

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF NEVADA

SEP 13 2022

JASON B. GALKIN
EXECUTIVE OFFICER & CLERK
By: M. MORGAN, Deputy Clerk

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NEVADA**

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AUDREY D. PRUETT,

Petitioner,

CASE NO: CU-0000283

vs.

**AMENDED RULING ON
SUBMITTED MATTER**

GREGORY J. DIAZ, in his official capacity as
Nevada County Registrar of Voters, and
KATHERINE ELLIOTT, in her official capacity as
County Counsel for Nevada County,

Respondents.

HEIDI HALL, in her official capacity as a
supervisor for Nevada County; ED SCOFIELD, in
his official capacity as a supervisor for Nevada
County; DAN MILLER, in his official capacity as a
supervisor for Nevada County; SUE HOEK, in her
official capacity as a supervisor for Nevada County;
HARDY BULLOCK, in his official capacity as a
supervisor for Nevada County,

Real Parties in Interest.

1 Petitioner, Audrey D. Pruett, filed a petition for writ of mandate, protective and
2 injunctive orders pertaining to Measure V. The Petitioner contends that the Ballot Label,
3 Impartial Analysis and Fiscal Impact Statement related to Measure V are untrue, partial,
4 argumentative, prejudicial and or false. The Petitioner seeks a judicial determination that
5 Measure V is a Special Tax and concurrently seeks to have the Ballot Label, Impartial Analysis
6 and Fiscal Impact Statement amended.

7 The Respondents, Gregory J. Diaz, Nevada County Registrar of Voters, and Katharine
8 Elliot, County Counsel for Nevada County, along with Real Parties in interest, Heidi Hall, Ed
9 Scofield, Dan Miller, Sue Hoek and Hardy Bullock, in their capacities as Supervisors of the
10 County of Nevada, oppose Petitioner's petition and contend that Measure V, the Ballot Label,
11 the Impartial Impact Analysis and the Fiscal Impact Statement, comply with the standards of
12 the California Elections Code. Since both the Respondents and the Real Parties in Interest are
13 aligned in their opposition, the Court will refer to the Respondents and the Real Parties
14 collectively as "Respondents."

15 The Court has reviewed all written materials submitted by the Petitioner and
16 Respondents. Further, after considering the substantial oral arguments by counsel for both sides,
17 the Court rules as follows.

18 **1. The Court finds that the Petitioner's writ was filed in a timely manner.**

19 Respondents contend that Petitioner is barred from bringing this action because the
20 petition was not filed within 10 days of the filing of Resolution No. 22-439 with the County
21 Registrar of Voters. Resolution 22-439 was filed with the Registrar of Voters on August 11,
22 2022. Petitioner's petition was filed with this Court on August 29, 2022.

23 Respondents assert that Elections Code §9190(b)(1) allows a 10-calendar-day, window
24 for the commencement of a writ action. Respondents argue that since the writ petition was filed
25 on August 29, 2022, the petition was filed eight days late. (10 calendar days from August 11,
26 2022, would be August 21, 2022. August 29, 2022 is eight days after August 21, 2022.)

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1 Petitioner alleges that the 10-calendar-day window only applies to election materials
2 identified in Elections Code §§9119, 9120, 9160, 9162 and 9167 because these are the only code
3 provisions specified in Elections Code §9190(a). Respondents acknowledge that Measure V was
4 initiated pursuant to the Board of Supervisors' authority to bring a ballot measure identified in
5 Elections Code §9140. Respondents also acknowledge that Elections Code §9190(a) does not
6 reference Elections Code §9140.

7 Respondents argue that the legislature must have made a scrivener's error in omitting
8 Elections Code §9140 from Elections Code §9190(a) and that this Court should correct the
9 legislature's mistake and reject the Petitioner's writ petition.

10 This Court is mindful of the proposition that the legislature is presumed to know what it
11 is doing when it drafts statutes. While this Court cannot articulate why a ballot measure initiated
12 by a Board of Supervisors would not be subject to the same review process as a City Council,
13 this Court adheres to the proposition that the words of a statute must be literally interpreted.
14 Accordingly, since Elections Code §9190(a) does not reference Elections Code §9140, this Court
15 rejects the argument that the Petitioner's writ petition is untimely.

16 If a scrivener's error has been made, it is best for an Appellate Court or the legislature
17 to correct the alleged drafting error.

18 **2. The Court finds that Measure V is a General Tax.**

19 The language of the Ballot Label specifically states that the revenues generated by
20 Measure V can be used for general government use.¹

21 The language of the Impartial Analysis submitted by County Counsel states, "The law
22 authorizes the County to levy a general sales tax..."² Additionally, the Impartial Analysis
23 informs the public that the funds generated by Measure V can be used for "other essential
24 general governmental services."³

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27 ¹ See line 6 to the Ballot Label.

28 ² See the first sentence of paragraph 3 of the Impartial Analysis.

³ See paragraph 4 of the Impartial Analysis.

1 The language of the Fiscal Impact Statement identifies Measure V as a General
2 Transaction and Use Tax (Sales Tax).⁴ The Fiscal Impact Statement states that funds generated
3 by Measure V may be used for “General Government Use.”⁵ Lastly, the Fiscal Impact Statement
4 informs the public that the Measure V revenue will be placed in the County’s General Fund.⁶

5 While the Petitioner takes exception to some of the language used in the Ballot Label,
6 Impartial Analysis and Fiscal Impact Statement, this Court is satisfied that should Measure V
7 be adopted, the public would have been adequately informed that it was adopting a General Tax.
8 The Court finds that Measure V is designed to enact a General Tax. Accordingly, the vote
9 required for passage of Measure V is a majority of the votes cast.

10 **3. The Ballot Label, Impartial Analysis and Fiscal Impact Statement do not**
11 **contain false or misleading statements.**

12 The Court does have concerns about the adversarial language contained in the Ballot
13 Label. Those concerns will be expressed below. In this phase of the Court’s ruling, the Court
14 focuses exclusively on the allegation that the Ballot Label, the Impartial Analysis and the Fiscal
15 Impact Statement contain false and misleading statements.

16 The Ballot Label asserts that the funds generated by Measure V cannot be taken by the
17 State. The first phrase expressed in the Ballot Label states,

18 “To maintain critical County of Nevada services with **locally controlled funding**
19 **that cannot be taken by the State...**”(Emphasis added.)

20 The issue presented to this Court is the question of whether the above quoted phrase is
21 false or misleading. The burden of proof required for the issuance of the relief sought is clear
22 and convincing.⁷ The burden of proof is on the Petitioner.

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26 ⁴ See paragraph 1 of the Fiscal Impact Statement.

27 ⁵ See paragraph 1 of the Fiscal Impact Statement.

28 ⁶ See paragraph 2 of the Fiscal Impact Statement.

⁷ See Elections Code §9190(b)(2).

1 *i. The Petitioner claims that funds generated by Measure V can be taken by the State*
2 *of California and therefore the above quoted phrase is both false and misleading.*

3 This Court must now assess whether the evidence provided by the Petitioner is
4 sufficiently clear and convincing to establish the proposition that the State of California could
5 take the revenue generated by Measure V.

6 Petitioner argues, without citing to any authority, that CalPERS and other State policies
7 can effectively “take” local revenues from Nevada County.⁸ This Court is aware of no statute
8 or published case that supports the petitioner’s contention.

9 The Petitioner then asserts that in the early 1990’s the State of California diverted local
10 property tax revenues through the Educational Revenue Augmentation Fund (“ERAF”)
11 program. No authority is cited for this ERAF alleged taking and this Court cannot Judicially
12 Notice Petitioner’s alleged fact.

13 The Petitioner then refers to an alleged Legislative Analyst’s opinion published in 2015.⁹
14 A certified copy of the alleged opinion has not been supplied to the Court and this Court cannot
15 Judicially Notice the alleged opinion. Petitioner quotes from the alleged opinion. The quoted
16 Legislative Analyst’s opinion refers to a “triple flip” accounting procedure. Nothing in the
17 Petitioner’s reference to the Legislative Analyst 2015 opinion, or the quoted language pertaining
18 to the “triple flip” subject, establishes that the Respondent’s ballot materials are false or
19 misleading.

20 Lastly, the Petitioner asserts that the State of California is “supreme” to Nevada County
21 and that the Respondents cannot guarantee to voters that the State cannot take Measure V
22 revenue.¹⁰ Petitioner states, “Nevada County cannot guarantee to voters to (sic) that the State
23 ‘will not take’ revenue generated by Measure V at some point in the future.” This Court is
24 aware of no authority that supports Petitioner’s assertion that the State may take Nevada
25 County’s revenues.

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27 ⁸ See Petitioner’s Verified Application for Writ, page 19, lines 5-7.

28 ⁹ See Petitioner’s Verified Application for Writ, page 19, lines 9-19.

¹⁰ See Petitioner’s Verified Application for Writ, page 19, 20-22.

1 Petitioner engages in an improper attempt to shift the burden of proof to the
2 Respondents. Petitioner has the burden of proving by clear and convincing evidence that the
3 language of the Measure V ballot materials is false and misleading. Petitioner has failed to meet
4 her burden of proof as to the alleged false and misleading allegations.

5 *ii. Petitioner claims the Ballot Measure, Impartial Analysis and Fiscal Impact*
6 *Statement falsely represents that \$12,000,000 will be raised over ten years.*

7 Once again, the Petitioner has the burden of proving the Respondent's assertion is false.
8 Petitioner seeks to prove her point by doing "simple math." The Petitioner asserts that in 2021
9 the County of Nevada had \$1,900,200,302 of taxable sales.¹¹ The petitioner then takes 0.5% of
10 the 2021 sales transactions and concludes that only \$9,501,002 in taxes would have been
11 generated in 2021. Based upon this calculation the Petitioner concludes that the Ballot Measure,
12 Impartial Analysis and Fiscal Impact statement are false and misleading.

13 The Petitioner's methodology is flawed. The Petitioner relies only on arithmetic to prove
14 her point without considering any other economic factor. The Court notes that the United States
15 is currently experiencing historically high inflation. Evidence Code §§451(f) and 452(g), (h)
16 permit the Court to note facts of common knowledge not reasonably subject to dispute. High
17 inflation is one economic factor that can affect tax revenues. High inflation may be a factor that
18 influenced the Controller's analysis. The County Controller does not state what variables she
19 relied upon to reach her conclusion. However, the burden of proving by clear and convincing
20 evidence that the estimated tax revenue that will be generated by Measure V is false or
21 misleading lies with the Petitioner. Once again, the Petitioner fails to meet her burden.

22 **4. The Court finds that language in the Ballot Measure is argumentative.**

23 The current language contained in Measure V states,

24 "To maintain critical County of Nevada services with locally controlled
25 funding that cannot be taken by the State, such as: wildfire prevention /
26 emergency preparedness; reducing flammable brush countywide; improving
27 evacuation routes to save lives; preventing illegal campfires; helping seniors
/disabled residents maintain defensible space; enhancing emergency

28 ¹¹ See Petitioner's Verified Application for Writ, page 21, line 8.

1 communications, early warning / 911 response; and for general government
2 use; shall the County of Nevada measure establishing a 1/2¢ sales tax,
3 providing \$12,000,000 annually for ten years, with citizen oversight /audits, be
4 adopted?”

5 Petitioner proposes a modification of the Respondents’ Ballot Label on page 21, lines
6 14-18 of Petitioner’s original moving papers. The Court will examine each of the Petitioner’s
7 proposals separately.

8 **(a) “critical”**

9 The Petitioner asserts that the word “critical” is an adversarial word designed to unfairly
10 influence the public. Petitioner requests this Court strike the word “critical” from the ballot
11 measure.

12 Petitioner relies on McDonough v. Superior Court (2012) 2004 Cal.App.4th 1169 and
13 points to the Appellate Court’s examination of the word “Reform.” In McDonough the
14 Appellate Division found that a Santa Clara County ballot measure with a label, “PENSION
15 REFORM,” was designed to unfairly influence the public.

16 The Appellate Court in McDonough referenced the Oxford American Dictionary of
17 Current English and the American Heritage Dictionary to identify the meaning of “reform.” The
18 Oxford Dictionary defined “reform” using the following descriptions, “to make or become better
19 by the removal of faults and errors, to correct, or to abolish or cure (an abuse or malpractice.)”
20 The American Heritage Dictionary used the following definitions for “reform;” “To improve by
21 alteration, correction of error, or removal of defects; put into a better form or condition... To
22 abolish abuse or malpractice....To put an end to (a wrong)....A change for the better; an
23 improvement.... Correction of evils, abuses, or errors.” (McDonough, supra, at pages 1174 and
24 1175.)

25 The McDonough court concluded that the definition of the word “reform” was so value
26 laden that its use was clearly and convincingly likely to unfairly bias the public in favor of
27 adopting the measure. The court in McDonough ordered the word “reform” removed from the
28 ballot measure and the word “MODIFICATION” be used in place of “reform.”

1 This Court now uses the same process adopted by the court in McDonough. The word
2 “critical” as defined by the Cambridge Dictionary means, “of greatest importance to the way
3 things might happen.” A second definition offered by the Cambridge Dictionary is, “extremely
4 serious or dangerous.”

5 In understanding which services might be funded or maintained by the County of
6 Nevada, Measure V informs a voting member of the public that it will be the services of greatest
7 importance, or the most serious services. That is, the services would be critical services as
8 contrasted with discretionary services. To further highlight the distinction, County of Nevada
9 services providing for beautification of parks or government buildings would not be considered
10 “critical” by a lay member of the voting public who would rely upon tradition dictionaries for a
11 correct understanding of the word “critical.”

12 Elections Code §9051 does permit the County to inform the public of the purpose of the
13 measure. However, the same Elections Code limits the County is to 75 words to adequately
14 convey the reason and purpose for adopting the measure. If the County were required to
15 specifically list each critical service the list of services qualifying as critical would likely exceed
16 75 words. Given the brevity required by the Elections Code, this Court is satisfied that using
17 the word “critical” is sufficiently benign and neutral to impartially inform the public of the Board
18 of Supervisors’ intent.

19 The Petitioner’s argument does not clearly and convincingly establish that the word
20 “critical” is argumentative in the context of the language of Measure V.

21 **(b) “that cannot be taken by the State.”**

22 The Petitioner argues that the quoted language false, misleading and argumentative.

23 The language, “cannot be taken by the State,” was earlier examined in this ruling
24 regarding the subjects of “falsity” and “misleading.” However, the Petitioner also argues that
25 the phrase “cannot be taken by the State” is argumentative and/or designed to unfairly influence
26 the public.

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1 This Court concludes that if the phrase, “cannot be taken by the State” is a true statement,
2 then informing the public of that fact is a useful item for public consideration. As previously
3 noted, the Petitioner failed to establish by clear and convincing evidence that the phrase is false
4 or misleading.

5 The language the Petitioner seeks to have stricken states a fact and is absent of hyperbole.
6 Accordingly, the Petitioner has failed to meet her burden of proof and the Court declines to
7 delete the words, “cannot be taken by the State” from the ballot measure.

8 **(c) “~~reducing~~ flammable brush removal countywide.”**

9 The Petitioner contends the word “reducing” is argumentative and prejudicial because it
10 is partial.

11 The word “reducing” tells the truth. No one can seriously believe that all flammable
12 material can be removed from Nevada County. At most, reduction of flammable material is the
13 best the County can achieve. This Court finds the word “reducing” is not argumentative or
14 prejudicial.

15 **(d) “and for general government use.”**

16 The Petitioner contends that this language is false and misleading. As previously
17 discussed in this ruling, Petitioner has failed to meet her burden of proof.

18 The phrase “and for general government use,” communicates that the revenues generated
19 by Measure V may be used for any governmental purpose. It is essential that the public be
20 informed of this fact. This Court finds that removal of this language would substantially
21 misinform the public. The Court declines to strike the language requested by the Petitioner.

22 **(e) The Petitioner seeks to exchange the dollar amount of \$12,000,000 with**
23 **\$9,500,000.**

24 This subject has previously addressed in this ruling and the Court adopts its earlier
25 conclusion.

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1 **(f) “to save lives.”**

2 Petitioner contends that this phrase is argumentative.

3 Fire certainly can and does result in loss of life. However, the greatest probability of
4 death occurs when the public fails to follow the instructions of law enforcement and firefighters.
5 The highest probability of damage due to fire is loss and/or injury to real and personal property.
6 Loss of life is dramatic and emotional. Alluding to loss of life, a less likely outcome, as
7 contrasted with loss or damage to real and personal property appears more likely to play upon
8 the heart strings of the public. With respect to this one phrase in the ballot measure the language
9 does appear to be adversarial and nonneutral. Accordingly, the Court does agree to strike the
10 phrase “to save lives” from the ballot measure.

11 **(g) The “¢” symbol. Petitioner seeks to strike the ¢ symbol from the Ballot Label.**

12 The Court is persuaded that the “¢” symbol could mislead or confuse voters.

13 A reasonable voter could conclude that there would only be a ½ cent tax imposed for each
14 transaction regardless of the size of the sale or purchase. A voter might believe that only ½ cent
15 tax would be imposed on a \$1000 purchase. However, if Measure V passes, the actual tax on a
16 \$1000 purchase would be \$5.00. ($\$1,000 \times 0.5\% = \5.00)

17 Accordingly, the Court concludes that the “¢” should be stricken from the Ballot Label
18 and in its place the “%” should be used.

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The Court is persuaded that Petitioner is entitled to CCP §1021.5 attorney's fees.

SO ORDERED.


Hon. Kent M. Kellegrew
Judge of the Superior Court

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF NEVADA**

201 Church Street Nevada City, CA 95959 Phone: (530) 362-4309	ELECTRONICALLY FILED BY SUPERIOR COURT OF CALIFORNIA, COUNTY OF NEVADA 09/13/2022 JASON B. GALKIN, CLERK OF THE COURT MELISSA MORGAN, DEPUTY
In Re Nevada County Registrar of Voters	
Proof of Service	Case Number: CU0000283

I am a clerk of Superior Court of California, County of Nevada. I am a citizen of the United States. I am over the age of 18 years and not a party to the action above.

On September 13, 2022, I served **Amended Ruling on Submitted Matter, filed 9/13/2022** on the interested parties in said action, by electronic service to the addresses indicated below:

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Date: September 13, 2022

Melissa Morgan,
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