

10 IT IS HEREBY ORDERED that the writ of mandate hearing in the above-entitled action  
11 is set for Monday, January 6, 2020 at 10:00 a.m. in Department 12. Any opposing papers or  
12 briefs by Respondents and Real Parties in Interest should be filed with the Superior Court clerk  
13 before 3:00 p.m. on Friday, January 3, 2020 and served electronically upon Petitioners' attorney  
14 Jason Bezis at e-mail address Bezis4Law@gmail.com and upon other parties before 5:00 p.m. on  
15 Friday, January 3, 2020. ~~Petitioners may electronically (by e-mail) serve a reply brief on~~  
16 ~~opposing parties by 5:00 p.m. on Sunday, January 5, 2020, lodge the reply brief with the Court at~~  
17 ~~the hearing on Monday, January 6, 2020, and file the reply brief with the Superior Court clerk on~~  
18 ~~Monday, January 6, 2020.~~ *No reply*

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25 **EDWARD WEIL**

26 Dated: December 31, 2019

27 JUDGE OF THE SUPERIOR COURT  
*Presiding Judge*

28 *Per CCP 635*

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**PROOF OF SERVICE**

*Michael Arata, et al. v. Deborah Cooper, et al.*  
Contra Costa County Superior Court Case No. N19-2489

At the time of service, I was over 18 years of age and not a party to this action. My business address is 3661-B Mosswood Drive, Lafayette, CA 94549-3509.

On December 31, 2019, I served true copies of the following document(s) described as:

**NOTICE OF ENTRY OF ORDER SETTING EXPEDITED BRIEFING AND HEARING SCHEDULE FOR WRIT OF MANDATE**

on the interested parties in this action as follows:

Thomas L. Geiger  
Assistant County Counsel  
COUNTY OF CONTRA COSTA  
[Thomas.Geiger@cc.cccounty.us](mailto:Thomas.Geiger@cc.cccounty.us)  
Attorney for Deborah Cooper, Sharon L. Anderson and Contra Costa County Board of Supervisors

Jason D. Kaune  
Hilary J. Gibson  
NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP  
[jkaune@nmgovlaw.com](mailto:jkaune@nmgovlaw.com); [hgibson@nmgovlaw.com](mailto:hgibson@nmgovlaw.com);  
Attorneys for Contra Costa Transportation Authority

**BY ELECTRONIC SERVICE:** I served the document(s) on the persons listed above to the e-mail addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 31, 2019, at Lafayette, California.



---

JASON A. BEZIS

1 LAW OFFICES OF JASON A. BEZIS  
2 California State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 708-7073  
6 Bezis4Law@gmail.com  
7 Attorney for Petitioners

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.: N19-2489

) **DECLARATION OF DAVID**  
) **SCHONBRUNN IN SUPPORT OF**  
) **PETITION FOR WRIT OF MANDATE**

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

) Action Filed: December 30, 2019

) ASSIGNED TO DEPARTMENT 12 FOR  
) ALL PURPOSES

1 I, David Schonbrunn, declare as follows:

2 1. I am over the age of 18 years. I have personal knowledge of the facts contained in this  
3 declaration, and if called upon to testify I could and would testify competently as to the truth of  
4 the facts stated herein.

5 2. I make this declaration in support of the petition for writ of mandate.

6 3. I am President of Transportation Solutions Defense and Education Fund, also known as  
7 TRANSDEF, an environmental non-profit corporation focused on reducing the impacts of  
8 transportation on climate change.

9 4. I submitted the ballot arguments opposed to Contra Costa Transportation Authority's  
10 (CCTA's) Measure X in 2016.

11 5. Together with Petitioner ARATA, I organized the submission of ballot arguments against  
12 CCTA's March 2020 ballot measure and signed the Rebuttal argument.

13 6. I have a five-year history of involvement in CCTA's transportation planning that is  
14 summarized on our webpage: <https://transdef.org/recent-contra-costa-transportation-history/>

15 7. Working with our attorney, I co-wrote a December 16, 2019 letter to Acting County  
16 Registrar COOPER, alerting her office to problems with the CCTA Measure ballot label, tax rate  
17 in the ballot label, and ballot measure letter designation. We sent copies of this letter to County  
18 Counsel ANDERSON and to CCTA. Attached Exhibit L is a true and correct copy of that letter.

19 8. I received a copy of County Counsel's revised CCTA Measure Impartial Analysis  
20 bearing a date stamp of December 18, 2019 from our attorney. I was shocked to notice that a  
21 highly significant revision had been made to the first sentence. I had received an earlier version  
22 from Petitioner ARATA.

23 9. Working with our attorney, I co-wrote a December 24, 2019 pre-litigation demand letter  
24 to Registrar COOPER, informing her office about problems with County Counsel's Impartial  
25 Analysis of the CCTA Measure and further alerting her office to problems with the ballot label,  
26 the tax rate, and the ballot measure letter designation. We sent copies of this letter to County  
27 Counsel ANDERSON, CCTA and the COUNTY BOARD OF SUPERVISORS. Attached  
28 Exhibit M is a true and correct copy of that letter.

1 10. Working with our attorney, I co-wrote a December 24, 2019 pre-litigation demand letter  
2 to County Counsel ANDERSON, alerting her office to problems with the CCTA Measure  
3 impartial Analysis. We sent copies of this letter to Registrar COOPER, CCTA and the  
4 COUNTY BOARD OF SUPERVISORS. Attached Exhibit N is a true and correct copy of that  
5 letter.

6 11. Through these letters (Exhibits L, M and N), TRANSDIEF placed Registrar COOPER, the  
7 County Elections Division, County Counsel ANDERSON, and CCTA on notice of problems  
8 with the CCTA Measure ballot label, tax rate in the ballot label, and ballot measure letter  
9 designation beginning on December 16, 2019

10 12. I declare under penalty of perjury pursuant to the laws of the State of California that the  
11 foregoing is true and correct. Executed on the 2<sup>nd</sup> day of January 2020 at Sausalito, California.  
12

13 DATED: January 2, 2020  
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18 By:



19 DAVID SCHONBRUNN  
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# EXHIBIT L

# EXHIBIT L

**LAW OFFICES OF JASON A. BEZIS**

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3661-B Mosswood Drive  
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(925) 962-9643 (landline) (925) 708-7073 (cell/mobile)  
Bezis4Law@gmail.com

December 16, 2019

Deborah Cooper  
Acting County Clerk-Recorder and Registrar of Voters  
Contra Costa County Elections Division  
555 Escobar St.  
P.O. Box 271  
Martinez, CA 94553  
VIA U.S. MAIL and VIA E-MAIL to [scott.konopasek@vote.cccounty.us](mailto:scott.konopasek@vote.cccounty.us); [rosa.mena@vote.cccounty.us](mailto:rosa.mena@vote.cccounty.us);  
[sara.brady@vote.cccounty.us](mailto:sara.brady@vote.cccounty.us); [candidate.services@vote.cccounty.us](mailto:candidate.services@vote.cccounty.us)

Re: Contra Costa Transportation Authority Sales Tax Measure (March 2020): Challenges to Ballot Question Misstatements and Ballot Measure Letter Designation

Dear Acting Registrar Cooper, Assistant Registrar Konopasek and Elections Division staff:

This office represents the Transportation Solutions Defense and Education Fund, known as TRANSDEF, a non-profit environmental organization created by transit activists to advocate for better solutions to transportation, land use and air quality problems in the San Francisco Bay Area. TRANSDEF prepared the argument against the Contra Costa Transportation Authority sales tax increase in 2016 (Measure X).

TRANSDEF reminds the County Elections Division of its relatively new duties under Elections Code § 13119 to ensure that a ballot question “shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.”

In 2016, Los Angeles County Superior Court ruled in *City of Carson, et al. v. Dean Logan* (BS164554) that § 13119 did not apply to measures placed on the ballot directly by public entities. In 2017, the Legislature and Governor Jerry Brown amended § 13119(a) to include “ballots used when voting upon a measure proposed by a local governing body.” Therefore, § 13119 unquestionably applies to CCTA’s March 2020 ballot measure. While the 2019 Legislature passed SB 268 in an attempt to water down the restrictive provisions of this statute, Governor Newsom vetoed the bill.

Concerning the Contra Costa Transportation Authority sales tax measure on the March 3, 2020 ballot, TRANSDEF respectfully asks the County Elections Division:

- (1) to require CCTA, the sponsoring agency, to amend and correct the rate of the tax to be levied in the ballot question,
- (2) to require CCTA, the sponsoring agency, to amend and correct untrue, not impartial, argumentative and prejudicial language in the ballot question, and
- (3) to change the ballot measure letter designation “Measure J.”

**I. CCTA Ballot Question Misstates Tax Rate In Violation of Elections Code § 13119: “½¢ sales tax” Should Be Changed to “½% sales tax” (as with 2016 CCTA Measure X)**

Elections Code § 13119(b) says, “If the proposed measure imposes a tax or raises the rate of a tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.” Elections Code § 13119(c) says, “The statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure.”

The Measure J ballot question, as currently written, violates Elections Code §§ 13119(b) and (c) because it incorrectly indicates that the rate is a “½¢ sales tax.” Use of the “¢” symbol is an untrue synopsis of the proposed measure and would mislead and confuse voters. The “¢” symbol represents units of currency. Voters may incorrectly assume that Measure J would impose a flat half-penny tax on each retail transaction instead of the actual half-percent ad valorem tax. The “¢” symbol creates prejudice for the measure because such voters would incorrectly believe that it would impose a mere half-penny tax on a \$1000 purchase, where the actual tax imposed would be five dollars. Other voters, especially many immigrants and many voters under age 40, do not know what the “¢” symbol represents. The “¢” symbol does not appear on standard modern keyboards.

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

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

Therefore, TRANSDEF requests that the Elections Division require CCTA to strike the “¢” symbol and replace it with the “%” symbol in the 2020 sales tax measure ballot question.

**II. Untrue, Not Impartial, Argumentative & Prejudicial Language in “Measure J” Ballot Question Must Be Removed**

To satisfy the Elections Code § 13119 standard, four statements must be amended or removed from the “Measure J” ballot question because they are untrue, not impartial, argumentative and/or prejudicial. TRANSDEF proposes as the standard for evaluation that statements in the ballot question be consistent with CCTA’s own 2017 Countywide Transportation Plan (CTP) Environmental Impact Report (EIR), available at [https://2017ctpupdate.net/wp-content/uploads/2017\\_CTP-DEIR\\_links\\_20170620.pdf](https://2017ctpupdate.net/wp-content/uploads/2017_CTP-DEIR_links_20170620.pdf). Note that none of the citations to the DEIR below were revised in the Final EIR.

*A. Challenged Ballot Statement #1: “Reduce congestion”*

Several parts of the DEIR demonstrate the falsity of this statement. First, the overall number of vehicle miles travelled (the product of the number of cars on the road times the average trip length) increases from 23 million in 2017 to 28 million in 2040. (Table 2.1-4, page 2.1-21.) More cars on the road, in the absence of massive capacity increases, immediately suggest more congestion. This is confirmed by the finding on page 2.1-19 that by the year 2040, vehicle hours of delay (VHD) would increase 166 percent. “Travelers on major roadways throughout Contra Costa County would experience an appreciable increase

in total VHD as compared with the baseline condition. An appreciable increase in VHD is defined as greater than 5 percent. (Significant and Unavoidable [environmental impact])" (DEIR page 2.1-21.)

*B. Challenged Ballot Statement #2: "Make commutes faster and more predictable"*

Table 2.1-3, DEIR page 2.1-19, shows that by the year 2040, vehicle hours of delay would increase 166 percent, average freeway speeds would decline by 2.7 percent, and average arterial speeds would decline by 2.3 percent. The ballot statement is inconsistent with any of these findings. Delays are the leading cause of unpredictable travel times.

*C. Challenged Ballot Statement #3: "Improve air quality"*

Page 2.3-23 of the DEIR states that "New or expanded transportation facilities pursuant to the 2017 CTP would result in a net increase in emissions of PM<sub>10</sub> from on-road mobile sources (including entrained dust) as well as a net increase in emissions of PM<sub>2.5</sub> entrained dust, as compared with the baseline condition. (Significant and Unavoidable [environmental impact])"

Clearly, the DEIR finds that the 2017 CTP Investment Program, to be funded by Measure J, will worsen particulate levels, which are the component of air quality of greatest concern for their impact on human health. The ballot statement is untrue for another reason, as well: the air quality improvements are not the result of the 2017 CTP Investment Program. Table 2.3-4, on the same page, indicates that the very large air quality improvements from the 2017 CTP Investment Program are only slightly greater than the improvements from the No Project Alternative. This indicates that the CTP Alternative was only responsible for a tiny share of air quality improvements, with the rest being the result of tightened statewide emissions standards.

*D. Challenged Ballot Statement #4: "Improve the frequency, reliability, accessibility, cleanliness, and safety of buses, ferries and BART"*

A standard of common sense should be applied to the evaluation of this statement. As separate jurisdictions with their own Boards of Directors, the Alameda-Contra Costa Transit District, the San Francisco Bay Area Water Emergency Transportation Authority and BART are not subject to decision making by CCTA. There is little that Measure J will do or can do that will affect any of these attributes of transit service, other than possibly its frequency. CCTA should be required to substantiate its ability to influence decisions on any of the service attributes by any outside agency, before that agency or that attribute can be listed on the ballot. The rest should be deleted from this list.

**III. The "Measure J" Ballot Measure Letter Designation Must Be Changed Due to High Potential for Voter Confusion With Existing CCTA Measure J.**

TRANSDEF strenuously objects to the Elections Division's assignment of "Measure J" to the Contra Costa Transportation Authority sales tax measure. TRANSDEF suggests that a different letter be used (other than "J") or that it be designated "JJ" or "J2" to avoid voter confusion with the existing Contra Costa Transportation Authority "Measure J" that appeared on the 2004 ballot and remains in effect until 2034.

Elections Code § 13116(b) says, "An elections official may commence designating local measures with any letter of the alphabet following the letter "A," and continuing in alphabetical order, in order to avoid voter confusion that might result from different local measures carrying the same letter designation in successive elections."

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

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

TRANSDEF suggests that the Contra Costa County Elections Division follow the Alameda County Registrar of Voters’ practice when the Alameda County Transportation Commission sought similar “self-help” transportation agency sales tax increases in 2012 and 2014. Voters passed the existing transportation sales tax, Measure B, in 2000. In 2012, the unsuccessful sales tax increase was designated “Measure B1.” In 2014, the sales tax increase passed as “Measure BB.”

In making these requests, TRANSDEF seeks to ensure that voters are offered a fair and objective description of the tax increase ballot measure placed before them, consistent with the text, intent and purpose of the Elections Code.

Respectfully submitted,

A handwritten signature in black ink that reads "Jason A. Bezis". The signature is written in a cursive, slightly slanted style.

JASON A. BEZIS

Attorney for Transportation Solutions Defense and Education Fund (TRANSDEF)

cc: County Counsel

Contra Costa Transportation Authority, Executive Director Randell Iwasaki

Daniel Borenstein, *East Bay Times*

# EXHIBIT M

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# EXHIBIT M

**LAW OFFICES OF JASON A. BEZIS**

State Bar No. 225641  
3661-B Mosswood Drive  
Lafayette, CA 94549-3509  
(925) 962-9643 (landline) (925) 708-7073 (cell/mobile)  
Bezis4Law@gmail.com

December 24, 2019

Deborah Cooper  
Acting County Clerk-Recorder and Registrar of Voters  
Contra Costa County Elections Division  
P.O. Box 271  
555 Escobar St.  
Martinez, CA 94553

VIA U.S. MAIL and VIA E-MAIL to [scott.konopasek@vote.cccounty.us](mailto:scott.konopasek@vote.cccounty.us);  
[rosa.mena@vote.cccounty.us](mailto:rosa.mena@vote.cccounty.us); [sara.brady@vote.cccounty.us](mailto:sara.brady@vote.cccounty.us);  
[candidate.services@vote.cccounty.us](mailto:candidate.services@vote.cccounty.us)

Re: Legally Defective Impartial Analysis for Contra Costa Transportation Authority Measure J

Dear Acting Registrar Cooper, Assistant Registrar Konopasek and Elections Division staff:

This office represents Contra Costa County electors and the Transportation Solutions Defense and Education Fund, known as TRANSDEF, a non-profit environmental organization created by transit activists to advocate for better solutions to transportation, land use and air quality problems in the San Francisco Bay Area. TRANSDEF prepared the argument and rebuttal against the Contra Costa Transportation Authority (CCTA) additional sales tax in 2016 (Measure X) and the argument and rebuttal against the CCTA additional sales tax on the March 2020 ballot (Measure J).

This letter is to serve as pre-litigation settlement demand. We believe that an error or omission has occurred, or is about to occur, in the printing of a ballot, county voter information guide or other official matter, or that neglect of duty by the Acting County Clerk-Recorder and Registrar of Voters, County Counsel, and/or CCTA has occurred, or is about to occur. See Elections Code §§ 9160, 13314, 13319, etc. See also *McDonough v. Superior Court* (2012) 204 Cal.App.4th 1169.

In our letter to the Acting County Clerk-Recorder and Registrar of Voters on December 16, 2019, we asked the County Elections Division:

- (1) to require CCTA, the sponsoring agency, to amend and correct the rate of the tax to be levied in the ballot question,
- (2) to require CCTA, the sponsoring agency, to amend and correct untrue, not impartial, argumentative and prejudicial language in the ballot question, and

(3) to change the ballot designation from “Measure J.”

We copied County Counsel and CCTA Executive Director on that letter. Yet eight days later, we have not heard from you, or any of the other parties to whom we addressed our December 16<sup>th</sup> letter. We repeat those demands herein by reference to that December 16<sup>th</sup> letter.

**County March 2020 Ballot Measure Letter Designations Do Not Conform to E.C. § 13116.**

We do not believe that your office’s ballot measure letter designations for the March 2020 election conform to the Elections Code or to your own office policies. Elections Code § 13116(a) says in part, “All county, city, or other local measures shall be designated by a letter, instead of a figure, printed on the left margin of the square containing the description of the measure, commencing with the letter “A” and continuing in alphabetical order, one letter for each of these measures appearing on the ballot.” Elections Code § 13116(b) says in full, “An elections official may commence designating local measures with any letter of the alphabet following the letter “A,” and continuing in alphabetical order, in order to avoid voter confusion that might result from different local measures carrying the same letter designation in successive elections.”

Your office has failed to conform with Elections Code § 13116 in its seven March 2020 ballot measure letter designations. After your office assigned Measure “A” to the Pleasant Hill Recreation and Park District ballot measure, the next measure should have been designated "B." Elections Code § 13116(b) says that the letter assignments should be “continuing in alphabetical order, one letter for each of these measures appearing on the ballot.” Instead of continuing in alphabetic order from “A,” your office jumped to “J,” then “L,” “M,” “R,” “T,” and “Y.” There would not have been “voter confusion” if your office had assigned “B,” “C,” “D,” “E,” “F,” or “G” to the CCTA ballot measure. No countywide election has used those ballot measure letter designations in recent elections. But as our December 16<sup>th</sup> letter explained, the 2020 CCTA Measure’s designation as “J” (enacting a new, additional, increased sales tax) creates “voter confusion” with the existing 2004 CCTA Measure J that CCTA prominently touts on road signs and other promotional materials across the county.

Your office’s 2020 “Guide to Filing Measure Arguments” says on page 6, “Assignment of Letters” Letters are assigned based upon a random draw. All letters are included in the random draw.” We note that the Contra Costa Transportation Authority tax increase was assigned Measure “J” (the same designation as CCTA’s 2004 Measure J that remains in effect until 2034), a Lafayette School District measure was assigned Measure “L” (“Lafayette” – “L”) and a Moraga School District measure was assigned Measure “M” (“Moraga” – “M”). The probability that all of these designations occurred through random chance is astronomically small.

**Public Records Act Request Concerning “2001 Policy” Apparently Relating to Ballot Measure Letter Designations. Immediate Response, Without Delay, Requested.**

We seek information about a policy referenced in a sign in the first-floor Elections Division room at 555 Escobar Street titled “MEASURE LETTER ASSIGNMENT FOR THE 03/03/20 PRIMARY ELECTION.” It says, “LETTER (EC 13109 & 2001 Policy).” Pursuant to the Public Records Act (Government Code §§ 6250, et seq.) and other legal authority that requires



disclosure, we hereby request any and all documents concerning the “2001 Policy” and any and all documents relating to requests from any party, including but not limited to measure sponsors, for specific ballot measure letter designations for the March 2020 election. **We request provision of a copy of the “2001 Policy” immediately, without delay.**

**Conclusion**

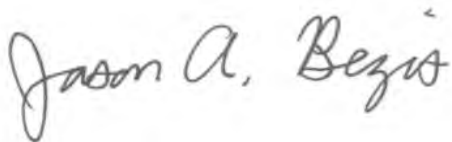
In a letter today (attached), we demand that County Counsel fulfill her legal duty under Elections Code § 9160(b) to conduct a truly impartial analysis of the 2020 CCTA tax increase ballot measure. Consistent with that letter, we demand that the Acting Clerk-Recorder withhold printing of County Counsel’s “Impartial Analysis” of the 2020 CCTA ballot measure in the Voter Guide until it is revised along the lines discussed in that demand letter.

In another letter today (attached), we express our concern to the Board of Supervisors that your Division is rudderless, in a state of crisis, and in turmoil that apparently renders the office unable to conform with its Elections Code duties (e.g., Elections Code §13119).

Official neglect of duty right now by County Counsel, Clerk-Recorder-Registrar of Voters and CCTA could mislead voters in the March 2020 CCTA additional sales tax election. Today, Christmas Eve, is one of the busiest days of the year for retail sales. Contra Costa County citizens and taxpayers should not be compelled to pay higher sales taxes (nearing or exceeding a 10.0% rate) for the next 35 Christmases as a consequence of official negligence and/or misconduct this month concerning the 2020 CCTA tax increase election.

In making these requests, Contra Costa County electors and TRANSDEF seek to ensure that voters are offered a fair and objective description of the tax increase placed before them, consistent with the text, intent and purpose of the Elections Code. We are available immediately to discuss a non-litigation settlement of our concerns.

Respectfully submitted,



JASON A. BEZIS  
Attorney for Contra Costa County Electors and TRANSDEF

Attachments: December 24, 2019 letter to County Counsel  
December 24, 2019 letter to Board of Supervisors

cc: Contra Costa Transportation Authority, Executive Director Randell Iwasaki  
Daniel Borenstein, *East Bay Times*

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# EXHIBIT N

# EXHIBIT N

**LAW OFFICES OF JASON A. BEZIS**

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December 24, 2019

Sharon L. Anderson  
County Counsel  
County of Contra Costa  
651 Pine Street 9th Floor  
Martinez, CA 94553  
VIA U.S. MAIL and FACSIMILE: (925) 646-1078

Re: Legally Defective Impartial Analysis for Contra Costa Transportation Authority Measure J

Dear County Counsel Anderson:

This office represents Contra Costa County electors and the Transportation Solutions Defense and Education Fund, known as TRANSDEF, a non-profit environmental organization created by transit activists to advocate for better solutions to transportation, land use and air quality problems in the San Francisco Bay Area. TRANSDEF prepared the argument and rebuttal against the Contra Costa Transportation Authority (CCTA) sales tax increase in 2016 (Measure X) and the argument and rebuttal against the CCTA sales tax increase on the March 2020 ballot (Measure J).

This letter is to serve as pre-litigation settlement demand. We believe that an error or omission has occurred, or is about to occur, in the printing of a ballot, county voter information guide or other official matter, or that neglect of duty by the Acting County Clerk-Recorder and Registrar of Voters, County Counsel, and/or CCTA has occurred, or is about to occur. See Elections Code §§ 9160, 13314, 13319, etc. See also *McDonough v. Superior Court* (2012) 204 Cal.App.4th 1169.

In our letter to the Acting County Clerk-Recorder and Registrar of Voters on December 16, 2019, we asked the County Elections Division:

- (1) to require CCTA, the sponsoring agency, to amend and correct the rate of the tax to be levied in the ballot question,
- (2) to require CCTA, the sponsoring agency, to amend and correct untrue, not impartial, argumentative and prejudicial language in the ballot question, and
- (3) to change the ballot designation from “Measure J.”

We copied you and the CCTA Executive Director on that letter. Yet eight days later, we have heard from none of the parties to whom we addressed our December 16<sup>th</sup> letter. We repeat those demands herein by reference to that December 16<sup>th</sup> letter.

In today's letter, we demand that you fulfill your legal duty under Elections Code § 9160(b) to conduct a truly impartial analysis of the 2020 CCTA sales tax increase ballot measure. In a separate letter (attached), we demand that the Acting Clerk-Recorder withhold printing of County Counsel's "Impartial Analysis" of the 2020 CCTA ballot measure in the Voter Guide until it is revised along the line discussed within this demand letter. In a third letter (attached), we convey our concerns to the Board of Supervisors that the improper politicization of this ballot measure constitutes yet another stain in Contra Costa County government's recent history of corruption and malfeasance.

**Last Week's Revision of County Counsel's Impartial Analysis of CCTA's Ballot Measure Eliminated the Prominent & Necessary Disclosure that Measure J is a Tax Increase.**

First, we demand that you restore to your "Impartial Analysis" the disclosure in the first sentence that CCTA "has proposed a measure asking voters to approve an additional one-half of one percent (0.5%) retail transactions and use tax." (emphasis added.) This exact phrase was in the first sentence of County Counsel's Impartial Analysis of CCTA's Measure X in 2016. See attached Exhibit A. This exact phrase also was in the first sentence of the version of County Counsel's Impartial Analysis of CCTA's 2020 Measure J that we obtained from the Contra Costa County Elections Division on December 16, 2019. See attached Exhibit B.

On or about December 18, 2019, your office revised the Impartial Analysis of CCTA's 2020 Measure J and removed the word "additional" not only from the first sentence, but also from the entire "Impartial Analysis." See attached Exhibit C. We strenuously object to the removal of the word "additional" from County Counsel's "Impartial Analysis" because that is essential information "showing the effect of the measure on the existing law and the operation of the measure" [Elections Code § 9160(b)(1)] – it would impose an additional one-half of one percent sales tax. We demand that you restore the wording used in the first sentence of County Counsel's official 2016 Measure X Impartial Analysis (Exhibit A) and the first sentence of the 2020 Measure J Impartial Analysis that the Elections Division distributed on December 16, 2019 (Exhibit B).

**County Counsel's "Impartial Analysis" of CCTA Ballot Measure Improperly Excludes Debt Service Interest From Its Analysis "Of the Tax Proceeds."**

Second, we demand that you correct references to percentages "of the tax proceeds" in the third paragraph of the CCTA 2020 ballot measure "Impartial Analysis" to include debt service interest. The four components "of the tax proceeds" cited by the Analysis add to 100.0%, giving the voter the impression that 100.0% of the sales tax revenues will be spent exclusively on those four components. Yet none of the four components in the Tax Expenditure Plan discloses bond "interest" expenditures or other "debt service" expenditures. To be consistent with the "Impartial Analysis's" fourth paragraph disclosure of CCTA's authorization to issue bonds,

estimated interest expenditures must be disclosed, to prevent the impression being given that there are no costs associated with bond issuance and debt service.

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

CCTA’s latest “Comprehensive Annual Financial Report” is for the fiscal year ended June 30, 2018. Page 45 discloses that CCTA has \$693 million of long-term debt, which will require \$204 million of interest payments through 2034. See attached Exhibit D. Unless CCTA changes its bonding practices, bond interest expenditures for 2020 Measure J would be substantially larger than the transportation planning and administrative components “of the tax proceeds” and therefore must be disclosed in County Counsel’s analysis. You are misleading voters in your current “Impartial Analysis” because you give voters the mistaken impression that none (0.0%) “of the tax proceeds” will pay for debt service interest.

We ask that you request aid from the County Auditor to re-write the third paragraph of the “Impartial Analysis” to include accurate statements “of the tax proceeds” that include either an estimate of debt service interest, or a statement that the portion of the tax proceeds that will be expended for debt service interest is unknowable at this time, but will be the consequence of the amount of bonds issued and the prevailing market interest rates. If the latter course is chosen, the following should be included "If CCTA's historic pattern of bonding is followed with this measure, x% [to be determined by the Auditor] of the tax proceeds would be spent on interest."

**County Counsel’s Impartial Analysis of CCTA Ballot Measure Must Not Include the Argumentative & Inaccurate “Reduce Congestion” & “Relieve Congestion” Claims.**

Third, we demand that you cease and desist from using the argumentative and inaccurate phrases “reduce congestion” and “relieve congestion” in your “Impartial Analysis.” The point in contention is found twice in the third paragraph: "According to the measure, proceeds from the sales tax would be used to reduce congestion..." and “According to the TEP, 41.1% of the tax proceeds will be used to relieve congestion on highways, interchanges, and major roads.” The problem here is that CCTA is using the phrases “reduce congestion” and "relieve congestion" to refer to the elimination of specific bottlenecks, while the congestion that the public will actually experience is the result of the overall functioning of the transportation network (i.e., the relationship between traffic volumes and traffic capacity). An Impartial Analysis must be held to a higher standard than merely parroting the words of a measure's sponsor. You have a duty to investigate assertions that call into question a sponsor's claims.

The TEP states on page 12, "ACHIEVING INTENDED OUTCOMES ... CCTA will ensure funding in the TEP will achieve the outcomes identified in the 2017 Countywide Transportation

Plan (CTP).” The Impartial Analysis must indicate what those outcomes are. As TRANSDEF’s December 16<sup>th</sup> letter stated, CCTA’s own 2017 CTP Environmental Impact Report (EIR) does not support CCTA’s assertion that its projects and programs would “reduce congestion” or “relieve congestion.” See Exhibit E, true and correct copies of relevant pages of the DEIR, available at [https://2017ctpupdate.net/wp-content/uploads/2017\\_CTP-DEIR\\_links\\_20170620.pdf](https://2017ctpupdate.net/wp-content/uploads/2017_CTP-DEIR_links_20170620.pdf). The overall number of vehicle miles travelled (the product of the number of cars on the road times the average trip length) increases from 23 million in 2017 to 28 million in 2040. (Table 2.1-4, page 2.1-21.) More cars on the road, in the absence of massive capacity increases, will inevitably result in more congestion.

This is confirmed by the finding on page 2.1-19 that by the year 2040, vehicle hours of delay (VHD) would increase 166 percent. "Travelers on major roadways throughout Contra Costa County would experience an appreciable increase in total VHD as compared with the baseline condition. An appreciable increase in VHD is defined as greater than 5 percent. (Significant and Unavoidable [environmental impact])" (DEIR page 2.1-21.) Table 2.1-3, DEIR page 2.1-19, shows that by the year 2040, vehicle hours of delay would increase 166 percent, average freeway speeds would decline by 2.7 percent, and average arterial speeds would decline by 2.3 percent. The “reduce congestion” and “relieve congestion” contentions in the current version of your “Impartial Analysis” is inconsistent with any of these findings. Delays are the leading cause of unpredictable travel times.

Therefore, we request that your analysis be re-written to strike "reduce congestion and" and thereby amend the sentence to read: "According to the measure, proceeds from the sales tax would be used to fix bottlenecks..." Similarly, you should strike “relieve congestion on” and replace that with “improve.” The phrase at issue would be revised to read, “According to the TEP, [insert actual percentage from County Auditor]% of the tax proceeds will be used to improve highways, interchanges, and major roads.” We further request that the following be included in the Impartial Analysis: "According to CCTA’s 2017 Countywide Transportation Plan's Environmental Impact Report, overall congestion in 2040 will increase by 166%, highway and arterial roadway speeds will be slower than present, and particulate air quality will be worsened."

### **County Counsel's Impartial Analysis Must Call Attention to the Transportation Expenditure Plan's Lack of a Defined Project List.**

CCTA’s 2020 Measure J Transportation Expenditure Plan is extremely unusual in that it is not a defined list of projects to be funded by the tax. Instead, it contains at least thirteen examples of "may include" or "may consider" as well as examples of "could include" and "could also be funded." While the TEP is arguably compliant with the minimal requirements of Public Utilities Code § 180206, it does not provide voters with an assurance of how their taxes will be spent, or whether the selections to be made in the future by CCTA will be effective.

At a minimum, you have a duty to inform voters that the TEP is not a defined project list, but rather that CCTA will have great discretion in determining most of the projects and programs to be funded. The Impartial Analysis should inform voters as to whether a majority or supermajority vote of the board will be required to determine how and where to spend these

discretionary dollars. In particular, we request you to opine whether future CCTA board decisions about allocating funding in the "may" and "could" areas just described would be considered "amendments" of the plan requiring supermajority (66.66%) votes.

### **Public Records Act Request**

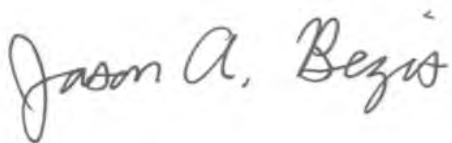
Pursuant to the Public Records Act (Government Code §§ 6250, et seq.) and other legal authority that requires disclosure, we hereby request any and all documents under the custody or control of your office, including but not limited to any and all notes and/or e-mails, concerning the removal of the word "additional" from your analysis of CCTA's 2020 ballot measure. We especially seek evidence identifying the person that requested the removal of the word "additional," the person that approved removal of the word "additional," and any internal and/or external discussion as to whether removing the word "additional" would be consistent with County Counsel's duty to prepare an Impartial Analysis.

### **Conclusion**

Official neglect of duty right now by County Counsel, Clerk-Recorder-Registrar of Voters and CCTA could mislead voters in the March 2020 CCTA tax increase election. Today, Christmas Eve, is one of the busiest days of the year for retail sales. Contra Costa County citizens and taxpayers should not be compelled to pay higher sales taxes (nearing or exceeding a 10.0% rate) for the next 35 Christmases as a consequence of official negligence and/or misconduct this month concerning the 2020 CCTA tax increase election.

In making these requests, Contra Costa County electors and TRANSDEF seek to ensure that voters are offered a fair and objective description of the additional tax/tax increase placed before them, consistent with the text, intent and purpose of the Elections Code. We are available immediately to discuss a non-litigation settlement of our concerns.

Respectfully submitted,



JASON A. BEZIS  
Attorney for Contra Costa County Electors and TRANSDEF

Attachments: Exhibits A-E  
December 24, 2019 letter to Board of Supervisors  
December 24, 2019 letter to Acting County Clerk-Recorder/Registrar of Voters

cc: Contra Costa Transportation Authority, Executive Director Randell Iwasaki  
Daniel Borenstein, *East Bay Times*

# Exhibit A



**MEASURE X  
CONTRA COSTA TRANSPORTATION AUTHORITY  
DISTRICT**

To implement a Transportation Expenditure Plan to continue:

- Repairing potholes/fixing roads;
- Improving BART capacity/reliability
- Improving Highways 680, 80, 24, and 4;
- Enhancing bus/transit including for seniors and people with disabilities;
- Increasing bicycle/pedestrian safety;
- Improving air quality;
- Reducing traffic;

shall voters adopt the ordinance augmenting the sales tax by ½% raising ninety-seven million dollars for transportation improvements annually for 30 years with independent oversight, audits, and all money benefitting local residents?

**COUNTY COUNSEL'S IMPARTIAL ANALYSIS OF  
MEASURE X**

The governing body of the Contra Costa Transportation Authority ("CCTA") has proposed a measure asking voters to approve an additional one-half of one percent (0.5%) retail transactions and use tax – a sales tax – to fund certain transportation improvements in Contra Costa County.

The sales tax would be collected in the incorporated and unincorporated areas of Contra Costa County, from April 1, 2017, until March 31, 2047. The proceeds from this sales tax would supplement CCTA's existing one-half of one percent (0.5%) sales tax, which will continue to be collected until March 31, 2034.

According to the measure, proceeds from the sales tax would be used to "implement a Transportation Expenditure Plan to continue repairing potholes/fixing roads; improving BART capacity/reliability; improving Highways 680, 80, 24, and 4; enhancing bus/transit including for seniors and people with disabilities; increasing bicycle/pedestrian safety; improving air quality; [and] reducing traffic." Sales tax proceeds may only be used for the projects and purposes specified in CCTA's Transportation Expenditure Plan ("TEP"), which is included in the Voter Information Handbook, and any future amendments to the TEP. According to the TEP, 26.79% of the tax proceeds will fund BART, bus, ferry, and train networks; 23.79% of the tax proceeds will fund fixing local streets and roads; 21.98% of the tax proceeds will fund building sustainable communities and protecting the environment; 20.71% of the tax proceeds will fund reducing congestion and smoothing traffic; 6.23% of the tax proceeds will fund transportation for children, seniors,

and people with disabilities; and 0.5% of the tax proceeds will fund administrative costs.

Approval of this measure also would authorize CCTA to issue limited tax bonds to finance projects described in the TEP. The maximum bonded indebtedness may not exceed the estimated proceeds of the sales tax.

According to the TEP, CCTA's Public Oversight Committee will provide oversight of all expenditures of the sales tax proceeds and will report to the public. This committee will review annual audits, the allocation of the tax proceeds, the performance of projects and programs in the TEP, and compliance by local jurisdictions. Expenditures of sales tax proceeds also would be subject to annual independent audits.

Two-thirds of those voting on the ballot measure must approve the measure for it to pass.

A "yes" vote is a vote in favor of authorizing this 0.5% sales tax.

A "no" vote is a vote against authorizing this 0.5% sales tax.

# Exhibit B

**COUNTY COUNSEL’S ANALYSIS OF  
CONTRA COSTA TRANSPORTATION AUTHORITY ORDINANCE  
PROPOSING A SALES TAX**

The governing body of the Contra Costa Transportation Authority (“CCTA”) has proposed a measure asking voters to approve an additional one-half of one percent (0.5%) retail transactions and use tax – a sales tax – to fund certain transportation improvements in Contra Costa County.

The sales tax would be collected in the incorporated and unincorporated areas of Contra Costa County from July 1, 2020, until June 30, 2055. The proceeds from this sales tax would supplement CCTA’s existing one-half of one percent (0.5%) sales tax, which will continue to be collected until March 31, 2034.

According to the measure, proceeds from the sales tax would be used to reduce congestion and fix bottlenecks on highways and major roads; make commutes faster and more predictable; improve the frequency, reliability, accessibility, cleanliness, and safety of buses, ferries, and BART; improve air quality; and repave roads. Sales tax proceeds may only be used for the projects and purposes specified in CCTA’s Transportation Expenditure Plan (“TEP”), which is included in the Voter Information Handbook, and any future amendments to the TEP. According to the TEP, 41.1% of the tax proceeds will be used to relieve congestion on highways, interchanges, and major roads; 54.9% of the tax proceeds will be used to improve transit and transportation countywide; 3.0% of the tax proceeds will fund transportation planning, facilities and services; and 1.0% of the tax proceeds will fund administrative costs.

Approval of this measure also would authorize CCTA to issue limited tax bonds to finance projects described in the TEP. The maximum bonded indebtedness may not exceed the estimated proceeds of the sales tax.

According to the TEP, CCTA’s Public Oversight Committee will provide oversight of all expenditures of the sales tax proceeds and will report to the public. This committee will review annual audits, the allocation of the tax proceeds, the performance of projects and programs in the TEP, and compliance by local jurisdictions. Expenditures of sales tax proceeds also would be subject to annual independent audits.

Two-thirds of those voting on the ballot measure must approve the measure for it to pass.

A “yes” vote is a vote in favor of authorizing this 0.5% sales tax.

A “no” vote is a vote against authorizing this 0.5% sales tax.

# Exhibit C

**COUNTY COUNSEL'S ANALYSIS OF  
CONTRA COSTA TRANSPORTATION AUTHORITY ORDINANCE  
PROPOSING A SALES TAX**

The governing body of the Contra Costa Transportation Authority ("CCTA") has proposed a measure asking voters to approve a retail transactions and use tax – a sales tax – to fund certain transportation improvements in Contra Costa County. State law authorizes CCTA to adopt an ordinance proposing a one-half of one percent (0.5%) sales tax.

The sales tax would be collected in the incorporated and unincorporated areas of Contra Costa County from July 1, 2020, until June 30, 2055. The proceeds from this sales tax would supplement CCTA's existing one-half of one percent (0.5%) sales tax, which will continue to be collected until March 31, 2034.

According to the measure, proceeds from the sales tax would be used to reduce congestion and fix bottlenecks on highways and major roads; make commutes faster and more predictable; improve the frequency, reliability, accessibility, cleanliness, and safety of buses, ferries, and BART; improve air quality; and repave roads. Sales tax proceeds may only be used for the projects and purposes specified in CCTA's Transportation Expenditure Plan ("TEP"), which is included in the Voter Information Handbook, and any future amendments to the TEP. According to the TEP, 41.1% of the tax proceeds will be used to relieve congestion on highways, interchanges, and major roads; 54.9% of the tax proceeds will be used to improve transit and transportation countywide; 3.0% of the tax proceeds will fund transportation planning, facilities and services; and 1.0% of the tax proceeds will fund administrative costs.

Approval of this measure also would authorize CCTA to issue limited tax bonds to finance projects described in the TEP. The maximum bonded indebtedness may not exceed the estimated proceeds of the sales tax.

According to the TEP, CCTA's Public Oversight Committee will provide oversight of all expenditures of the sales tax proceeds and will report to the public. This committee will review annual audits, the allocation of the tax proceeds, the performance of projects and programs in the TEP, and compliance by local jurisdictions. Expenditures of sales tax proceeds also would be subject to annual independent audits.

Two-thirds of those voting on the ballot measure must approve the measure for it to pass.

A "yes" vote is a vote in favor of authorizing this 0.5% sales tax.

A "no" vote is a vote against authorizing this 0.5% sales tax.

# Exhibit D





CONTRA COSTA  
transportation  
authority

# Comprehensive Annual Financial Report

Fiscal Year Ended  
June 30, 2018

Contra Costa  
Transportation Authority  
2999 Oak Road, Suite 100  
Walnut Creek, CA 94597

**CONTRA COSTA TRANSPORTATION AUTHORITY**  
**Notes to Basic Financial Statements**  
**June 30, 2018**

**NOTE 6 - LONG-TERM DEBT (Continued)**

The 2012, 2015, and 2017, are limited obligations of the Authority payable solely from and secured solely by a pledge of Sales Tax Revenues collected from Measure J. The Measure J Sales Tax will expire on March 31, 2034. The 2012, 2015, and 2017 Bonds are not secured by a debt service reserve fund or any liquidity facility. The total projected Measure J Sales Tax revenue, as reported in the 2016 Measure J Strategic Plan, is expected to approximate \$2.7 billion, which is sufficient to repay the estimated debt service, including net interest rate swap settlements, of \$693.4 million on the 2012, 2015, and 2017.

**B. Annual Future Payments**

The following table presents the Authority's aggregate annual amount of principal and interest payments required to amortize the outstanding debt (in thousands):

<b>Year ending</b>	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
<b>June 30:</b>			
2019	16,350	21,618	37,968
2020	18,620	20,876	39,496
2021	21,060	19,974	41,034
2022	23,555	19,023	42,578
2023-2027	144,460	76,548	221,008
2028-2032	180,765	41,297	222,062
2033-2037	84,205	5,028	89,233
	<u>\$ 489,015</u>	<u>\$ 204,364</u>	<u>\$ 693,379</u>

**C. Swap Commitment**

In fiscal year 2005, in order to protect itself against rising interest costs on the expected issuance of bonds, the Authority entered into forward commitment interest rate swap agreements with Bank of America, N.A. and Merrill Lynch Capital Services, Inc. (Counterparties). An interest rate swap is a contractual agreement whereby the parties agree to exchange cash flows over a certain period of time. Beginning on September 23, 2009, the Authority was to pay a fixed rate of 3.6574% to the Counterparties, and the Counterparties would pay a floating rate to the Authority. The floating rate is expected to approximately equal the floating rate which the Authority will pay to the holders of its floating rate bonds, issued in 2012. Including anticipated ongoing fees associated with the floating rate bonds, the synthetic fixed rate which the Authority will pay is considered a very favorable rate in comparison with long-term interest rates.

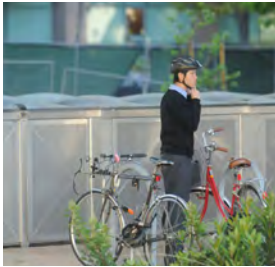
On September 18, 2009, the Authority partially terminated \$100 million of an existing \$150 million floating-to-fixed swap with Merrill Lynch Capital Services, Inc. (Merrill Lynch) and simultaneously novated the remaining \$50 million notional amount to Bank of America, N.A. ("BofA"), who acquired Merrill Lynch. The partial termination resulted in an amended \$200 million floating-to-fixed swap with BofA, which relates to the Series 2012A Bonds.

Subsequent to the June 30, 2018 reporting period, on August 23, 2018, the Authority partially terminated \$100 million of the \$200 million floating-to-fixed swap with BofA. The partial termination resulted in an amended \$100 million floating-to-fixed swap with BofA, which relates to the 2018A Bonds. A summary of the terms of the interest rate swap agreement is presented below:



# Exhibit E

# 2017 Countywide Comprehensive Transportation Plan



## Draft Environmental Impact Report

State Clearinghouse #2017022054



June 16, 2017

Table 2.1-3: Summary of Modeling Results

Measure of Performance	Baseline (2013)	Modeled 2017 Conditions	2017 CTP (2040)
Vehicle Miles Traveled Per Capita	21.0	21.2	21.2
Percent Change from Baseline	—	1%	1%
Vehicle Hours of Delay	71,648	84,584	190,685
Percent Change from Baseline	—	18%	166%
Average Freeway Speeds	55.6	55.3	54.1
Percent Change from Baseline	—	0.5%	-2.7%
Average Arterial Speeds	34.2	34.1	33.4
Percent Change from Baseline	—	0.3%	-2.3%
Non-SOV Mode Share	41%	41%	42.1%
Percent Change from Baseline	—	no change	2.7%
Transit Ridership	101,033	113,381	157,391
Percent Change from Baseline	—	12%	55.8%

Source: Compiled modeling results included as Appendix D.

Because transportation impacts can be both regional and local, specific detailed analyses are most appropriate at the project level. Localized impacts of the 2017 CTP and its Investment Program would vary depending on the proximity to local and regional transportation improvements. Subsequent, project-specific transportation analyses that further assess each individual project's design improvements may be necessary to determine the extent of site-specific impacts and project-specific design requirements.

## Vehicle Miles Traveled per Capita (Criterion I)

**Trans-1:** New or expanded transportation facilities pursuant to the 2017 CTP would not result in an appreciable increase in per capita VMT when compared with the baseline condition. An appreciable increase in per capita VMT is defined as greater than 5 percent. (*Less than Significant*)

### 2017 CTP

Expected countywide population and employment growth will increase travel demand throughout Contra Costa and the rest of the Bay Area region.

The resulting increase in VMT will thus be a product of an increased population and job base, the relative distance of each vehicle trip (primarily a function of the distance between home and work), and individual choices regarding model of travel (i.e., the percent increase in drive-alone vehicles). The VMT per capita metric separates out the variable related to population increase. The distance between home and work, or other travel distances, is a function of land use. In this analysis, the land use assumptions for future conditions are "fixed," based on forecasts from ABAG's *Projections 2013* and the land use assumption of *Plan Bay Area*. This, the VMT/capita metric provides a telling measure of transportation mode choice.

**Table 2.1-4: VMT Per Capita, 2017 CTP Investment Program, Comparison**

Scenario	Total VMT	Vehicle Miles Traveled Per Capita
Baseline (2013)	22,040,884	21.0
2017 Modeled Condition	23,229,962	21.2
No Project (2040)	28,009,826	21.1
Investment Program 2017 CTP (2040)	28,119,444	21.2

Source: Compiled modeling results included as Appendix D.

For informational purposes only, when compared with a No Project 2040 scenario (with no additional investment in transportation or transit project other than those that have already been approved and funded), the increase in total VMT is nearly identical to the 2017 CTP, and the VMT per capita is slightly lower (at 21.2 VMT per capita). This comparison indicates that the relative balance in investments between freeway and roadway projects, and transit projects as proposed under the Investment Program does not differentiate between these mode choices substantially enough to modify overall travel behavior. Other social and economic factors, such as those described above, are therefore more likely to influence VMT per capita than are transportation investment pursuant to the Investment Program.

### Mitigation Measures

No mitigation measures are required.

### Vehicle Hours of Delay (Criterion 2)

**Trans-2:** Travelers on major roadways throughout Contra Costa County would experience an appreciable increase in total VHD as compared with the baseline condition. An appreciable increase in VHD is defined as greater than 5 percent. (*Significant and Unavoidable*)

### 2017 CTP

Regional roadways throughout Contra Costa will experience an appreciable increase in VHD as compared with the baseline condition. This worsening roadway congestion reflects the additional travel generated from future population and employment growth, which cannot sufficiently be accommodated by the limited financial resources available for improving the efficiency and capacity of the regional transportation system. This increase is projected to occur irrespective of implementation of the 2017 CTP. However, because these roadways will see an appreciable increase in VHD as compared with the baseline condition, this impact is considered significant and unavoidable.

### Analysis of the Investment Program

Even with the substantial investments in transportation and transit projects proposed pursuant to the 2017 CTP Investment Program, travelers on regional roadways throughout Contra Costa will experience an appreciable increase in VHD when compared with the baseline condition, as indicated in **Table 2.1-5**. Total hours of delay on the County roadway network are projected to increase by

Table 2.3-4: Countywide Emission Estimates for Criteria Pollutants (tons per day), 2017 CTP Investment Program			
	Baseline (2013)	No Project (2040)	2017 CTP Investment Program
ROG	8.71	2.23	2.21
% Change from Baseline		-74.4%	-74.6%
% Change from No Project			-0.9%
NO <sub>x</sub>	16.49	2.66	2.59
% Change from Baseline		-83.8%	-84.3%
% Change from No Project			-2.6%
CO	69.80	16.01	15.77
% Change from Baseline		-77.1%	-77.4%
% Change from No Project			-1.5%
PM <sub>2.5</sub>	0.76	0.65	0.65
% Change from Baseline		-14.5%	-14.5%
% Change from No Project			0%

Source: Compiled modeling results included as Appendix E.

Because individual Investment Program projects pursuant to the 2017 CTP are expected to occur within an overall context that will achieve an overall reduction in operational criteria pollutant emissions, and because the Investment Program's investments in TCMs are shown to contribute toward these emission reductions, the Investment Program's impacts are considered less than significant.

### Mitigation Measures

No mitigation measures are required.

### Particulate Matter Emissions (Criterion 4)

**Air-4:** New or expanded transportation facilities pursuant to the 2017 CTP would result in a net increase in emissions of PM<sub>10</sub> from on-road mobile sources (including entrained dust) as well as a net increase in emissions of PM<sub>2.5</sub> entrained dust, as compared with the baseline condition. (*Significant and Unavoidable*)

### 2017 CTP

New transportation projects pursuant to the 2017 CTP are expected to result in a net increase in air quality impacts related to particulate matter emissions as compared with the baseline condition. When compared with the baseline (year 2013) condition, PM<sub>10</sub> and PM<sub>2.5</sub> emissions from all mobile sources would increase by year 2040. The higher levels of particulate matter emissions in 2040 conditions are a result of these emissions being strongly influenced by projected growth in total VMT (which directly affects entrained roadway dust), with some contributions from tire and brake wear, and exhaust.

Particulate matter emissions from mobile sources are not expected to increase at the same rate as VMT due to the stringent emission controls that CARB has adopted for new vehicle engines,

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**PROOF OF SERVICE**

*Michael Arata, et al. v. Deborah Cooper, et al.*  
Contra Costa County Superior Court Case No. N19-2489

At the time of service, I was over 18 years of age and not a party to this action. My business address is 3661-B Mosswood Drive, Lafayette, CA 94549-3509.

On January 3, 2020, I served true copies of the following document(s) described as:

**DECLARATION OF DAVID SCHONBRUNN IN SUPPORT OF PETITION FOR WRIT OF MANDATE**

on the interested parties in this action as follows:

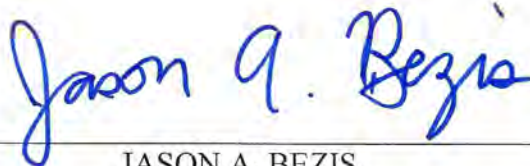
Thomas L. Geiger  
Assistant County Counsel  
COUNTY OF CONTRA COSTA  
[Thomas.Geiger@cc.eccounty.us](mailto:Thomas.Geiger@cc.eccounty.us)  
Attorney for Deborah Cooper, Sharon L. Anderson and Contra Costa County Board of Supervisors

Jason D. Kaune  
Hilary J. Gibson  
NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP  
[jkaune@nmgovlaw.com](mailto:jkaune@nmgovlaw.com); [hgibson@nmgovlaw.com](mailto:hgibson@nmgovlaw.com);  
Attorneys for Contra Costa Transportation Authority

**BY ELECTRONIC SERVICE:** I served the document(s) on the persons listed above to the e-mail addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 3, 2020, at Lafayette, California.



\_\_\_\_\_  
JASON A. BEZIS



1 LAW OFFICES OF JASON A. BEZIS  
2 California State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 708-7073  
6 Bezis4Law@gmail.com  
7 Attorney for Petitioners

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.: N19-2489

) **DECLARATION OF MICHAEL ARATA**  
) **SUPPORTING PETITION FOR WRIT OF**  
) **MANDATE**

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

) Action Filed: December 30, 2019

) ASSIGNED TO DEPARTMENT 12 FOR  
) ALL PURPOSES

1 I, Michael Arata, declare as follows:

2 1. I am over the age of 18 years. I am a Petitioner in this action. I have personal knowledge  
3 of the facts contained in this declaration, and if called upon to testify I could and would testify  
4 competently as to the truth of the facts stated herein.

5 2. I make this declaration in support of the petition for writ of mandate.

6 3. I am an elector and a consistent voter, domiciled in Contra Costa County. Additionally, I  
7 am the principal coordinator and the in-person physical filer of the arguments against the half-  
8 percent “retail transactions and use tax” (sales tax) addition which the Contra Costa  
9 Transportation Authority (CCTA) seeks to impose “in the incorporated and unincorporated  
10 territory” of Contra Costa County until 2055.

11 4. The underlying tax-increase ballot issue to be considered by Contra Costa County  
12 electors/voters in the March 3, 2020 primary election has been designated by the Contra Costa  
13 County Elections Department as “Measure J.”

14 5. CCTA’s *existing* half-percent sales tax, passed by voters in 2004 as a *renewal* of CCTA’s  
15 1988 Measure C. was itself denominated as “Measure J.” and is in force until 2034.

16 6. A potential, indeed probable, result of electors/voters being presented now with a second  
17 Measure J (a same-name new measure which in fact *adds* to the existing tax) — by the same  
18 agency which administers the existing Measure J — is confusion and misunderstanding.

19 7. Adding to the problem are roadside project signs erected within the County, advising  
20 drivers of the involvement of [existing, 2004] Measure J funding in road construction, lane  
21 additions, and other related activity. An example of such a sign is submitted as a photographic  
22 insertion herewith, as Exhibit O.

23 8. I personally photographed the Exhibit O sign on January 2, 2020, on the northbound side  
24 of I-680 (though the referenced project involves a southbound lane), near the AAA Headquarters  
25 building, roughly at the boundary between the Walnut Creek and Pleasant Hill communities.  
26 The Exhibit O photograph is a true and correct rendering of that sign. Driving north from  
27 Danville on I-680 to that location for a safe off-road photograph, I passed at least three more  
28 such signs. And at least the first such sign, observed as I entered the freeway, seemed to be



1 identical to the sign presented as Exhibit O; but I was later traveling close to the speed limit, so  
2 could not be sure of sign content in the other cases.

3 9. The drivers likely to be able to read details of such signs, especially in freeway locations,  
4 are regular commuters who are slowed to a “crawl” or dead stop by traffic conditions. Since the  
5 signs imply a lessening of congestion, the signs could readily influence the votes of such drivers,  
6 especially if in a quick perusal of ballot booklets regarding the March 3 election they do not  
7 realize that a new Measure J, now involving a half-percent tax *increase*, is at issue. These signs  
8 are effectively billboards which in part promote CCTA and that agency’s existing Measure J.  
9 But the signs could readily cause drivers/electors/voters to assume that the new Measure J is also  
10 involved in the already-underway projects being promoted.

11 10. Further, and notably in this context, CCTA’s 75-word new Measure J ballot-measure  
12 summary (what voters see on actual ballots) omits the word “additional” in reference to the tax  
13 addition, as does County Counsel’s late-breaking, suddenly amended “Impartial Analysis” of  
14 December 18, 2019, i.e. the same day on which initial pro-and-con arguments regarding the new  
15 Measure J were due.


16 11. I note further that the sign presented as Exhibit O shows CCTA’s logo, lists “Measure J  
17 Funds” among “Tax Dollars AT WORK,” and provides a phone number (925-206-3019) which  
18 associates with CCTA web pages — for example: [https://680xpresslanesproject.com/home/wp-](https://680xpresslanesproject.com/home/wp-content/uploads/2019/09/I680_SB_EL_FactSheet_Fall2019_20190906-02-1.pdf)  
19 [content/uploads/2019/09/I680\\_SB\\_EL\\_FactSheet\\_Fall2019\\_20190906-02-1.pdf](https://680xpresslanesproject.com/home/wp-content/uploads/2019/09/I680_SB_EL_FactSheet_Fall2019_20190906-02-1.pdf).

20 12. In my capacities as Measure J oppositional argument coordinator and filer — and further  
21 as an elector/voter and taxpayer — I believe that the 2020 CCTA ballot measure should be re-  
22 designated with a letter different from “J,” and I so request.

23 13. Were the Court to order the substitution of a new measure-letter designation, both the  
24 proponents and opponents of the new CCTA measure should be given 24 hours to file slightly  
25 altered arguments which reflect the change in letter (including the website designations, e.g.  
26 [www.NOonJ.info](http://www.NOonJ.info), which opponents included in the arguments I filed) — with the slightly altered  
27 arguments still to fit Election Department guidelines. Wholesale changes in the arguments  
28 already submitted would not be permitted.

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct and that this Declaration is executed on January 3, 2020 in Danville,  
3 California.

4  
5 DATED: January 3, 2020

6  
7 By: 

8 MICHAEL ARATA  
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# EXHIBIT O

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1 **PROOF OF SERVICE**

2 *Michael Arata, et al. v. Deborah Cooper, et al.*  
3 Contra Costa County Superior Court Case No. N19-2489

4 At the time of service, I was over 18 years of age and not a party to this action. My  
5 business address is 3661-B Mosswood Drive, Lafayette, CA 94549-3509.

6 On January 3, 2020, I served true copies of the following document(s) described as:

7 **DECLARATION OF MICHAEL ARATA SUPPORTING PETITION FOR WRIT OF**  
8 **MANDATE**

9 on the interested parties in this action as follows:

10 Thomas L. Geiger  
11 Assistant County Counsel  
12 COUNTY OF CONTRA COSTA  
13 [Thomas.Geiger@cc.cccounty.us](mailto:Thomas.Geiger@cc.cccounty.us)  
14 Attorney for Deborah Cooper, Sharon L. Anderson and Contra Costa County Board of  
15 Supervisors

16 Jason D. Kaune  
17 Hilary J. Gibson  
18 NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP  
19 [jkaune@nmgovlaw.com](mailto:jkaune@nmgovlaw.com); [hgibson@nmgovlaw.com](mailto:hgibson@nmgovlaw.com);  
20 Attorneys for Contra Costa Transportation Authority

21 **BY ELECTRONIC SERVICE:** I served the document(s) on the persons listed above to  
22 the e-mail addresses listed above.

23 I declare under penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct.

25 Executed on January 3, 2020, at Lafayette, California.

26   
27 \_\_\_\_\_  
28 JASON A. BEZIS



1 LAW OFFICES OF JASON A. BEZIS  
2 California State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 708-7073  
6 Bezis4Law@gmail.com  
7 Attorney for Petitioners

FILED

2020 JAN -6 A 9:40

KATE BECKER  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA  
BY: D. WINDMILL DEPUTY CLERK

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.: N19-2489

Signature by  
Facsimile

DECLARATION OF XIEBING  
CAUTHEN IN SUPPORT OF PETITION  
FOR WRIT OF MANDATE

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

Action Filed: December 30, 2019

ASSIGNED TO DEPARTMENT 12 FOR  
ALL PURPOSES

Hearing Date: January 6, 2020

Time: 10:00 a.m.

Dept.: 12

1 I, Xiebing Cauthen, declare as follows:

- 2 1. I am over the age of 18 years.
- 3 2. I live at 900 Paramount Road, Oakland CA 94610.
- 4 3. I have personal knowledge of the facts contained in this declaration, and if called upon to
- 5 testify I could and would testify competently as to the truth of the facts stated herein.
- 6 4. I make this declaration in support of the petition for writ of mandate.
- 7 5. I was born Shenyang, China and I am now a United States citizen.
- 8 6. I am fluent speaker, reader, and writer of the Mandarin Chinese language.
- 9 7. I am author of several books in the Mandarin Chinese language.
- 10 8. I have taught the Mandarin Chinese language in several Bay Area schools.
- 11 9. I have read the Chinese language translation of the 2020 CCTA Measure in the sample
- 12 official ballot that is County's Exhibit A in this writ petition matter.
- 13 10. In the second to last line of the Chinese translation in Exhibit A, the characters “半美分”
- 14 or “ban měi fēn” translate to “one-half cent (American coin).” The first character, 半 “ban”
- 15 directly translates to “one-half.” The second character, 美 “měi,” directly translates to
- 16 “American.” The third character, 分 “fēn,” directly translates into “cent.” To Chinese speakers
- 17 in the United States, the phrase “半美分” would signify “one-half penny.” Nothing in the phrase
- 18 “半美分” signifies “percent.”
- 19 11. I declare under penalty of perjury pursuant to the laws of the State of California that the
- 20 foregoing is true and correct. Executed on the 5<sup>th</sup> day of January, 2020 at Oakland, California.

21

22 DATED: January 5, 2020

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26 By: 

27 XIEBING CAUTHEN

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**PROOF OF SERVICE**

*Michael Arata, et al. v. Deborah Cooper, et al.*  
Contra Costa County Superior Court Case No. N19-2489

At the time of service, I was over 18 years of age and not a party to this action. My business address is 3661-B Mosswood Drive, Lafayette, CA 94549-3509.

On January 6, 2020, I served true copies of the following document(s) described as:

**DECLARATION OF XIEBING CAUTHEN IN SUPPORT OF PETITION FOR WRIT OF MANDATE**

on the interested parties in this action as follows:

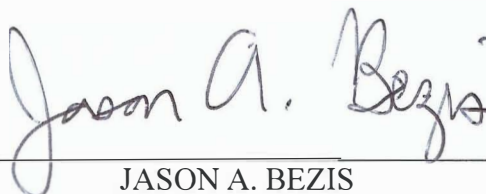
Thomas L. Geiger  
Assistant County Counsel  
COUNTY OF CONTRA COSTA  
[Thomas.Geiger@cc.cccounty.us](mailto:Thomas.Geiger@cc.cccounty.us)  
Attorney for Deborah Cooper, Sharon L. Anderson and Contra Costa County Board of Supervisors

Jason D. Kaune  
Hilary J. Gibson  
NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP  
[jkaune@nmgovlaw.com](mailto:jkaune@nmgovlaw.com); [hgibson@nmgovlaw.com](mailto:hgibson@nmgovlaw.com);  
Attorneys for Contra Costa Transportation Authority

**BY ELECTRONIC SERVICE:** I served the document(s) on the persons listed above to the e-mail addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 6, 2020, at Lafayette, California.

  
\_\_\_\_\_  
JASON A. BEZIS



1 SHARON L. ANDERSON (SBN 94814)  
County Counsel  
2 THOMAS L. GEIGER (SBN 199729)  
Assistant County Counsel  
3 COUNTY OF CONTRA COSTA  
651 Pine Street, 9th Floor  
4 Martinez, California 94553  
Telephone: (925) 335-1800  
5 Facsimile: (925) 646-1078

**FILED**  
2020 JAN -8 P 2:58  
KATE BEYER  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA  
BY: [Signature]

6 Attorneys for  
Contra Costa County Acting Clerk-Recorder-Registrar of Voters Deborah Cooper,  
7 Contra Costa County Counsel Sharon L. Anderson,  
Contra Costa County Board of Supervisors  
8

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF CONTRA COSTA

11  
12 MICHAEL ARATA

13 Petitioner,

14 v.

15  
16 DEBORAH COOPER,  
SHARON L. ANDERSON

17 Respondents;  
18

19 CONTRA COSTA  
TRANSPORTATION AUTHORITY,  
20 CONTRA COSTA COUNTY BOARD  
OF SUPERVISORS  
21

22 Real Parties in Interest.  
23  
24

Case No. N 19-2489

**OPPOSITION TO MOTION FOR  
RECONSIDERATION OF ORDER  
DENYING PETITION FOR  
ELECTIONS WRIT OF MANDATE**

Date: January 9, 2020  
Time: 10:00 a.m.  
Dept.: 12

25 Petitioner's motion for reconsideration of the Court's January 6, 2020, order denying  
26 the petition for an elections writ of mandate must be denied. The petition was not timely  
27 filed, and, as the Court correctly found on January 6, any changes to the official ballot or  
28 voter information guide would significantly interfere with the printing process. That finding

1 was made before the voter information guide was printed. Now, the voter information guide  
2 is being printed, and any changes ordered to the official ballot or voter information guide will  
3 substantially interfere with the printing of official election materials, will cost hundreds of  
4 thousands if not millions of dollars, and disrupt the primary election. The official ballot is in  
5 the process of being printed at a cost of \$650,000, and the voter information guide is in the  
6 process of being printed at a cost of approximately \$2 million. Finally, Petitioner does not  
7 meet the standard for reconsideration of the Court's order. Petitioner has presented no new  
8 or different facts, circumstances, or law that would warrant reconsideration of the Court's  
9 order that denied the petition. Petitioner simply believes the Court was wrong, and is asking  
10 for a late do-over based on nothing more than an incorrect reading of the law.

## 11 ARGUMENT

### 12 1. **Petitioners Have Presented No New or Different Facts, Circumstances, or Law 13 That Would Warrant Reconsideration of the Court's Order.**

14 A motion for reconsideration is governed by Code of Civil Procedure section 1008.

15 Subsection (a) of section 1008 provides:

16 When an application for an order has been made to a judge, or to a court, and  
17 refused in whole or in part, or granted, or granted conditionally, or on terms,  
18 any party affected by the order may, within 10 days after service upon the  
19 party of written notice of entry of the order and based upon new or different  
20 facts, circumstances, or law, make application to the same judge or court that  
made the order, to reconsider the matter and modify, amend, or revoke the  
prior order. The party making the application shall state by affidavit what  
application was made before, when and to what judge, what order or decisions  
were made, and what new or different facts, circumstances, or law are claimed  
to be shown.

21 Subsection (e) of section 1008 states that "[t]his section specifies the court's  
22 jurisdiction with regard to applications for reconsideration of its orders... ." Subsection (e)  
23 further provides: "No application to reconsider any order or for the renewal of a previous  
24 motion may be considered by any judge or court unless made according to this section." A  
25 court exceeds its jurisdiction if it grants reconsideration of a motion that is not based on new  
26 or different facts, circumstances, or law. (See *Gilberd v. AC Transit* (1995) 32 Cal.App.4th  
27 1494, 1500; *Morite of California v. Superior Court* (1993) 19 Cal.App.4th 485, 492-493; see  
28 also 6 Witkin, Cal. Procedure, "Proceedings Without Trial," § 49, p. 472 (5th ed. 2008).)

1 This jurisdictional requirement is not satisfied by arguing that the court “misinterpreted” the  
2 law in its initial decision and would, therefore, be relying on “different” law on  
3 reconsideration. (*Gilberd, supra*, 32 Cal.App.4th at p. 1500.) An attorney’s or party’s  
4 mistaken belief as to the law does not constitute a “new fact or law” and is not a proper basis  
5 for a motion for reconsideration. (*Pazderka v. Caballeros Dimas Alang, Inc.* (1998) 62  
6 Cal.App.4th 658, 670.) Petitioners’ motion is entirely bereft of any new or different facts,  
7 circumstances, or law that would warrant reconsideration of the Court’s order.

8 **2. The Court’s Ruling that the Petition Was Not Timely Filed Was Correct.**

9 Elections Code section 9190 requires the County Elections Official to make specified  
10 elections materials available for public examination in the Elections Office “for a period of  
11 10 calendar days immediately following the deadline for submission of those materials.”  
12 (Elec. Code, § 9190(a).) “During the 10-calendar-day public examination period provided by  
13 [section 9190], any voter of the jurisdiction in which the election is being held ... may seek a  
14 writ of mandate or an injunction requiring any or all of the materials to be amended or  
15 deleted. The writ of mandate or injunction request shall be filed no later than the end of the  
16 10-calendar-day public examination period.” (Elec. Code, § 9190(b)(1).)

17 As Petitioner concedes, the 10-calendar-day public examination period for examining  
18 the impartial analysis concluded December 28, 2019. The petition was not filed until  
19 December 30, 2019. The Court correctly held that the petition was not timely filed.

20 In elections cases, Code of Civil Procedure section 12a<sup>1</sup> does not apply. (See *Steele v.*  
21 *Bartlett* (1941) 18 Cal.2d 573, 574.) *Steele* was an election case involving a statutory  
22 provision requiring the filing of nominating papers “not later than ... the thirty-first day before  
23 the election.” The thirty-first day was a Sunday, and some candidates had filed on the  
24 following Monday. The California Supreme Court held that was too late: “[W]hile sections  
25 12, 12a and 13 ... serve to extend one day the time within which an act may be done when the

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26  
27 <sup>1</sup> This statute provides: “If the last day for the performance of any act provided or required  
28 by law to be performed within a specified time period shall be a holiday, then such period is hereby  
extended to and including the next day which is not a holiday... .”

1 last day therefor falls on a Sunday or holiday, said sections are without application and do not  
2 extend the time for an act that must be performed ‘not less’ than or ‘not later’ than a given  
3 number of days before a designated time.” (*Id.* at p. 574.) (Accord *Griffin v. Dingley* (1896)  
4 114 Cal.481 (election case involving statute requiring filing of nomination papers not less  
5 than 30 days before the date of election).) The statutes in *Steele* and *Griffin* counted  
6 backward from a given date – election day – to insure that no new candidates would emerge  
7 within a given time period and ballots could be printed identifying all candidates. (See  
8 *DeLeon v. Bay Area Rapid Transit Dist.* (1983) 33 Cal.3d 456, 459, citing *Steele* and *Griffin*.)  
9 Similarly here, Elections Code section 9190 counts backward from a given date – the final  
10 date of the public examination period – to ensure that a petition would not be filed after the  
11 10-calendar-day time period specified in the statute, and the printing of elections materials  
12 could proceed without disruption.

13 **3. The Official Ballots and Voter Information Guides Are Being Printed and Any**  
14 **Changes Will Require the Printing Process To Start Over and Cost up to**  
15 **\$2.65 Million**

16 Even if the petition had been timely filed, the Court’s decision was correct on grounds  
17 entirely unrelated to the 10-calendar-day time period for filing a petition. A writ ordering  
18 changes to elections materials is subject to a two-part test: “A peremptory writ of mandate or  
19 an injunction shall be issued only upon clear and convincing proof that the material in  
20 question is false, misleading, or inconsistent with this chapter [Chapter 2 of Division 9 of the  
21 Elections Code], and that issuance of the writ or injunction will not substantially interfere  
22 with the printing or distribution of official election materials as provided by law.” (Elec.  
23 Code, § 9190(b)(2).) The Court found that the changes requested in the petition would  
24 substantially interfere with the printing of election materials, and the elections materials were  
25 not misleading.

26 Any changes ordered now would be even more disruptive. The official ballot is in the  
27 process of being printed at a cost of \$650,000, and the voter information guide is in the  
28 process of being printed at a cost of approximately \$2 million. (Declaration of Contra Costa


1 County Acting Clerk-Recorder-Registrar of Voters Deborah Cooper (Cooper Decl.), ¶ 2.)  
2 Any delay or change to the official ballot or voter information guide will require the entire  
3 printing process to be cancelled and begin again, because the Elections Division would need  
4 to destroy the original files and materials, make the changes, regenerate the corrected files,  
5 proofread the corrected files, and then send the new files to the printer to start the printing  
6 process again. (Cooper Decl., ¶¶ 10, 17.) An explanation of the printing process and reasons  
7 that any changes to ballot materials would be so disruptive now are specified in more detail  
8 in the Cooper Declaration.

9 **CONCLUSION**

10 For the above reasons, the motion for reconsideration should be denied.

11 DATED: January 8, 2020

SHARON L. ANDERSON, County Counsel

12  
13 By:   
14 Thomas L. Geiger, Assistant County  
15 Attorneys for Contra Costa County  
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**PROOF OF SERVICE**

**Re: Michael Arata, et al. v Deborah Cooper, et al.  
Contra Costa County Superior Court Case No. N19-2489**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Office of the County Counsel, 651 Pine Street, Ninth Floor, Martinez, CA 94553-1229. On January 8, 2020, I served the following document(s) by the method indicated below:

1. **Opposition to Motion for Reconsideration of Order Denying Petition for Elections Writ of Mandate**
2. **Declaration of Contra Costa County Acting Clerk-Recorder-Registrar of Voters Deborah Cooper**

By fax transmission on this date from fax number (925) 646-1078 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting fax machine. Service by fax was made by agreement of the parties, confirmed in writing. The transmitting fax machine complies with Cal.R.Ct. 2.301(3).

By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Martinez, California addressed as set forth below. I am readily familiar with Office of County Counsel's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

By electronically transmitting from electronic notification address sandy.tellez@cc.cccounty.us a true copy of the above-referenced document(s) to counsel for the parties as listed below.

By personally delivering the document(s) listed above to the person(s) and at the addresses listed below.

By placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.

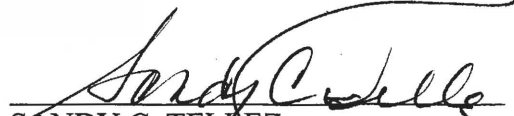
Law Offices of Jason A. Bezis, Esq.  
Bezis4Law@gmail.com

*Attorneys for Petitioners*  
Michael Arata and Richard S.Colman

Hilary Gibson  
HGibson@nmgovlaw.com

*Attorneys for Defendant*  
Transporation Authority

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the above is true and correct. Executed on January 8, 2020, at Martinez, California.

  
SANDY C. TELLEZ

000226

1 SHARON L. ANDERSON (SBN 94814)  
County Counsel  
2 THOMAS L. GEIGER (SBN 199729)  
Assistant County Counsel  
3 COUNTY OF CONTRA COSTA  
651 Pine Street, 9th Floor  
4 Martinez, California 94553  
Telephone: (925) 335-1800  
5 Facsimile: (925) 646-1078

6 Attorneys for  
Contra Costa County Acting Clerk-Recorder-Registrar of Voters Deborah Cooper,  
7 Contra Costa County Counsel Sharon L. Anderson,  
Contra Costa County Board of Supervisors

**FILED**

2020 JAN -8 P 2:58

STATE OF CALIFORNIA  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

8  
9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF CONTRA COSTA

11  
12 MICHAEL ARATA,  
13 Petitioner submitted to  
the printer

14 v.

15  
16 DEBORAH COOPER,  
SHARON L. ANDERSON

17 Respondents;

18  
19 CONTRA COSTA  
20 TRANSPORTATION AUTHORITY,  
21 CONTRA COSTA COUNTY BOARD  
OF SUPERVISORS

22 Real Parties in Interest.  
23

Case No. N 19-2488

**DECLARATION OF  
CONTRA COSTA COUNTY ACTING  
CLERK-RECORDER-REGISTRAR  
OF VOTERS DEBORAH COOPER**

Date: January 9, 2020  
Time: 10:00 a.m.  
Dept.: 12

24  
25 I, Deborah Cooper, declare:

26 1. I am the Acting Clerk-Recorder-Registrar of Voters for Contra Costa County.

27 In this capacity, I am responsible for overseeing operations of the Contra Costa County  
28 Clerk-Recorder-Elections Department, including the Elections Division.

1           2. Any changes to the official ballot or voter information guide will substantially  
2 interfere with the printing of official election materials, will cost hundreds of thousands if  
3 not millions of dollars, and disrupt the March 3, 2020, Presidential Primary election. The  
4 official ballot is in the process of being printed at a cost of \$650,000, and the voter  
5 information guide is in the process of being printed at a cost of approximately \$2 million.

6           3. The March 3, 2020 Presidential Primary is the most complex election in a  
7 four-year election cycle. There are 27 elective offices, with a total of 128 candidates for the  
8 various offices, that will be appearing on ballots. Voters will also decide one state  
9 proposition and seven local measures in Contra Costa County.

10          4. The Elections Division is responsible for printing the official ballots for the  
11 primary election. Federal law requires that all ballots be translated into Spanish and  
12 Chinese, which results in a three-page ballot, front and back, to represent a single voter's  
13 official ballot.

14          5. Ballots must be printed for military and overseas voters, vote by mail voters,  
15 precinct voters, and conditional voters; and include enough ballots to meet the rules  
16 governing the open primary (where a voter can vote for a candidate in other political  
17 parties).

18          6. The Elections Division will print approximately 3,600,000 ballot pages for the  
19 primary election at a cost of \$650,000.

20          7. Contra Costa County has 857 voting precincts. Each of the 857 voting  
21 precincts has at least one unique version of style of ballot. Styles are determined by the  
22 number of contests in a precinct resulting in approximately 900 ballot styles. Because this  
23 is a partisan primary, there are eight variations of each ballot style in each precinct  
24 containing each party's presidential and central committee candidates.

25          8. The official ballot files were submitted to the printer for printing on December  
26 31, 2019, and printing had been ongoing since then. Submitted to the printer were pdf files  
27 consisting of approximately 21,000 pages.

28          9. Each ballot is produced as a three-page set and it is not possible to create and



1 replace a single page. The entire ballot must be reproduced to make a change on just one  
2 page.

3 10. Any delay or change to the official ballot will require the entire printing  
4 process to be cancelled and begin again, because the Elections Division would need to  
5 destroy the original files and materials, make the changes, regenerate the corrected files,  
6 proofread the corrected files, and then send the new files to the printer to start the printing  
7 process again.

8 11. The first ballots for military and overseas voters must be mailed by January  
9 17, 2020, as required by federal law. The United States Department of Justice has  
10 threatened to sue any county that has not mailed official ballots to military and overseas  
11 voters by January 17, 2020.

12 12. The Elections Division also is responsible for printing the voter information  
13 guide. The voter information guide is a separate publication with different requirements  
14 and production timelines than the official ballot.

15 13. The Elections Division had planned to begin printing the voter information  
16 guides on January 4, 2020, but waited pending the outcome of the court hearing on January  
17 6, 2020.

18 14. The voter information guides are in the process of being printed. As of  
19 January 8, 2020, more than 500,000 voter information guides are on the presses. This  
20 represents approximately 78 percent of the total number of voter information guides that  
21 will be printed. The cost of printing and mailing the voter information guides is  
22 approximately \$2,000,000.

23 15. Each voter information guide contains seven mandatory informational pages,  
24 eight sample ballot facsimile pages, four or five candidate statements pages, 56 pages of the  
25 spending plan for the Contra Costa Transportation Authority's half-cent sales tax measure,  
26 County Counsel's impartial analyses for different local measures, and between zero and  
27 seven pages of arguments for and against local measures.

28 16. Federal law requires all pages in a voter information guide to be published in

1 Spanish and Chinese, resulting in page counts of between 220 pages and 250 pages for each  
2 voter information guide. The voter information guides are produced by ballot style and are  
3 custom to each voter.


4 17. Any delay or change to anything in the voter information guide will require  
5 the printing process to be cancelled and begin again, because the Elections Division would  
6 need to destroy the original files and materials sent to the printer, make the changes,  
7 regenerate the corrected files, proofread the corrected files, and then send the new files to  
8 the printer to start the printing process again.

9 18. Voter information guides are planned to be mailed to each of the  
10 approximately 650,000 individual voters in Contra Costa County on January 23, 2020. The  
11 Elections Division sends official ballots to vote by mail voters 29 days before the election,  
12 which is February 3, 2020. The open primary election allows voters registered as "No  
13 Political Party" to vote in certain party primaries. The voter information guide contains  
14 important information about the open primary election and ballot options. For this reason,  
15 it is important that the guides are received by the voters before the official ballots are  
16 mailed.

17 If called upon to testify as a witness, I can competently testify to the matters stated  
18 herein on my own personal knowledge.

19 I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct.

21 Executed January 8, 2020, at Martinez, California.

22  
23   
24 Deborah Cooper

25  
26  
27  
28

**FILED**

2020 JAN -9 A 10: 25

KATE BIEKER  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA  
BY: D. WEBER, DEPUTY CLERK

LAW OFFICES OF JASON A. BEZIS  
California State Bar No. 225641  
3661-B Mosswood Drive  
Lafayette, CA 94549-3509  
(925) 708-7073  
Bezis4Law@gmail.com  
Attorney for Petitioner MICHAEL ARATA

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

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

Petitioners,

vs.

DEBORAH COOPER, in her official capacity  
as ACTING 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,

Real Party in Interest.

CONTRA COSTA COUNTY BOARD OF  
SUPERVISORS,

Real Party in Interest.

Case No.: N19-2489

**NOTICE OF EX-PARTE APPLICATION  
AND EX-PARTE APPLICATION FOR  
ORDER SHORTENING TIME TO HEAR  
MOTION FOR RECONSIDERATION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
JASON A. BEZIS**

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

**ASSIGNED TO DEPARTMENT 12 FOR  
ALL PURPOSES**

**Date: January 9, 2020  
Time: 10:00 a.m.  
Dept.: 12**

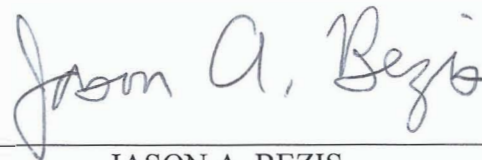
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1 TO RESPONDENTS: DEBORAH COOPER and SHARON L. ANDERSON AND THEIR  
2 ATTORNEYS AND TO REAL PARTIES IN INTEREST: CONTRA COSTA  
3 TRANSPORTATION AUTHORITY and CONTRA COSTA COUNTY BOARD OF  
4 SUPERVISORS AND THEIR ATTORNEYS:

5 PLEASE TAKE NOTICE THAT on January 9, 2020 at 10:00 A.M., or as soon thereafter  
6 as the matter can be heard, in Department 12 of the above-entitled Court located at 725 Court  
7 Street, Martinez, California, Petitioner MICHAEL ARATA, will and does move the Court by ex-  
8 parte application for an Order shortening time for the Court to hear a motion for reconsideration,  
9 pursuant to Code of Civil Procedure § 1008(a), of the January 6, 2020 order denying petition for  
10 writ of mandate and to modify, amend, or revoke the prior order in the above-entitled action.

11 This ex-parte application will be based upon this Notice, the Memorandum of Points and  
12 Authorities in support thereof, the files and records of this case, the Declaration of Jason A.  
13 Bezis, and such other and further oral and documentary evidence as may be presented at the  
14 hearing.

15  
16  
17  
18 Dated: January 8, 2020



19 JASON A. BEZIS  
20 Law Offices of Jason A. Bezis  
21 Attorney for Petitioner

22 //

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. STATEMENT OF FACTS**

25 This case involves the Contra Costa Transportation Authority's ballot measure, which has  
26 been placed on the ballot for the March 3, 2020 election. Petitioner is requesting ex-parte relief  
27 as he will suffer great and irreparable injury if the Court does not act immediately, in that  
28 election material production and mailing deadlines are rapidly approaching.

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## II. LEGAL ARGUMENT

### **Court Should Shorten Time to Hear Motion to Reconsider January 6<sup>th</sup> Order**

Issuance of any writ of mandate in early January 2020 concerning the Contra Costa Transportation Authority ballot measure would not substantially interfere with the conduct of the March 3, 2020 election. See attached Declaration of Jason A. Bezis. Therefore, Petitioner believes that issuance of any Superior Court writ of mandate on or before January 10, 2020 or in the days immediately thereafter would not substantially interfere with the conduct of the March 3, 2020 election.

The Court immediately must hear Petitioner’s motion to reconsider its January 6, 2020 order denying writ of mandate and modify, amend, or revoke the prior order, pursuant to Code of Civil Procedure section 1008(a), because different law not discussed in the moving papers, opposing papers, or by any participant in the oral argument would bring about a different outcome. See Government Code § 6702, Code of Civil Procedure § 12b and *Tran v. Fountain Valley Comm. Hospital* (1997), 51 Cal.App.4th 1464, 1465.

Petitioner requests that the Court take judicial notice of Government Code § 6702, Code of Civil Procedure § 12b and *Tran v. Fountain Valley Comm. Hospital* (1997), 51 Cal.App.4th 1464, 1465, all of which support the notion that Petitioner timely filed on Monday, December 30, 2019 the petition for writ of mandate pursuant to Elections Code §§ 9160, 9190 challenging the December 18, 2019 County Counsel Impartial Analysis of the CCTA Measure on the March 3, 2020 ballot. Respondents COOPER, ANDERSON and BOARD OF SUPERVISORS admit through ¶20 of the January 3, 2020 Declaration of Scott Konopasek, Assistant Registrar of Voters, that “[t]he 10-calendar-day public examination period for examining the impartial analysis prepared for the Contra Costa Transportation Authority’s sales tax measure was December 18, 2019, through December 28, 2019.”

C.C.P. § 12a says in part, “‘holiday’ means all day on Saturdays.” C.C.P. § 12b says in full, “If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a.” Government Code §



1 6702 says in part, “Every Saturday from noon to midnight is a holiday as regards the transaction  
2 of business in the public offices of the state and political divisions where laws, ordinances, or  
3 charters provide that public offices shall be closed on holidays.”

4 As the last day of the Impartial Analysis public examination period, Saturday, December  
5 28, 2019, was a “holiday” as defined by Elections Code § 15, Gov’t. Code § 6702, and C.C.P. §§  
6 12, 12a, and 12b, Petitioner’s filing of the petition for writ of mandate “may be performed upon  
7 the next business day with the same effect as if it had been performed upon the day appointed.”  
8 (Elections Code § 15.) Furthermore, the *Tran* case clearly holds that when the last day to file a  
9 complaint falls on a weekend or holiday, the time to sue is extended to the next court day.

10 Therefore, contrary to the Court’s ruling at the January 6, 2020 writ petition hearing,  
11 Petitioner on Monday, December 30, 2019 timely filed his writ petition challenging the  
12 December 18, 2020 County Counsel Impartial Analysis as Monday, December 30, 2019 was the  
13 next business day following the ten-calendar-day public examination period. Since Petitioner  
14 timely filed his petition for writ of mandate pursuant to Elections Code §§ 9160, 9190  
15 challenging County Counsel’s Impartial Analysis, the Court must reconsider its January 6, 2020  
16 order that it was time-barred and must reconsider the merits of Petitioner’s arguments that the  
17 Impartial Analysis must be amended because it is false and/or misleading.

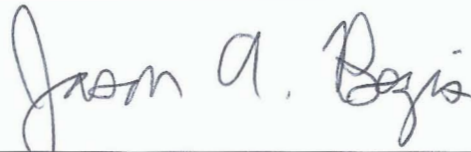
18 This Court has the power to issue an order shortening time for the Court to hear a motion  
19 for consideration of the Court’s January 6, 2020 order denying petition for writ of mandate and  
20 to modify, amend, or revoke the prior order. See Local Rule 3.47, California Rule of Court  
21 3.1200, et seq., C.C.P. section 1005. See also California Rule of Court 3.1300(b), which says,  
22 “The court, on its own motion or on application for an order shortening time supported by a  
23 declaration showing good cause, may prescribe shorter times for the filing and service of papers  
24 than the times specified in Code of Civil Procedure section 1005.” As an elections-related writ,  
25 this Petition is entitled to preferential, expedited hearing per Elections Code section 13314(a)(3).

26 Time is of the essence. Petitioner proposes that the Court set the motion for  
27 reconsideration hearing in the above-entitled action for Thursday, January 9, 2020 at 10:00 a.m.,  
28 or as soon thereafter as the matter can be heard, immediately after the hearing on this ex-parte  
application, in Department 12. In the alternative, Petitioner proposes that the Court set the

1 motion for reconsideration hearing for Friday, January 10, 2020 at 10:00 a.m. in Department 12.  
2 Petitioner further proposed that the Court order that any opposing papers or briefs by  
3 Respondents and Real Parties in Interest be served electronically by e-mail upon Petitioner's  
4 attorney Jason Bezis at e-mail address Bezis4Law@gmail.com and upon the other parties "at the  
5 first reasonable opportunity," pursuant to California Rule of Court 3.1206.

6 Dated this January 8<sup>th</sup>, 2020

7 Respectfully submitted,

8  
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10 

11 \_\_\_\_\_  
12 JASON A. BEZIS  
13 Law Offices of Jason Bezis  
14 Attorney for Petitioner

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**DECLARATION OF JASON A. BEZIS AND PROOF OF SERVICE**

I, Jason A. Bezis, declare:

1. That I am Petitioner's attorney in this action. I am over the age of 18 years. I have personal knowledge of the facts contained in this declaration, and if called upon to testify I could and would testify competently as to the truth of the facts stated herein.
2. I make this declaration in support of this ex-parte application for an order shortening time for the Court to hold a hearing on a motion to reconsider the Court's January 6, 2020 order denying the writ of mandate petition and to modify, amend, or revoke the prior order in this action.
3. Petitioner through his attorney requests this order shortening time for a motion to reconsider the January 6, 2020 order denying writ of mandate before the Hon. Charles "Steve" Treat, Department 12 because different law likely would change the outcome.
4. I have personal knowledge of the statutory basis for granting priority to deciding this writ petition with an expedited briefing and hearing schedule. Elections Code § 13314(a)(3) says, "The action or appeal shall have priority over all other civil matters." Furthermore, irreparable harm likely would result if an expedited hearing were not set to reconsider the Court's January 6, 2020 order denying the writ petition. If this motion to reconsider were not heard immediately,

1 then the Court more likely could not issue it because the delay would more likely be deemed to  
2 substantially interfere with the conduct of the March 3, 2020 election.

3 5. I am informed and believe that the Contra Costa County Elections Division was closed to  
4 the public for the whole of Saturday, December 28, 2019 and for the whole of Sunday,  
5 December 29, 2019.

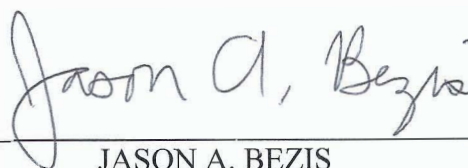
6 6. I am informed and believe that the office of the Clerk of Contra Costa County Superior  
7 Court was closed to the public for the whole of Saturday, December 28, 2019 and for the whole  
8 of Sunday, December 29, 2019.

9 7. At 7:00 a.m. on January 8, 2020, I provided notice of the ex-parte application hearing to  
10 be held on January 9, 2019 at 10:00 a.m. before Department 12 to Respondents and Real Parties  
11 in Interest. I provided notice to Respondents DEBORAH COOPER, SHARON L. ANDERSON,  
12 and Real Party in Interest BOARD OF SUPERVISORS by sending an e-mail containing this ex-  
13 parte application as an attachment to Assistant County Counsel Thomas Geiger at  
14 [Thomas.Geiger@cc.cccounty.us](mailto:Thomas.Geiger@cc.cccounty.us).

15 8. At 7:00 a.m. on January 8, 2020, I provided notice of the ex-parte application hearing to  
16 Real Party in Interest CONTRA COSTA TRANSPORTATION AUTHORITY (CCTA) by  
17 sending an e-mail containing this ex-parte application as an attachment to CCTA external coun-  
18 sel Jason Kaune at [JKaune@nmgovlaw.com](mailto:JKaune@nmgovlaw.com) and Hilary Gibson at [hgibson@nmgovlaw.com](mailto:hgibson@nmgovlaw.com).

19 9. Therefore, Petitioner has informed the opposing parties at least 24 hours before the  
20 January 9, 2020 hearing where and when the application would be made, in compliance with  
21 California Rule of Court 3.1203. Petitioner expects opposition. The notice to opposing parties  
22 includes the relief sought, because a proposed date for hearing the motion for reconsideration is  
23 included in this application and in the proposed order.

24 10. I declare under penalty of perjury under the laws of the State of California that the  
25 foregoing is true and correct and that this Declaration is executed on January 8, 2020 at  
26 Lafayette, California.

27  
28  
  
\_\_\_\_\_  
JASON A. BEZIS



FILED

2020 JAN -9 A 10:28

KATE BIEKER  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA  
BY: D. WELLS, DEPUTY CLERK

1 LAW OFFICES OF JASON A. BEZIS  
2 California State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 708-7073  
6 Bezis4Law@gmail.com  
7 Attorney for Petitioner MICHAEL ARATA

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 //

Case No.: N19-2489

**NOTICE OF MOTION AND MOTION  
FOR RECONSIDERATION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
JASON A. BEZIS**

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

**ASSIGNED TO DEPARTMENT 12 FOR  
ALL PURPOSES**

Date: <sup>02-21</sup> ~~January~~ \_\_, 2020

Time: 9:00am

Dept.: 12

1 TO RESPONDENTS: DEBORAH COOPER and SHARON L. ANDERSON AND THEIR  
2 ATTORNEYS AND TO REAL PARTIES IN INTEREST: CONTRA COSTA  
3 TRANSPORTATION AUTHORITY and CONTRA COSTA COUNTY BOARD OF  
4 SUPERVISORS AND THEIR ATTORNEYS:

5 PLEASE TAKE NOTICE THAT on <sup>02-21-</sup> ~~January~~ 9/10/20, or as soon thereafter  
6 as the matter can be heard, in Department 12 of the above-entitled Court located at 725 Court  
7 Street, Martinez, California, Petitioner MICHAEL ARATA, will and does move the Court to  
8 hear a motion for reconsideration, pursuant to Code of Civil Procedure § 1008(a), of the January  
9 6, 2020 order denying petition for writ of mandate and to modify, amend, or revoke the prior  
10 order in the above-entitled action. At or about 7:00 a.m. on January 8, 2020, Petitioner served  
11 notice of an ex-parte application to shorten time to hear this motion for reconsideration that will  
12 be heard in Department 12 on Thursday, January 9, 2020 at 10:00 a.m., or as soon thereafter as  
13 the matter can be heard. As the ex-parte application explained, Petitioner will move that this  
14 motion for reconsideration be heard as soon as January 9, 2020 at 10:00 a.m., but January 10,  
15 2020 or January 13, 2020 hearing date is more likely.

16 This motion for reconsideration will be based upon this Notice, the Memorandum of  
17 Points and Authorities in support thereof, the Request for Judicial Notice in support of this  
18 motion, the files and records of this case, the attached Declaration of Jason A. Bezis, and such  
19 other and further oral and documentary evidence as may be presented at the hearing.

20  
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22  
23  
24  
25 Dated: January 9, 2020



26 JASON A. BEZIS  
27 Law Offices of Jason A. Bezis  
28 Attorney for Petitioner

//

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**  
2 **RECONSIDERATION**

3 **I. STATEMENT OF FACTS**

4 This case involves the CONTRA COSTA TRANSPORTATION AUTHORITY's  
5 (hereinafter CCTA) ballot measure, which Real Parties in Interest CCTA and BOARD OF  
6 SUPERVISORS have placed on the ballot for the March 3, 2020 election. Pursuant to Elections  
7 Code §§ 9160, 9190, Petitioner MICHAEL ARATA filed a petition for writ of mandate on  
8 December 30, 2019 alleging, *inter alia*, that portions of Respondent ANDERSON's County  
9 Counsel Impartial Analysis bearing a date stamp of December 18, 2019 (Exhibit F) must be  
10 amended or deleted because the material in question is false, misleading, and/or inconsistent the  
11 Elections Code.

12  
13 **II. LEGAL ARGUMENT**

14 **A. Based Upon Different Law, Court Should Reconsider Its January 6, 2020 Order**  
15 **Concerning Timeliness of Challenge to County Counsel Impartial Analysis.**

16 Petitioner timely filed his writ petition seeking amendment or deletion of portions of  
17 Respondent ANDERSON's County Counsel Impartial Analysis of the CCTA Measure. The  
18 Court should reconsider its January 6, 2020 order denying writ of mandate and modify, amend,  
19 or revoke the prior order, pursuant to Code of Civil Procedure section 1008(a), because different  
20 law not discussed in the moving papers, opposing papers, or by any participant in the oral  
21 argument would bring about a different outcome.

22 A motion for reconsideration can be granted if the moving party "provide[s] not only new  
23 evidence but also a satisfactory explanation for the failure to produce that evidence at an earlier  
24 time." *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1198. "[N]ew or  
25 different facts, circumstances, or law" that would justify reconsideration must not have been  
26 known to the moving party. *New York Times v. Superior Court* (2005) 135 Cal.App.4th 206,  
27 213. The attached Declaration of Jason A. Bezis explains the failure to produce these authorities  
28 before this date.

1 Real Party in Interest CCTA misled this Court in its points and authorities memorandum  
2 (p. 5:4-16) when it referred to *McDonough v. Superior Court* (2012), 204 Cal. App. 4th 1169, as  
3 authority for the contention that Elections Code § 9190 (and similarly-worded sections of the  
4 Elections Code, including § 9295) imposes a ten-day “statute of limitations” upon petitioners  
5 who challenge election materials specified in those Elections Code sections. *McDonough* makes  
6 no such contention that the ten-day public examination period is a “statute of limitations.”

7 The different law than the law presented before and during the January 6, 2020 hearing is  
8 Government Code § 6702, Code of Civil Procedure § 12b and *Tran v. Fountain Valley Comm.*  
9 *Hospital* (1997), 51 Cal.App.4th 1464, 1465. See Request for Judicial Notice, Exhibits P and Q.

10 As Petitioner’s attorney noted during the January 6, 2020 writ hearing, the definitions  
11 section at the beginning of the Elections Code includes section 15 concerning computation of  
12 time. Elections Code § 15 says in full:

13 Notwithstanding any other provision of law, if the last day for the performance of  
14 any act provided for or required by this code shall be a holiday, as defined in  
15 Chapter 7 (commencing with Section 6700) of Division 7 of Title 1 of the  
16 Government Code, the act may be performed upon the next business day with the  
17 same effect as if it had been performed upon the day appointed. For purposes of  
18 this section, the Friday in November immediately after Thanksgiving Day shall be  
19 considered a holiday.

20 Exhibits P and Q are different law from the law presented by all parties before and at the  
21 January 6, 2020 hearing. Exhibits P and Q, coupled with Elections Code § 15, support the notion  
22 that Petitioner timely filed on Monday, December 30, 2019 the petition for writ of mandate  
23 pursuant to Elections Code §§ 9160, 9190 challenging the December 18, 2019 County Counsel  
24 Impartial Analysis of the CCTA Measure on the March 3, 2020 ballot. Respondents COOPER,  
25 ANDERSON and BOARD OF SUPERVISORS admit through ¶20 of the January 3, 2020  
26 Declaration of Scott Konopasek, Assistant Registrar of Voters, that “[t]he 10-calendar-day public  
27 examination period for examining the impartial analysis prepared for the Contra Costa  
28 Transportation Authority’s sales tax measure was December 18, 2019, through December 28,  
2019.”



1 The different law that was not discussed by parties or the Court at the January 6th hearing  
2 was Government Code § 6702, which says in part, “Every Saturday from noon to midnight is a  
3 holiday as regards the transaction of business in the public offices of the state and political  
4 divisions where laws, ordinances, or charters provide that public offices shall be closed on  
5 holidays.” This statute appears to be an artifact of a bygone era, when half-day Saturday work  
6 was common. Petitioner believes its proper interpretation in a contemporary context should be  
7 that Saturdays are to be considered holidays when government offices are closed all day  
8 Saturday.

9 Note that this interpretation would be wholly consistent with C.C.P. § 12a, which says in  
10 part, “‘holiday’ means all day on Saturdays.” C.C.P. § 12b says in full, “If any city, county, state,  
11 or public office, other than a branch office, is closed for the whole of any day, insofar as the  
12 business of that office is concerned, that day shall be considered as a holiday for the purposes of  
13 computing time under Sections 12 and 12a.”

14 As the “last day” of the Impartial Analysis public examination period, Saturday,  
15 December 28, 2019, was a “holiday” as defined by Elections Code § 15, Gov’t. Code § 6702,  
16 and C.C.P. §§ 12, 12a, and 12b, Petitioner’s filing of the petition for writ of mandate “may be  
17 performed upon the next business day with the same effect as if it had been performed upon the  
18 day appointed.” (Elections Code § 15.) Petitioner met this requirement by timely filing this writ  
19 petition on Monday, December 30, 2019, the next business day after December 28, 2019.

20 According to the “Historical and Statutory Notes” in “West’s California Statutes,” the  
21 pertinent language of today’s Elections Code § 15 (computation of time under Elections Code)  
22 was first enacted as “Elections Code § 60” by Stats. 1979, Chapter 667, § 3. *Steele v. Bartlett*  
23 (1941) 18 Cal.2d 573 is a nearly 80 year-old case concerning computation of time in an election  
24 context that pre-dates the enactment of what is now Elections Code § 15 by nearly 40 years.  
25 Hence, the definition of “last day” in Elections Code § 15 controls. *DeLeon v. Bay Area Rapid*  
26 *Transit District* (1983) 33 Cal.3d 456 cites *Steele* but it is inapposite in the election law context  
27 because *DeLeon* concerned timeliness of a government tort claim.

28 Furthermore, the *Tran* case clearly holds that when the last day to file a complaint falls  
on a weekend or holiday, the time to sue is extended to the next court day. At the hearing on

1 January 6, 2020, the Court erroneously asserted, "If I'm injured in a car accident on January 31st  
2 and my statute of limitation runs January 31st two years from then, and that's a Saturday, I'd  
3 better file on Friday because the following Monday is outside the statute of limitations." *Tran*  
4 conclusively holds that a complaint filed on the following Monday would be timely.

5 Therefore, contrary to the Court's ruling at the January 6, 2020 writ petition hearing,  
6 Petitioner on Monday, December 30, 2019 timely filed his writ petition challenging the  
7 December 18, 2020 County Counsel Impartial Analysis as Monday, December 30, 2019 was the  
8 next business day following the ten-calendar-day public examination period. Since Petitioner  
9 timely filed his petition for writ of mandate pursuant to Elections Code §§ 9160, 9190  
10 challenging County Counsel's Impartial Analysis, the Court must consider the merits of  
11 Petitioner's arguments that portions of the Impartial Analysis must be amended or deleted  
12 because they are false, misleading, and/or otherwise inconsistent with the Elections Code.

13  
14 **B. County Counsel's Impartial Analysis is False, Misleading or Inconsistent with**  
15 **Elections Code Section 9160.**

16 Elections Code § 9190(b)(2) says in part, "A peremptory writ of mandate or an injunction  
17 shall be issued only upon clear and convincing proof that the material in question is false,  
18 misleading, or inconsistent with this chapter." County Counsel's Impartial Analysis is among  
19 the specified ballot materials subject to review under § 9190 via § 9160.

20 *Huntington Beach City Council v. Superior Court* (2002), 94 Cal.App.4th 1417, 1432 sets  
21 forth the standard for ballot materials: "In determining whether statements are false or  
22 misleading, courts look to whether the challenged statement is subject to verifiability, as distinct  
23 from "typical hyperbole and opinionated comments common to political debate." (citation  
24 omitted) An "outright falsehood" or a statement that is "objectively untrue" may be stricken.  
25 (Ibid.) We need only add that context may show that a statement that, in one sense, can be said to  
26 be literally true can still be materially misleading ..."

27 County Counsel's Impartial Analysis of the CCTA includes several contentions that are  
28 "false," "misleading," or inconsistent with this chapter of the Elections Code.

1           **1. “Reduce Congestion,” “Make Commutes Faster and More Predictable,”**  
2           **“Improve Air Quality,” and “Relieve Congestion” Should Be Stricken from**  
3           **Impartial Analysis as “False” and/or “Misleading” Because CCTA’s Own**  
4           **Quantitative Analyses Show Them to Be Objectively Untrue.**

5  
6           Respondents claim that use of these phrases are appropriate in the Impartial Analysis  
7 because they are direct quotations from the ballot label/ballot question and from the  
8 Transportation Expenditure Plan. Petitioner asks that they be stricken from the Impartial  
9 Analysis because they are objectively untrue under the *Huntington Beach* “verifiability” and  
10 “objectively untrue” standards, using CCTA’s own quantitative data.

11           Key to understanding CCTA’s quantitative data is that they offer none, other than  
12 CCTA’s Exhibit 2. Petitioner objects to judicial notice being taken of CCTA’s Exhibit 2 because  
13 judicial notice would be improper under Evidence Code § 452. CCTA’s Points and Authorities  
14 contend that judicial notice may be taken of CCTA’s seven exhibits under Evidence Code §  
15 452(c) as “official acts of government agencies” and that “[a]ll of the materials requested for  
16 judicial notice herein are subject to judicial notice pursuant to Evidence Code section 452(h) as  
17 well.” (Footnote 2 to CCTA’s RJN Points of Authorities.) CCTA’s Exhibit 2 satisfies neither of  
18 these judicial notice categories. The Declaration In Support of Request of Judicial Notice states  
19 that CCTA’s external counsel received a copy of Exhibit 2 from CCTA’s “Director of External  
20 Affairs.” No indication is given that it is an official act of CCTA, so judicial notice under §  
21 452(c) is improper. Judicial notice also is improper under § 452(h) because Exhibit 2 is not  
22 “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate  
23 and accurate determination by resort to sources of reasonably indisputable accuracy.” The title  
24 page of Exhibit 2 says “Performance Analysis of the Proposed 2020 TEP Preliminary Results,”  
25 which suggests that its facts and propositions are not final and therefore reasonably subject to  
26 dispute and are not capable of immediate and accurate determination by resort to sources of  
27 reasonably indisputable accuracy.” The “Modeling Results” section is unintelligible within its  
28 “four corners;” the next few pages express series of percentages that lack foundation, context,



1 and explanation. Therefore, Exhibit 2's facts and propositions are reasonably subject to dispute.  
2 Judicial notice of Exhibit 2 is improper.

3 The only known quantitative analysis of CCTA's plans at a systemic level is the 2017  
4 Countywide Transportation Plan (CTP). The 2020 Ballot Measure's Transportation Expenditure  
5 Plan (TEP) is inextricably tied to the 2017 CTP. Petitioner's Exhibit G contains relevant  
6 excerpts from the TEP. Page 12 of the TEP says, "ACHIEVING INTENDED OUTCOMES ...  
7 CCTA will ensure funding in the TEP will achieve the outcomes identified in the 2017  
8 Countywide Transportation Plan (CTP)." Page 42 of the TEP further states in its  
9 "IMPLEMENTING GUIDELINES ... Funds Only Projects and Programs in the TEP" that "the  
10 Authority may amend or delete Projects and Programs ... to maintain consistency with the  
11 current Contra Costa Countywide Transportation Plan (CTP) ..." Page 45 of the TEP says,  
12 "The Authority shall also use the CTP to convey the Authority's investment priorities ..."

13 The 2017 CTP Environmental Impact Report (EIR) contains quantitative analyses of  
14 CCTA's projects and programs that undermine the "reduce congestion," "relieve congestion,"  
15 "make commutes faster and more predictable," and "improve air quality" claims in County  
16 Counsel's Impartial Analysis. Relevant excerpts of the EIR are contained in Petitioner's Exhibit  
17 I.

18 **CCTA's Own Quantitative Analyses Demonstrate that CCTA Measure Will Not**  
19 **"Reduce Congestion" or "Relieve Congestion":** CCTA's Opposition Brief admits that  
20 "overall 'congestion' will increase due to normal population and job growth ..." (p. 14:2). The  
21 Brief goes on to say that the 2017 Countywide Transportation Plan improvements will "reduce  
22 that congestion." (p. 14:3). However, this latter part of the sentence refers to a reduction in  
23 congestion compared to doing nothing. The average person reading the phrases "reduce  
24 congestion" and "relieve congestion" in the Impartial Analysis would understand them to mean a  
25 reduction in congestion compared to current conditions. To use these two phrases to mean  
26 "reducing congestion so that is not as bad as it would be if nothing were done" would be  
27 misleading to the average person. Petitioner has firmly established that overall congestion will  
28 be worse in the future compared to the present.



1 CCTA offers no verifiable, admissible quantitative data to support County Counsel's  
2 contention that the CCTA Ballot Measure would "reduce congestion" or "relieve congestion."  
3 Data in CCTA's 2017 CTP EIR tend to disprove that the CCTA Ballot Measure would "reduce  
4 congestion" or "relieve congestion" at an aggregate, systemic level. See Exhibit I. Table 2.1-3,  
5 DEIR page 2.1-19, shows that by the year 2040, vehicle hours of delay would increase 166  
6 percent between 2013 and 2040. Furthermore, Exhibit I, page 2.1-21 concludes, "Travelers on  
7 major roadways throughout Contra Costa County would experience an appreciable increase in  
8 total VHD as compared with the baseline condition."

9 Therefore, Petitioner believes that the phrases "reduce congestion" and "relieve  
10 congestion" are false and/or misleading and should be deleted from the Impartial Analysis under  
11 the *Huntington Beach* "verifiability" and "objectively untrue" standards.

12 **CCTA's Own Quantitative Analyses Demonstrate that CCTA Measure Will Not**  
13 **"Make Commutes Faster and More Predictable":** CCTA offers no verifiable, admissible  
14 quantitative data to support County Counsel's contention that the CCTA Ballot Measure would  
15 "make commutes faster and more predictable." On the contrary, Exhibit I, Table 2.1-3, DEIR  
16 page 2.1-19, shows that by the year 2040, average freeway speeds would decline by 2.7 percent,  
17 and average arterial speeds would decline by 2.3 percent, both compared to 2013. Therefore,  
18 Petitioner believes that the phrase "make commutes faster and more predictable" is false and/or  
19 misleading and should be deleted from the Impartial Analysis under the *Huntington Beach*  
20 "verifiability" and "objectively untrue" standards.

21 **CCTA's Own Quantitative Analyses Demonstrate that CCTA Measure Will Not**  
22 **"Improve Air Quality":** CCTA offers no verifiable, admissible quantitative data to support  
23 County Counsel's contention that the CCTA Ballot Measure would "improve air quality." On  
24 the contrary, Exhibit I, p. 2.3-23 concludes, "New or expanded transportation facilities pursuant  
25 to the 2017 CTP would result in a net increase in emissions of PM<sub>10</sub> from on-road mobile  
26 sources (including entrained dust) as well as a net increase in emissions of PM<sub>2.5</sub> entrained dust,  
27 as compared with the baseline condition." Therefore, Petitioner believes that the phrase  
28 "improve air quality" is false and/or misleading and should be deleted from the Impartial  
Analysis under the *Huntington Beach* "verifiability" and "objectively untrue" standards.

1  
2 **2. “Of the Tax Proceeds” References in Impartial Analysis Are False and Misleading**  
3 **and Should Be Stricken Because It is Objectively Untrue.**

4 References to “of the tax proceeds” in the third paragraph of the Impartial Analysis are  
5 impermissibly false and misleading. They do not meet the *Huntington Beach* “verifiability” and  
6 “objectively untrue” standards. The four components “of the tax proceeds” cited by the  
7 Impartial Analysis add to 100.0%, giving the voter the impression that 100.0% of the sales tax  
8 revenues will be spent exclusively on those four components. Yet none of the four components  
9 in CCTA’s 2020 Transportation Expenditure Plan (“TEP” pages 4-5, Exhibit G) discloses bond  
10 “interest” expenditures or other “debt service” expenditures. They are objectively untrue and  
11 must be stricken from the Impartial Analysis unless the percentages are recalculated to include  
12 bond interest payments.

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

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

1 For these reasons, Petitioner requests that the Court order the “Impartial Analysis” to be  
2 amended to include the following statement: "If CCTA's historic pattern of bonding is followed  
3 with this measure, a substantial percentage of the tax proceeds would be spent on interest."  
4

5 **3. Omission of “Additional ... Tax” from Impartial Analysis Is Misleading**

6 Exhibits A through E constitute admissions by Real Parties in Interest CCTA and  
7 BOARD OF SUPERVISORS that the CCTA Ballot Measure is an “additional” tax.

8 Exhibit A is CCTA Ordinance 19-03 adopted by the CCTA Board on October 30, 2019.  
9 Section 5, “TRANSACTIONS TAX RATE” states “a tax is hereby imposed upon all retailers ...  
10 at the rate of an **additional** one-half of one cent until June 30, 2055 ...” (Emphasis added.)  
11 Section 7, “USE TAX RATE,” states, “An excise tax is hereby imposed ... at the rate of an  
12 **additional** one-half of one cent until June 30, 2055 ...” (Emphasis added.)

13 Exhibit B is CCTA Resolution 19-55-P “Requesting the Contra Costa County Board of  
14 Supervisors to Call and Consolidate a Special Election” adopted by the CCTA Board on October  
15 30, 2019. The third “WHEREAS” clause says in part, “The Authority ... wishes to increase such  
16 tax for special governmental purposes at an **additional** rate of one-half of one cent ...”  
17 (Emphasis added.)

18 Exhibit D is County Counsel’s Impartial Analysis of CCTA’s unsuccessful Measure X  
19 that appeared on the November 2016 ballot. The first sentence disclosed that CCTA had  
20 proposed “an additional one-half of one percent (0.5%) retail transactions and use tax.”

21 Exhibit E is County Counsel’s original Impartial Analysis for 2020 Measure J, apparently  
22 submitted to the County Elections Division on or about December 10, 2019. The first sentence  
23 disclosed that CCTA had proposed “an additional one-half of one percent (0.5%) retail  
24 transactions and use tax.”

25 Yet at the eleventh hour, County Counsel mysteriously removed the word “additional”  
26 not only from the first sentence of the analysis of the CCTA Measure, but also from the entire  
27 analysis. See Petitioner’s Exhibit F and County’s Exhibit B. Respondent County Counsel  
28 ANDERSON has failed to provide to this Court a declaration or any other explanation for her  
deliberate and intentional removal of the phrase “additional ... tax.”



1           **Omission of “Additional ... Tax” Is “Misleading”**: Petitioner contends that the  
2 omission of “additional ... tax” from the Impartial Analysis violates Elections Code 9190  
3 because it is misleading to the voters of Contra Costa County. Omission of “additional ... tax”  
4 does not satisfy the *Huntington Beach* standard because it is readily verifiable from Exhibits A,  
5 B and C – the very legislative body enactments that placed the additional tax on the ballot – that  
6 the CCTA Measure would impose an “additional ... tax.” County Counsel included the phrase  
7 “additional ... tax” in its 2016 Impartial Analysis of CCTA’s Measure X (Exhibit D) and in its  
8 first submission of its Impartial Analysis of the 2020 CCTA Measure (Exhibit E).

9           **Omission of “Additional ... Tax” Is Inconsistent With Elections Code 9160**: County  
10 Counsel has a legal duty under Elections Code 9160 to “prepare an impartial analysis of the  
11 measure showing the effect of the measure on the existing law and the operation of the measure.”  
12 Petitioner contends that the verb “supplement” does not adequately disclose to the voter “the  
13 effect of the measure on the existing law and the operation of the measure.” The *American*  
14 *Heritage Dictionary, 5<sup>th</sup> Edition* defines “supplement” as “[s]omething added to complete a  
15 thing.” Use of the verb “supplement” gives the reader the erroneous impression that the CCTA  
16 Measure would add a small portion of revenue to CCTA rather than *double* revenue to CCTA.  
17 The verb “double” would be a more accurate description of the effect of the measure on existing  
18 law than the verb “supplement.”

19           Petitioner asserts that the increase in the sales tax rate is the most significant effect of the  
20 measure on existing law, and that, as a result, notice of the tax increase must be included in the  
21 first sentence of the analysis, to catch the attention of short-attention-span voters.

22  
23           **4. Omission of Disclosure of Project Certainty Makes Impartial Analysis**  
24           **Misleading.**

25           County Counsel’s Impartial Analysis (Petitioner’s Exhibit F) does not meet the Elections  
26 Code §§ 9160, 9190 standards because the Impartial Analysis omits disclosure of the lack of  
27 certainty as to how sales tax proceeds would be spent. Much of the CCTA Ballot Measure’s  
28 project funding categories (Exhibit G, p. 4) are vague and undefined, essentially blank check for  
the CCTA board to allocate. CCTA’s Transportation Expenditure Plan (TEP) for the 2020 ballot

1 measure is extremely unusual in that it is not a defined list of projects to be funded by the tax.  
2 Instead, the TEP contains at least thirteen examples of "may include" or "may consider," as well  
3 as examples of "could include" and "could also be funded." While the TEP is arguably  
4 compliant with the minimal requirements of Public Utilities Code § 180206, it does not provide  
5 voters with an assurance of how their taxes actually would be spent, or whether the selections to  
6 be made in the future by CCTA will be effective in achieving the desired outcomes (e.g., "reduce  
7 congestion"). At a minimum, County Counsel has a duty in her Impartial Analysis to inform  
8 voters that the TEP is not a defined project list, but rather that CCTA will have great discretion  
9 in determining most of the projects and programs to be funded. The Impartial Analysis should  
10 inform voters as to whether a majority or supermajority vote of the Board will be required to  
11 determine how and where to spend these discretionary dollars.

### 12 13 **III. CONCLUSION**

14 The Court should grant this motion to reconsider, pursuant to C.C.P. section 1008(a),  
15 based on different law, including Government Code § 6702, C.C.P § 12b and the *Tran* decision,  
16 than was before the court in the papers and oral arguments for the January 6, 2020 hearing.  
17 Since the writ petition challenging Respondent ANDERSON's County Counsel Impartial  
18 Analysis of the CCTA Measure was timely filed on December 30, 2019, Petitioner requests that  
19 the Court provide the relief requested in that petition and its supporting papers.

20 Petitioner requests that the Court find pursuant to Elections Code sections 9160 and 9190  
21 that a peremptory writ of mandate shall issue because the Court finds clear and convincing proof  
22 that the County Counsel Impartial Analysis of the CCTA Measure is false, misleading, and/or  
23 inconsistent with Elections Code section 9160 and therefore that portions of the Impartial  
24 Analysis must be amended and/or deleted.

25 Petitioner requests that if the County Voter Information Guide has already been sent to  
26 the printer that the Court order Respondent COOPER and the Contra Costa County Elections  
27 Division to produce and mail a corrected Impartial Analysis to registered voters in a  
28 Supplemental Voter Information Guide. Through this remedy of a Supplemental Voter

1 Information Guide, the issuance of any writ will not substantially interfere with the conduct of  
2 the March 3, 2020 election, especially if the Voter Information Guide has already been sent to  
3 the printer by the date that the Court considers any order.

4 Petitioner further requests that a peremptory writ of mandate shall issue, ordering  
5 Respondents ANDERSON and COOPER, and all persons acting pursuant to their direction and  
6 control, to amend, correct, and/or delete portions of County Counsel's Impartial Analysis of the  
7 CCTA Measure consistent with Elections Code sections 9160, 9190, and 13314.

8 Petitioner alternatively requests that a peremptory writ of mandate shall issue, ordering  
9 Respondents ANDERSON and COOPER, and all persons acting pursuant to their direction and  
10 control, to amend, correct, and/or delete portions County Counsel's Impartial Analysis of the  
11 CCTA Measure as follows:

12 a. restore the phrase "an additional one-half of one percent (0.5%)" to the first sentence  
13 of the Impartial Analysis (just as it had been in Exhibit E, the earlier version of the Impartial  
14 Analysis for the 2020 CCTA Measure).

15 b. re-write the third paragraph of the "Impartial Analysis" to include the following  
16 statement: "If CCTA's historic pattern of bonding is followed with this measure, a substantial  
17 percentage of the tax proceeds would be spent on interest."

18 c. strike the entire sentence beginning "According to the TEP ..." because there is no  
19 information available about "% of the tax proceeds" to be spent on debt service.

20 d. alternatively, if (c., *supra*) is not granted, strike "relieve congestion on" and replace  
21 that with "improve" so that the phrase at issue would be revised to read, "According to the TEP,  
22 41.1% of the tax proceeds will be used to improve highways, interchanges, and major roads..."

23 e. strike "reduce congestion and", "make commutes faster and more predictable", and  
24 "improve air quality", thereby amending the sentence to read: "According to the measure,  
25 proceeds from the sales tax would be used to fix bottlenecks on highways and major roads;  
26 improve the frequency, reliability, accessibility, cleanliness and safety of buses, ferries and  
27 BART; and repave roads."  
28

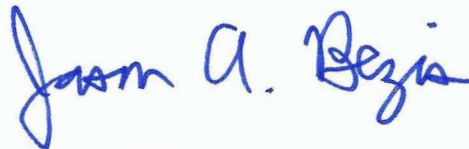
1 f. amend the Impartial Analysis to include: "According to CCTA's 2017 Countywide  
2 Transportation Plan's Environmental Impact Report, overall congestion in 2040 will increase by  
3 166%, highway and arterial roadway speeds will be slower than present, and particulate air  
4 quality will be worsened."

5 g. include in the Impartial Analysis a disclosure that the CCTA Board has discretion to  
6 determine how a large percentage of the project funds would actually be spent;

7 h. opine whether future CCTA Board decisions about allocating funding in the "may  
8 include, "may consider," "could include" and "could also be funded" categories described *supra*  
9 would be considered "amendments" of the plan requiring supermajority (66.66%) votes.  
10

11 Dated this January 9<sup>th</sup>, 2020

12 Respectfully submitted,

13  
14 

15  
16 \_\_\_\_\_  
17 JASON A. BEZIS  
18 Law Offices of Jason Bezis  
19 Attorney for Petitioner

20 **DECLARATION OF JASON A. BEZIS AND PROOF OF SERVICE**

21 I, Jason A. Bezis, declare:

- 22 1. That I am Petitioner's attorney in this action. I am over the age of 18 years. I have  
23 personal knowledge of the facts contained in this declaration, and if called upon to testify I could  
24 and would testify competently as to the truth of the facts stated herein.
- 25 2. I make this declaration in support of this motion to reconsider the Court's January 6,  
26 2020 order denying the writ of mandate petition and to modify, amend, or revoke the prior order  
27 in this action.  
28



1 3. Petitioner through his attorney makes this motion to reconsider the January 6, 2020 order  
2 denying writ of mandate before the Hon. Charles “Steve” Treat, Department 12 because different  
3 law likely would change the outcome.

4 4. Neither the writ petition and supporting papers filed by me nor the opposition papers filed  
5 by opposing counsel cite or discuss C.C.P. § 12b, Government Code § 6702, or the *Tran* decision  
6 concerning statutes of limitations that .

7 5. The terms of the Court’s briefing and hearing order of December 31, 2019 expressly  
8 barred me from presenting reply papers to opposing parties or filing them with the Court.

9 6. None of the participants in the January 6, 2020 writ hearing referred directly to or  
10 discussed C.C.P. § 12b, Government Code § 6702, or the *Tran* decision.

11 7. I am informed and believe that the Contra Costa County Elections Division was closed to  
12 the public for the whole of Saturday, December 28, 2019 and for the whole of Sunday,  
13 December 29, 2019.

14 8. I am informed and believe that the office of the Clerk of Contra Costa County Superior  
15 Court was closed to the public for the whole of Saturday, December 28, 2019 and for the whole  
16 of Sunday, December 29, 2019.

17 9. I exercised reasonable diligence before the January 6, 2020 hearing to research the issue  
18 of the ten-calendar day public examination period ending on Saturday, December 28, 2019 when  
19 the County Elections Division office and the Superior Court clerk’s office were closed. On  
20 Sunday, January 5, 2020, in preparation for the January 6<sup>th</sup> hearing, I studied C.C.P. § 12a,  
21 Elections Code § 15, and Government Code § 6700. I believed that C.C.P. § 12a was dispositive  
22 as to timely filing of the Elections Code §§ 9160, 9190 writ petition challenging County  
23 Counsel’s Impartial Analysis on Monday, December 30, 2019 because C.C.P 12a expressly says,  
24 “**“holiday” means all day on Saturdays ...**” and “This section applies to Sections 659, 659a,  
25 and 921, and to all other provisions of law providing or requiring an act to be performed on a  
26 particular day or within a specified period of time, whether expressed in this or **any other code**  
27 **or statute, ordinance, rule, or regulation.**” (Emphasis added.) I assumed that “any other code  
28 or statute” included computation of time under the Elections Code. I made a mental note of  
Elections Code § 15 and Government Code § 6700 and ceased further research of this issue.



1 10. During the January 6, 2020 writ hearing, I cited C.C.P. § 12a, Elections Code § 15 and  
2 Government Code § 6700 to argue that Petitioner's writ petition challenging County Counsel's  
3 Impartial Analysis pursuant to Elections Code §§ 9160, 9190 was timely filed on Monday,  
4 December 30 because Saturdays and Sundays are holidays under the text of C.C.P. § 12a and  
5 Sundays are holidays under Elections Code § 15 through reference to Government Code § 6700.

6 11. On January 7, 2020, I discovered the existence of Government Code § 6702 and C.C.P. §  
7 12b, which both tend to prove through Elections Code § 15 that "Saturdays" are "holidays"  
8 under the Elections Code. I also discovered the *Tran* decision when I consulted the "California  
9 Practice Guide: Civil Procedure Before Trial: Statutes of Limitations," which cites the *Tran*  
10 decision in Section 1:16 "Where Last Day a Weekend or Holiday."

11 12. I declare under penalty of perjury under the laws of the State of California that the  
12 foregoing is true and correct and that this Declaration is executed on January 9, 2020 at  
13 Lafayette, California.

14  
15 

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JASON A. BEZIS

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**PROOF OF SERVICE**

*Michael Arata, et al. v. Deborah Cooper, et al.*  
Contra Costa County Superior Court Case No. N19-2489

At the time of service, I was over 18 years of age and not a party to this action. My business address is 3661-B Mosswood Drive, Lafayette, CA 94549-3509.

On January 9, 2020, I served true copies of the following document(s) described as:

**NOTICE OF MOTION AND MOTION FOR RECONSIDERATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JASON A. BEZIS**

on the interested parties in this action as follows:

Thomas L. Geiger  
Assistant County Counsel  
COUNTY OF CONTRA COSTA  
[Thomas.Geiger@cc.cccounty.us](mailto:Thomas.Geiger@cc.cccounty.us)  
Attorney for Deborah Cooper, Sharon L. Anderson and Contra Costa County Board of Supervisors

Jason D. Kaune  
Hilary J. Gibson  
NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP  
[jkaune@nmgovlaw.com](mailto:jkaune@nmgovlaw.com); [hgibson@nmgovlaw.com](mailto:hgibson@nmgovlaw.com);  
Attorneys for Contra Costa Transportation Authority

**BY ELECTRONIC SERVICE:** I served the document(s) on the persons listed above to the e-mail addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 9, 2020, at Lafayette, California.



---

JASON A. BEZIS

FILED

2020 JAN -9 A 10: 28

KATE BREKER  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

BY: D. WEDER, DEPUTY CLERK

1 LAW OFFICES OF JASON A. BEZIS  
2 California State Bar No. 225641  
3 3661-B Mosswood Drive  
4 Lafayette, CA 94549-3509  
5 (925) 708-7073  
6 Bezis4Law@gmail.com  
7 Attorney for Petitioner MICHAEL ARATA

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  
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) Case No.: N19-2489

) **PETITIONER'S REQUEST FOR  
) JUDICIAL NOTICE IN SUPPORT OF  
) MOTION FOR RECONSIDERATION;  
) SUPPORTING MEMO OF POINTS AND  
) AUTHORITIES; SUPPORTING  
) DECLARATION OF AUTHENTICITY;  
) EXHIBITS**

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

) **Filed: December 30, 2019**

) **Date: 02-4 January 21, 2020**

) **Time: 9:00am**

) **Dept.: 12**

1 Petitioner hereby requests that the Court take judicial notice of the following documents  
2 supporting his motion for reconsideration of the Court's January 6, 2020 order:

3 1. Pursuant to Evidence Code § 452(a) and (b), of the text of California Government Code §  
4 6702 and Code of Civil Procedure § 12b. In support thereof, attached hereto as Exhibit P is a  
5 true and correct copy of said document, as downloaded from the Findlaw website.

6 2. Pursuant to Evidence Code § 452(a) and (d), of a California Court of Appeal opinion,  
7 *Tran v. Fountain Valley Comm. Hospital* (1997), 51 Cal.App.4th 1464, 1465. In support thereof,  
8 attached hereto as Exhibit Q is a true and correct copy of said document, as downloaded from the  
9 Justia US Law website.

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11 Respectfully submitted,

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15 Dated: January 9, 2020

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17 \_\_\_\_\_  
18 JASON A. BEZIS  
19 Law Offices of Jason A. Bezis  
20 Attorney for Petitioner

21  
22 **SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES**

23 **ALL EXHIBITS ARE PROPERLY SUBJECT TO JUDICIAL NOTICE.**

24 As explained below, each of the documents or facts for which judicial notice is requested  
25 is properly subject to judicial notice.

26 Exhibit P includes two California statutes. The statutory law of any state of the United  
27 States is subject to judicial notice under Evidence Code § 452(a). Legislative enactments issued  
28 by or under the authority any public entity in the United States is subject to judicial notice under  
Evidence Code § 452(b). Official acts of the legislative departments of any state of the United  
States is subject to judicial notice under Evidence Code § 452(c).

1 Exhibit Q is a published California Court of Appeal opinion. The decisional law of any  
2 state of the United States is subject to judicial notice under Evidence Code § 452(a). Records of  
3 any court of this state are subject to judicial notice under Evidence Code § 452(d).

4 These documents also are subject to judicial notice as matters that are “not reasonably  
5 subject to dispute and are capable of immediate and accurate determination by resort to sources  
6 of reasonably indisputable accuracy.” Evidence Code, § 452(h).

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8 Respectfully submitted,

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13 Dated: January 9, 2019

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JASON A. BEZIS  
Law Offices of Jason A. Bezis  
Attorney for Petitioner

**DECLARATION OF AUTHENTICITY**

**DECLARATION OF JASON A. BEZIS**

I, Jason A. Bezis, declare as follows:

1. I am an attorney licensed to practice in the State of California. I am attorney for  
Petitioner in this case. I have personal knowledge of the facts stated in this declaration and am  
competent to testify as to them if called as a witness.

2. Attached as Exhibit P is Government Code § 6702 and Code of Civil Procedure § 12b. I  
downloaded the text of these statutes from the Findlaw website at:

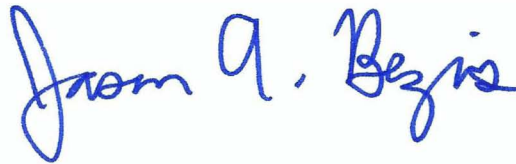
<https://codes.findlaw.com/ca/government-code/gov-sect-6702.html> and



1 <https://codes.findlaw.com/ca/code-of-civil-procedure/ccp-sect-12b.html>. I believe that Exhibit P  
2 shows the true, correct, and complete text of these two statutes.

3 3. Attached as Exhibit Q is *Tran v. Fountain Valley Comm. Hospital* (1997), 51 Cal.App.4th  
4 1464, 1465. I downloaded the text of this court opinion from the Justia US Law website at:  
5 <https://law.justia.com/cases/california/court-of-appeal/4th/51/1464.html>. I believe that Exhibit Q  
6 contains the true, correct, and complete text of the *Tran* court opinion.

7 I declare under penalty of perjury pursuant to the laws of the State of California that the  
8 foregoing is true and correct. Executed on this 9<sup>th</sup> day of January, 2020, at Lafayette, California.

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14 JASON A. BEZIS

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## **EXHIBIT P**

California Code, Government Code - GOV § 6702

Every Saturday from noon to midnight is a holiday as regards the transaction of business in the public offices of the state and political divisions where laws, ordinances, or charters provide that public offices shall be closed on holidays. This section shall not be construed to prevent or invalidate the issuance, filing, service, execution, or recording of any legal process or written instrument during such period. Public offices of a city shall be closed on those holidays enumerated in Section 6700 unless otherwise provided by charter, ordinance or resolution.

<https://codes.findlaw.com/ca/government-code/gov-sect-6702.html>

California Code, Code of Civil Procedure - CCP § 12b

If any city, county, state, or public office, other than a branch office, is closed for the whole of any day, insofar as the business of that office is concerned, that day shall be considered as a holiday for the purposes of computing time under Sections 12 and 12a.

<https://codes.findlaw.com/ca/code-of-civil-procedure/ccp-sect-12b.html>

# EXHIBIT Q

## **Tran v. Fountain Valley Community Hospital (1997)**

[No. G015845. Fourth Dist., Div. Three. Jan 8, 1997.]

NICKY TRAN, a Minor, etc., Plaintiff and Appellant, v. FOUNTAIN VALLEY COMMUNITY HOSPITAL et al., Defendants and Respondents.

(Superior Court of Orange County, No. 711149, Marvin G. Weeks, Judge.)

(Opinion by The Court.)

### **COUNSEL**

Horton, Barbaro & Reilly and William O. Humphreys for Plaintiff and Appellant.

Madory, Zell and Pleiss and Richard E. Madory for Defendants and Respondents.

### **OPINION**

THE COURT. fn. \*

Appellant, a minor, appeals the dismissal of his complaint based upon the statute of limitations. The judgment is reversed.

### **Facts**

Appellant was born on May 24, 1985. A complaint was filed on his behalf against defendants on Monday, May 24, 1993, alleging medical negligence occurring on the date of his birth.

Defendants demurred contending the complaint was untimely as it was not filed prior to the minor's eighth birthday as provided for under the relevant code section. The court agreed and dismissed the complaint and minor appealed.

### **Discussion**

[1] The issue before us involves the interplay of two statutes with the birthday rule. The statute of limitations for an action brought by a minor under the age of six against a health provider is set forth as follows: "In an [51 Cal. App. 4th 1466] action for an injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of an action shall be three years after the date of the injury ... except that actions by a minor under the full age of six years shall be commenced within three years or prior to his eighth birthday whichever provides a longer period." (Code Civ. Proc., § 340.5; all further statutory references are to the Code of Civil Procedure unless otherwise indicated.)



Under section 12a, "If the last day for the performance of any act provided or required by law to be performed within a specified period of time shall be a holiday, then that period is hereby extended to and including the next day which is not a holiday.... [¶] This section applies ... to all other provisions of law, however stated or wherever expressed, providing or requiring an act be performed on a particular day or within a specified period of time."

Here, appellant contends filing the complaint on appellant's eighth birthday was appropriate because that day was a Monday and the last date to file the action would have been a holiday, i.e., Sunday.

Under the birthday rule, a person obtains a certain age on the first minute of his or her birthday. (Civ. Code, former § 26; *In re Harris* (1993) 5 Cal. 4th 813, 844 [21 Cal. Rptr. 2d 373, 855 P.2d 391].) As the California Supreme Court noted in that case, "absent an expression of contrary legislative intent, [this rule] generally applies to all statutory calculations of age." (Id. at p. 849.)

Here, appellant became eight years old on the first minute of May 24, 1993. Appellant contends filing the complaint on appellant's eighth birthday was appropriate because that day was a Monday and the last day to file that action would have been on a holiday, i.e., Sunday, the filing on the next day was permissible. Respondent, on the other hand, argues the provisions of section 12a do not apply because section 340.5 specifically requires the action to be filed "prior to" the minor's eighth birthday. We agree with appellant.

While other courts have declined to extend the time within which an action must be performed, those cases involve situations where the last date upon which to act was a specified number of days before a date certain. (See *Griffin v. Dingley* (1896) 114 Cal. 481 [46 P. 457] [certificate of nomination was to be filed not less than 30 days before date of election]; *Steele v. Bartlett* (1941) 18 Cal. 2d 573 [116 P.2d 780] [person seeking office must file nominating papers 31 days before election].) [**51 Cal. App. 4th 1467**]

These cases are distinguishable in that they deal with statutes requiring a calculation back from a given date. (*DeLeon v. Bay Area Rapid Transit Dist.* (1983) 33 Cal. 3d 456, 458-459 [189 Cal. Rptr. 181, 658 P.2d 108].)

In reviewing both section 12a and section 340.5, we see no reason why appellant should not have the benefit of the provisions of section 12a. Here, the last day upon which to file the action was a Sunday. Under a plain reading of section 12a, appellant had until the next business day to file the action. Such an outcome would be no different if the issue had been raised under any other statute of limitations providing for filing an action within one, two or three years after the injury.

The judgment is reversed. Appellant shall recover his costs on appeal.

FN \*. Before Sills, P. J., Crosby, J., and Rylaarsdam, J.

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**PROOF OF SERVICE**

*Michael Arata, et al. v. Deborah Cooper, et al.*  
Contra Costa County Superior Court Case No. N19-2489

At the time of service, I was over 18 years of age and not a party to this action. My business address is 3661-B Mosswood Drive, Lafayette, CA 94549-3509.

On January 9, 2020, I served true copies of the following document(s) described as:

**PETITIONER'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR RECONSIDERATION; SUPPORTING MEMO OF POINTS AND AUTHORITIES; SUPPORTING DECLARATION OF AUTHENTICITY; EXHIBITS**

on the interested parties in this action as follows:

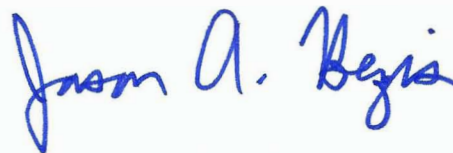
Thomas L. Geiger  
Assistant County Counsel  
COUNTY OF CONTRA COSTA  
[Thomas.Geiger@cc.cccounty.us](mailto:Thomas.Geiger@cc.cccounty.us)  
Attorney for Deborah Cooper, Sharon L. Anderson and Contra Costa County Board of Supervisors

Jason D. Kaune  
Hilary J. Gibson  
NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP  
[jkaune@nmgovlaw.com](mailto:jkaune@nmgovlaw.com); [hgibson@nmgovlaw.com](mailto:hgibson@nmgovlaw.com);  
Attorneys for Contra Costa Transportation Authority

**BY ELECTRONIC SERVICE:** I served the document(s) on the persons listed above to the e-mail addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 9, 2020, at Lafayette, California.



---

JASON A. BEZIS

1 SHARON L. ANDERSON (SBN 94814)  
County Counsel  
2 THOMAS L. GEIGER (SBN 199729)  
Assistant County Counsel  
3 COUNTY OF CONTRA COSTA  
651 Pine Street, 9th Floor  
4 Martinez, California 94553  
Telephone: (925) 335-1800  
5 Facsimile: (925) 646-1078

6 Attorneys for  
Contra Costa County Acting Clerk-Recorder Deborah Cooper,  
7 Contra Costa County Counsel Sharon L. Anderson,  
Contra Costa County Board of Supervisors  
8

FILED

2020 JAN 17 P 1:35

KATE BECKER  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

BY: E. F. ...

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF CONTRA COSTA

11  
12 MICHAEL ARATA,  
RICHARD S. COLMAN

13 Petitioners,

14  
15 v.

16 DEBORAH COOPER,  
SHARON L. ANDERSON

17 Respondents;  
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20 CONTRA COSTA  
TRANSPORTATION AUTHORITY,  
CONTRA COSTA COUNTY BOARD  
21 OF SUPERVISORS

22 Real Parties in Interest.  
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Case No. N 19-2489

**NOTICE OF ENTRY OF MINUTE  
ORDER DENYING PETITION FOR  
WRIT OF MANDATE**

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**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

NOTICE IS HEREBY GIVEN that on January 6, 2020, in Department 12 of the Superior Court of California, County of Contra Costa, the Honorable Charles Treat, Judge of the above-entitled Court, entered the attached minute order denying the petition for writ of mandate. A true and correct copy of the minute order is attached as Exhibit A.

DATED: January 17, 2020

SHARON L. ANDERSON, County Counsel

By:   
Thomas L. Geiger, Assistant County Counsel  
Attorneys for Contra Costa County

SUPERIOR COURT - MARTINEZ  
COUNTY OF CONTRA COSTA  
DEPARTMENT 12

REPORTER:

HEARING DATE: 01/06/20

CLERK: J. ESPY.

---

MICHAEL ARATA

PLAINTIFF(S)

VS.

CASE NO. MSN19-2489

DEBORAH COOPER

DEFENDANT(S)

\*\*\*\*\* MINUTE ORDER \*\*\*\*\*

\*\*\*\*\*

PROCEEDINGS: SPECIAL SET HEARING ON: WRIT

Cause called for hearing before JUDGE CHARLES TREAT.

Court Reporter: TIFFANY DEUSEBIO, CSR# 9086

Clerk: S. TIGUE

MICHAEL ARATA Appears with Attorney JASON BEZIS

COUNSEL: THOMAS GEIGEL FOR RESP COOPER, ANDERSON, RPI CCCBOS present  
in Court

COUNSEL: HILARY GIBSON FOR CONTRA COSTA TRANSPORTATION AUTH present  
in Court

HEARING HELD. COUNSEL PRESENT ORAL ARGUMENT.

PETITION FOR WRIT OF MANDATE IS DENIED. RULING OF THE COURT AS STATED  
ON THE RECORD.

Date: 01/06/20

BY


  
S. TIGUE,  
Deputy Clerk

EXHIBIT A

000265

1 **PROOF OF SERVICE**

2 **Re: Michael Arata, et al. v Deborah Cooper, et al.**  
3 **Contra Costa County Superior Court Case No. N19-2489**

4 I am a resident of the State of California, over the age of eighteen years, and not a party to the  
5 within action. My business address is Office of the County Counsel, 651 Pine Street, Ninth Floor,  
6 Martinez, CA 94553-1229. On January 17, 2020, I served the following document(s) by the method  
indicated below:

7 **NOTICE OF ENTRY OF MINUTE ORDER DENYING PETITION FOR WRIT  
8 OF MANDATE**

9  By fax transmission on this date from fax number (925) 646-1078 the document(s)  
10 listed above to the fax number(s) set forth below. The transmission was completed  
11 before 5:00 p.m. and was reported complete and without error. The transmission  
12 report, which is attached to this proof of service, was properly issued by the  
transmitting fax machine.. Service by fax was made by agreement of the parties,  
confirmed in writing. The transmitting fax machine complies with Cal.R.Ct. 2.301(3).

13  By placing the document(s) listed above in a sealed envelope with postage thereon  
14 fully prepaid, in the United States mail at Martinez,  
15 below. I am readily familiar with Office of County Counsel's practice of collection  
and processing of correspondence for mailing. Under that practice, it would be  
16 deposited with the U.S. Postal Service on that same day with postage thereon fully  
prepaid in the ordinary course of business.

17  By electronically transmitting from electronic notification address  
18 sandy.tellez@cc.cccounty.us a true copy of the above-referenced document(s) to  
counsel for the parties as listed below.

19  By personally delivering the document(s) listed above to the person(s) and at the  
20 addresses listed below.

21 Jason A. Bezis, Esq.  
22 Law Offices of Jason A. Bezis  
3661-B Mosswood Drive  
Lafayette, CA 94549  
23 Bezis4Law@gmail.com

*Attorneys for Petitioners*  
Michael Arata and Richard S.Colman

24 Hilary Gibson, Esq.  
25 Nielsen Merksamer Parrinello, et al.  
2350 Kerner Boulevard, Suite 250  
26 San Rafael, CA 94901  
HGibson@nmgovlaw.com

*Attorneys for Defendant*  
Transporation Authority

27  
28 I declare under penalty of perjury, under the laws of the State of California and the United  
States of America, that the above is true and correct. Executed on January 17, 2020, at Martinez,  
California.

  
SANDY C. TELLEZ 000266