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13
14 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

15
16 LA HABRA HEIGHTS OIL WATCH, CENTER)
FOR BIOLOGICAL DIVERSITY, WILLIAM)
17 R.PHELPS, OFELIA BERMUDEZ, MICHAEL)
HUGHES, WILLIAM WELCHER,)

18 Petitioners/Plaintiffs,)

19 vs.)

20 SHAUNA CLARK, the City Clerk and City)
21 Manager of the City of La Habra Heights, and)
DOES I through V,)

22 Respondent/Defendant.)

23 and)

24 LA HABRA HEIGHTS CITY COUNCIL, BRIAN)
25 BERGMAN, Mayor of the City of La Habra)
Heights, LAYNE BAROLDI, GREG STEFFLRE,)
26 ELEE PHILLIPPS, and WILLIAM HINZ, and)
DOES VI through X.)

27 Real Parties in Interest.)
28)

Case No.:

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Cal. Elections Code §§ 9295, 13314; Cal.
Code of Civil Procedure § 1085)

**Priority over other civil matters required by
Elec. §13314(a)(3)**

1 Petitioners/Plaintiffs La Habra Heights Oil Watch, Center for Biological Diversity, William
2 R. Phelps, Ofelia Bermudez, Michael Hughes, William Welcher (“Petitioners”) hereby allege as
3 follows:

4 **I. INTRODUCTION**

5 1. Concern about the effects that new, high-intensity oil and gas production techniques
6 and the rapid expansion of oil and gas development could have in their community, led residents in
7 the City of La Habra Heights to organize to place a land use initiative on the March 2015 ballot. The
8 initiative would safeguard the community from certain oil and gas activities by banning new oil and
9 gas development, including the use of high-intensity techniques like hydraulic fracturing.

10 2. Residents gathered the required amount of signatures to place “The Healthy City
11 Initiative,” otherwise known as Measure A, on the March 2015 ballot. If passed, this initiative
12 would prohibit land use for drilling new oil and gas wells, new high-intensity petroleum operations
13 like hydraulic fracturing, and the reactivation of idle wells. The initiative would ensure that
14 operators with vested rights, including rights to use high-intensity techniques, could continue their
15 operations.

16 3. On September 29, 2014, after meeting the requirements to qualify Measure A for a
17 vote on the ballot, residents submitted the initiative to the La Habra Heights City Council (“City
18 Council”) in order to process it for placement on the March 2015 ballot.

19 4. City officials are responsible for preparing ballot language that summarizes the nature
20 of the initiative, including preparing language that sets forth the ballot “question.” The ballot
21 question is a one-sentence question setting forth the purpose of the initiative and is what the voters
22 view first when voting on the initiative. The ballot question is also referred to as the label.¹ City
23 officials must also collect arguments for and against an initiative. If the City itself submits
24 arguments, it must comply with certain Election Code procedures.

25
26 ¹ Throughout the process of preparing the language and the lawsuit brought by James Pigott, parties have referred to the
27 ballot question variously as the “ballot question,” “ballot label/title,” “ballot question/label,” etc. As a functional matter,
28 all of these items are the same here.

1 5. Voters have statutory and constitutional rights to reach a decision free of undue
2 influence. Thus, ballot materials describing an initiative put to popular vote must be “a true and
3 impartial statement of the purpose of the proposed measure in such language that the ballot title shall
4 neither be an argument, nor be likely to create prejudice, for or against the proposed measure.”
5 (Elec. Code §9203.) The language of a ballot “cannot favor a particular partisan position.” (*See*
6 *McDonough v. Superior Court* (2012) 204 Cal. App. 4th 1169, 1174.)

7 6. On November 13, 2014, the City Council adopted a ballot question that described
8 Measure A in accurate and impartial terms.

9 7. On November 21, 2014, an individual named James Pigott, represented by Latham
10 and Watkins and another firm, sued the City challenging the language used in the ballot question,
11 contending that it was not accurate and impartial.

12 8. After some councilmembers voiced concerns about the potential costs of continued
13 litigation, on December 1, 2014, the City Council voted 4 to 1 to revise the ballot question and adopt
14 the language proposed by Pigott and his attorneys.

15 9. Based on the litigation, the City Council replaced the original ballot question with the
16 exact language proposed by Pigott and his attorneys. The new ballot question contains inaccurate
17 language that will mislead voters as to the purpose and intent of Measure A. In particular, the ballot
18 question now states that the initiative will ban the use of “any” well treatment that will “enhance”
19 production, as opposed to treatments at “new” wells.

20 10. In addition, the Mayor of the City and others co-authored a ballot argument against
21 Measure A that contains some of the same false and misleading descriptions about the effect of
22 Measure A as contained in the ballot question. This submission violates the authors’ duty to submit
23 arguments free of such inaccuracies.

24 11. In light of the foregoing, Petitioners must now bring this action to ensure voters reach
25 a decision on the merits of the initiative without experiencing undue influence or misunderstanding
26 its effects, by restoring the ballot question to the accurate and impartial language originally adopted
27 by the City Council. Petitioners also seek to vindicate the rights of voters to receive ballot materials
28 that are accurate, impartial, and otherwise consistent with the requirements of the Elections Code.

1 **II. JURISDICTION AND VENUE**

2 12. This Court has jurisdiction over this action pursuant to California Elections Code
3 sections 13314 and 9295, and California Code of Civil Procedure sections 1085 and 1088, to issue a
4 peremptory writ of mandate requiring Respondent Clark to amend the ballot materials to conform
5 with the requirements of the Elections Code.

6 13. Venue is proper in this Court pursuant to Code of Civil Procedure section 393, since
7 the cause of action arose in Los Angeles County and the impacts of Respondent’s actions are felt in
8 Los Angeles County.

9 14. As required by Code of Civil Procedure section 1088 and Los Angeles County
10 Superior Court Local Rule 3.231, Petitioners have provided notice of this Petition to Respondent, by
11 serving Respondent with a copy of this Petition, concurrently with the filing of this Petition.

12 15. Petitioners have performed any and all conditions precedent to filing this instant
13 action. Petitioners have no plain, speedy, or adequate remedy at law, unless the Court grants the
14 requested writ of mandate.

15 **III. PARTIES**

16 16. Petitioner LA HABRA HEIGHTS OIL WATCH (“HOW”) is an organization
17 dedicated to protecting the public from the adverse effects of oil and gas drilling, whose members
18 are residents and registered voters of the City of La Habra Heights. The group’s members helped
19 draft and collect signatures for “The Healthy City Initiative: A Measure to Protect La Habra Heights’
20 Air, Water, and Health by Prohibiting Land Use for New Oil and Gas Development, including High-
21 Intensity Petroleum Operations and Associated Activity.” (Later labeled by the City as “Measure
22 A”.)

23 17. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-profit
24 corporation with offices in San Francisco and elsewhere in California and throughout the United
25 States. The Center is actively involved in environmental protection issues throughout California and
26 North America, and has over 50,000 members. The Center has members who are registered voters in
27 La Habra Heights, and who will be adversely affected if Measure A is defeated, and new high-
28 intensity oil and gas petroleum operations are allowed to go forward in La Habra Heights.

1 18. Petitioner WILLIAM R. PHELPS is a resident, registered voter, and taxpayer of the
2 City of La Habra Heights. He is also a member of the Center.

3 19. Petitioner OFELIA BERMUDEZ is a resident, registered voter, and taxpayer of the
4 City of La Habra Heights.

5 20. Petitioner MICHAEL HUGHES is a resident, registered voter, and taxpayer of the
6 City of La Habra Heights. He is a proponent of the Healthy City Initiative, and also a member of
7 HOW and the Center.

8 21. Petitioner WILLIAM WELCHER is a resident, registered voter, and taxpayer of the
9 City of La Habra Heights.

10 22. Respondent SHAUNA CLARK is the City Clerk and City Manager for the City of La
11 Habra Heights, and serves as the elections official in the City of La Habra Heights, responsible for
12 processing of the language of Measure A. Respondent Clark is sued in her official capacity as the
13 City Clerk.

14 23. Real Party in Interest the LA HABRA HEIGHTS CITY COUNCIL (the “City
15 Council”) serves as the legislative body for the City of La Habra Heights. The City Council has
16 called an election for March 3, 2015, in order to submit Measure A for a vote to city residents. The
17 City Council approved the initial ballot question and label for the measure, as well as the revised
18 ballot question and label.

19 24. Real Party in Interest BRIAN BERGMAN is the Mayor of the City of La Habra
20 Heights, and is the primary author of the Argument Against Measure A. He is sued in his official
21 capacity as the Mayor of the City of La Habra Heights.

22 25. Real Party in Interest LAYNE BAROLDI is a Former Mayor of the City of La Habra
23 Heights, and is an author of the Argument Against Measure A.

24 26. Real Party in Interest GREG STEFFLRE is a Planning Commissioner in the City of
25 La Habra Heights, and is an author of the Argument Against Measure A.

26 27. Real Party in Interest ELEE PHILIPPS is a Festival Chair of the City of La Habra
27 Heights, and is an author of the Argument Against Measure A.

1 28. Real Party in Interest WILLIAM HINZ is a member of the Board of Trustees of the
2 Lowell Join School District in the City of La Habra Heights, and is an author of the Argument
3 Against Measure A.

4 29. The true names and capacities, whether individual, corporate, or otherwise, of DOES
5 I through X are unknown to Petitioner. Petitioner will amend this Petition to set forth the true names
6 and capacities of said Doe parties when they have been ascertained. Petitioner alleges that each of
7 said Doe parties I through V has jurisdiction by law over one or more aspects of the processing and
8 publication of ballot materials. Petitioner alleges that each of said Does parties VI through X are
9 Real Parties in Interest.

10 IV. BACKGROUND

11 A. Overview of La Habra Heights

12 30. La Habra Heights is a community in Los Angeles County known for its open space,
13 spectacular vistas, and lush greenery. Due to this unique configuration, the community provides
14 habitat for local species, and serves as an important corridor for migrating wildlife.

15 31. California Resources Corporation, Matrix Oil, Sempra Energy/Southern California
16 Gas Company and potentially other oil and gas companies operate wells and/or own land used for oil
17 and gas development in La Habra Heights. Like other operators around the state and nation, they
18 wish to use new ways of extracting oil and gas that require large amounts of energy, including
19 hydraulic fracturing, also known as “fracking,” and acid well stimulation. Fracking, along with
20 other new forms of well stimulation, has been linked to serious health and environmental impacts,
21 including toxic air pollution emissions, increased water use during a serious drought, and
22 groundwater contamination. Other energy-intensive techniques include enhanced oil recovery such
23 as steam injection. Such techniques result in harmful air pollution and require vast amounts of water.

24 32. It is these environmental and health concerns that led community residents in the City
25 of La Habra Heights to advocate for sensible land use policies regarding oil and gas development in
26 their community.

1 **B. Key Features of the “Healthy City Initiative” – Measure A**

2 33. Upon learning of new oil and gas development involving dangerous technologies,
3 residents banded together and obtained signatures from more than ten percent of the registered voters
4 in La Habra Heights to place a land use initiative on the ballot. Measure A proposes to amend the
5 City of La Habra Heights’ General Plan and the City of La Habra Heights’ Municipal Code to
6 safeguard city residents from the effects of oil and gas drilling by prohibiting land use for new wells,
7 including new “high-intensity” operations, such as hydraulic fracturing, while leaving in place
8 existing activities.

9 34. The purpose of Measure A is to:

10 [P]rotect the City of La Habra Heights’ air, water, and health for the general welfare of the
11 City’s residents by prohibiting the use of land within the City’s jurisdiction for the purposes
12 of any new oil and gas development, such as drilling or, conducting High-Intensity
Petroleum Operations, or reactivating Idle Wells.

13 (The Healthy City Initiative, Section 1(A) at p. 1; attached as **Exhibit 1**, (emphasis added).)

14 35. The effect of Measure A will be to:

15 [A]mend the City of La Habra Heights General Plan and Municipal Code to clearly provide
16 that land use for any **new oil or gas development including High Intensity Petroleum**
17 **Operations, new oil and gas wells, and reactivation of Idle Wells**, is prohibited within
18 City Limits.

19 **This Initiative includes provisions to safeguard vested rights and constitutionally**
20 **protected property rights. Nothing in this Initiative is intended to interfere with the**
21 **operation of existing oil and gas wells**, provided the operation does not involve new High-
22 Intensity Petroleum Operations.

23 (The Healthy City Initiative, Section 1(B) at p. 1, Exh. 1.)

24 36. The proposed initiative is tailored to amend the General Plan by adding a land use
25 policy providing:

26 Land Use Element Policy 28A: prohibition on land use for **new oil and gas development**,
27 including High-Intensity Petroleum Operations, new oil and gas wells, and reactivation of
28 Idle Wells.

 In light of serious concerns related to air, water, health, and quality of life[,] no land within
the City may be used for the development, construction, installation, or use of any facility,
appurtenance, or above-ground equipment, whether temporary or permanent, to support new

1 High-Intensity Petroleum Operations, drilling new oil and gas wells or reactivation of Idle
2 Wells as of the Effective Date of the Healthy City Initiative.

3 (The Healthy City Initiative, Section 2 at pp. 4-5, Exh. 1.)(emphasis added.)

4 37. The initiative specifically exempts vested oil and gas rights, providing that it: “shall
5 not apply to any person or entity that has obtained, as of the Effective Date, a vested right pursuant
6 to State law (1) to conduct a High-Intensity Petroleum Operation, (2) to drill new oil or gas wells, or
7 (3) to reactivate Idle Wells.” (The Healthy City Initiative, Section 2 at p. 6, Exh. 1.)

8 38. It also provides that it shall not be applied against a person or entity, if such
9 application “would constitute an unconstitutional taking of property.” (The Healthy City Initiative,
10 Section 2 at p. 7; *see also*, Section 5 at pp. 14-15, Exh. 1.)

11 39. The initiative defines “High-Intensity Petroleum Operations” as: (1) “Well
12 stimulation” treatments which are “designed to enhance oil and gas production or recovery by
13 increasing the permeability of the formation,” including hydraulic fracturing and acid well
14 stimulation treatments; or (2) the operation of “Enhanced Recovery Wells,” which are those
15 “injected with water, steam, polymers, carbon dioxide, or other fluids or gases into petroleum-
16 bearing formations to recover oil and natural gas,” including waterflood injection, steamflood
17 injection, and cyclic steam injection. (The Healthy City Initiative, Section 2 at p. 5, Exh. 1.)

18 40. Activities such as “routine well cleanout work, routine well maintenance, routine
19 removal of formation damage due to drilling, bottom hole pressure surveys, or routine activities that
20 do not affect the integrity of the well or he formation,” are specifically excluded from the definition
21 of “well stimulation treatment.” (The Healthy City Initiative, Section 2 at p. 5, Exh. 1.)

22 41. These proposed changes to the City’s land use policy are also reflected in the
23 proposed alterations to the La Habra Heights Municipal Code governing land use and related
24 permitting activities. (The Healthy City Initiative, Section 3 at pp. 10-11, Exh. 1.)

25 **C. Procedural History of Measure A**

26 42. Residents submitted the petition to put the initiative on the ballot, including the text
27 of the proposed measure, to the City Council on September 29, 2014. (The Healthy City Initiative,
28 Exh. 1.)

1 49. On November 21, 2014, James Pigott, represented by attorneys from Neilsen,
2 Merksamer, Parrinello, Gross & Leoni LLP, as well as Latham & Watkins LLP, a large law firm that
3 represents large oil companies and oil and gas lobbying groups, filed a petition for writ of mandate
4 against Respondent Clark and the City Council, alleging that the ballot label adopted by the city was
5 false and misleading. (*James Pigott v. Shauna Clark, et. al*, Case No. BS 152700, Verified Petition
6 for Peremptory Writ of Mandate & Complaint For Declaratory & Injunctive Relief (“Pigott
7 Petition”), attached as **Exhibit 4.**)

8 50. Pigott objected to the ballot label on the grounds that the phrase “high-intensity
9 petroleum operations,” was false and misleading. Pigott proposed replacing the phrase “high-
10 intensity petroleum operations” with the phrase “any treatment of a well designed to enhance oil and
11 gas production or recovery.” (Pigott Petition at ¶10, Exh. 4.)

12 51. On November 30, 2014, Shute, Mihaly & Weinberger LLP, Earthjustice and the
13 Center for Biological Diversity sent a letter to the City Council stating that Pigott’s proposed
14 language was neither true nor impartial. These groups urged the City Council to retain the original
15 ballot question to maintain compliance with the Elections Code. (Letter from Heather Minner,
16 Shute, Mihaly & Weinberger LLP to City Council, City of La Habra Heights (November 20,
17 2014)(“November 30 Letter”), attached as **Exhibit 5.**) In the alternative, these groups proposed
18 alternative language that they hoped would accommodate all interested parties while complying with
19 the requirements of providing an accurate and unbiased statement of the measure. The alternative
20 language read as follows:

21 Shall an ordinance be adopted that prohibits land use for new oil and gas development,
22 including any injection treatment of oil or gas wells that are designed to increase
23 production or recovery, any new oil and gas wells, and reactivation of idle wells?

24 (*Ibid.* at p. 4, Exh. 5.)

25 52. On December 1, 2014, at 11:00 a.m., the City Council held a special meeting and
26 decided to amend the “language of the ballot label/question” for Measure A. In so doing, and
27 despite objections from the actual proponents of the measure, the City Council adopted the language
28

1 proposed by Pigott’s attorneys. (*See* Notice Regarding Special Meeting of the La Habra Heights
2 City Council, attached as **Exhibit 6**.)

3 53. The December 1 special hearing was a direct response to the Pigott lawsuit. In
4 calling the meeting, the City Manager Respondent Clark noted that “[t]he essence of the complaint is
5 the fairness of the ballot title with particular emphasis on the term ‘high-intensity petroleum
6 operations.’ The plaintiffs contend that the terminology is ‘politically loaded.’ The best way for the
7 Council to avoid the costs of this suit is to agree to amend the ballot title in a manner that would be
8 acceptable to the plaintiffs.” (*Ibid.*) The City provided very little notice of the meeting, and called
9 the meeting at a time during the work-day, making it difficult for community members to participate
10 in the hearing.

11 54. The City Attorney prepared a ballot question that mirrored the industry’s proposed
12 language:

13 Shall an ordinance be adopted that prohibits land use for any treatment of oil or gas wells
14 that is designed to enhance production or recovery, any new oil and gas wells, and
15 reactivation of idle wells?

16 (*Ibid.*).

17 55. During the December 1, 2014 City Council meeting, many residents gave oral
18 testimony, urging the City Council to reject the proposed language and preserve the original ballot
19 title. Despite this testimony, the City Council voted 4-1 to adopt the language proposed by Pigott
20 and his attorneys.

21 56. On December 1, 2014, the City Council adopted Resolution No. 2014-22, changing
22 the ballot question previously approved by the City Council. (Resolution No. 2014-22, **Exhibit 7**.)
23 While “the City maintains that the language of the [original] ballot label/question is impartial and
24 wholly consistent with the requirements of the California Elections Code,” it nevertheless voted to
25 amend the question, “in order to avoid the costs of litigating [the] dispute.” (*Ibid.*)

26 57. The amended ballot question adopted was the precise language proposed by Pigott
27 and his attorneys.
28

1 58. On the same day, December 1, 2014, as was required, proponents of Measure A filed
2 an argument in support of the measure, to be included in materials provided to voters. (Argument in
3 Favor of Measure A, attached as **Exhibit 8.**) A group of opponents of Measure A, consisting of the
4 Mayor of the City, a former mayor, the planning commissioner, festival chair, and a member of the
5 board of trustees of the Lowell Joint School District, filed an argument against the measure.
6 (Argument Against Measure A, attached as **Exhibit 8.**) This argument was not advanced by the City
7 Council, as is required by statute.

8 59. On December 11, 2014, proponents of Measure A filed rebuttal arguments in support
9 of the measure. (Rebuttal Arguments in Favor of and Against Measure A, attached as **Exhibit 9.**)
10 Opponents of Measure A also filed rebuttal arguments against the measure, and as with the primary
11 arguments against the measure, against the requirements of the statute. (*Ibid.*)

12 **V. FIRST CAUSE OF ACTION –**

13 **INACCURATE AND MISLEADING BALLOT QUESTION**

14 **(Violations of California Elections Code Sections 9203, 13314)**

15 60. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
16 in the preceding paragraphs.

17 61. Voters have statutory rights under Elections Code and constitutional rights to make
18 voting decisions free from undue influence, and to support these entitlements, ballot materials
19 provided to voters cannot be “false, misleading, or partial to one side.” (*McDonough*, 204 Cal. App.
20 4th at p. 1174.) Ballot materials cannot be affirmatively misleading. Ballot materials also cannot
21 mislead by omitting the “chief purposes and points” of a measure. Nor can ballot materials deviate
22 significantly from the materials circulated to the electorate to secure their support for the proposed
23 initiative to appear on the ballot.

24 62. Elections Code provides that the ballot form used by voters to vote in municipal
25 elections will include: a question summarizing the initiative to be voted on, and a “statement of all
26 measures submitted to the voters...abbreviated on the ballot in a ballot label” mirroring the ballot
27 title and summary prepared for the purposes of circulating the initiative to voters for signature. (*See*
28 Elec. Code § 13119, § 13247, § 303.) Petitioners are informed and believe that local elections

1 officials in many jurisdictions throughout the State of California satisfy the requirements of
2 Elections Code by drafting a single question to serve as the ballot question, title and label.

3 63. The Elections Code imposes a duty upon a city to prepare language that will be used
4 in the ballot label and question that is true and impartial, and that it “neither be an argument, nor be
5 likely to create prejudice, for or against the proposed measure.” (Elec. Code § 9203, § 13247.).

6 64. The revised ballot question adopted by the City fails to provide voters with a true and
7 impartial characterization of Measure A. The revised language adopted by the City states: “[s]hall
8 an ordinance be adopted that prohibits land use for any treatment of oil or gas wells that is designed
9 to enhance production or recovery, any new oil and gas wells, and reactivation of idle wells?”
10 (Resolution No. 2014-22, Exh. 7.)

11 65. This language misleads voters by inaccurately characterizing Measure A as
12 prohibiting land use for “**any treatment** of oil or gas wells that **designed to enhance production or**
13 **recovery.**” (*Ibid.*)(emphasis added).

14 66. Measure A specifically exempts operators with vested rights to conduct “high-
15 intensity” well treatments, and allows such operators to continue their business. (The Healthy City
16 Initiative, Section 2 at p. 6, Exh. 1.) The prohibition in Measure A on well treatments was carefully
17 tailored to prohibit such use on “new” wells only. (*Ibid.*) Therefore, it is inaccurate and misleading
18 to state that Measure A will apply to “any treatment” of oil or gas wells.

19 67. Measure A is also intended to apply to particular types of “high-intensity” well
20 treatments, and does not apply to all types of potential well treatments. It prohibits treatments that
21 increase the “permeability” of the formation, such as hydraulic fracturing, and “injection” treatments
22 such as water- and steamflooding, but does not prohibit other types of treatments. (Healthy City
23 Initiative, Section 2 at p. 5, Exh. 1.) The revised language inaccurately and improperly suggests that
24 the prohibition will apply to “any” type of well treatment.

25 68. Further, the new language articulates that routine activities such as cleanout and
26 maintenance will also be prohibited. In fact, these routine activities are specifically exempted in
27 Measure A. (*Ibid.*)

1 69. The revised language also misleads voters by using the word “enhance” to describe
2 high-impact and potentially harmful well treatments. Merriam-Webster’s Collegiate Dictionary
3 defines “enhance” as to “1: raise; 2: heighten, increase; esp. to increase or improve in value, quality,
4 desirability, or attractiveness.” The word has a positive connotation, and is applied to describe
5 “fracking” and other similar extraction techniques. The use of this word improperly influences
6 voters by portraying such activities in a positive light.

7 70. The revised language adopted by the City Council significantly deviates from the
8 ballot title and question that were circulated to voters in order to secure their signatures and support
9 for placing the initiative on the ballot, and thus risks misleading and confusing voters once Measure
10 A is submitted to a vote in March 2015.

11 71. Voters may seek a writ of mandate to review ballot materials that are “false,
12 misleading, or inconsistent” with the requirements of the code which shall be granted upon “clear
13 and convincing proof.” (Elec. Code § 9204, § 9295, Cal. Civ. Proc. § 1085). A voter may also seek
14 a writ of mandate to review an “error, omission or neglect” in violation of Elections Code or the
15 Constitution, which shall be granted upon a showing of such violation, and that “issuance of the writ
16 will not substantially interfere with the conduct of the election.” (Elec. Code § 13314, Cal. Civ.
17 Proc. § 1085). Such actions will have priority over all other civil matters.

18 72. Petitioners have met all the criteria for issuance of relief under these statutes. If the
19 inaccurate, misleading, and biased ballot language is allowed to remain in place, voters will denied
20 the right to a fair and impartial voting process, and Petitioners will suffer irreparable injury and
21 damage. Petitioners have no speedy or adequate remedy at law, unless the Court issues a writ of
22 mandate requiring Respondent to revise the offending ballot language. The issuance of the writ will
23 not substantially interfere with the conduct of the election.

24 **VI. SECOND CAUSE OF ACTION –**
25 **IMPROPER SUBMISSION OF BALLOT ARGUMENT**
26 **(Violations of California Elections Code Sections 9282, 13314)**

27 73. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
28 in the preceding paragraphs.

1 74. Where measures are placed on the ballot by petition, the relevant statute clearly
2 provides that “the persons filing an initiative petition pursuant to this article may file a written
3 argument in favor of the ordinance, and the legislative body may submit an argument against the
4 ordinance.” (Elec. Code § 9282)(hereinafter “opposition argument”).

5 75. Here, the legislative body of the City of La Habra Heights is the City Council. Its
6 powers are defined by the Elections Code and other applicable law, and it may not take actions in
7 excess of these powers. The legislative body for the City of the La Habra Heights, the City Council,
8 did not file the argument against the ordinance. Rather, a group of Measure A opponents, which
9 consist of the current mayor, a former mayor, a planning commissioner, a festival chair, and a trustee
10 of the school district, filed the argument against the ordinance. (*See* Argument Against Measure A,
11 Exh. 8.)

12 76. The opposition argument is not consistent with the requirements of the Elections
13 Code and other applicable provisions of law, since it was not submitted by the legislative body.

14 77. Further, voters will be misled into thinking that the opposing argument submission by
15 five members of the community reflects the arguments of their duly elected legislative body.

16 78. Voters may seek a writ of mandate to review ballot materials that are misleading or
17 otherwise inconsistent with the requirements of the Elections Code. (Elec. Code § 9295, § 13314,
18 Cal. Civ. Proc. § 1085).

19 79. Petitioners have met all the criteria for issuance of relief under these statutes. If the
20 false and misleading ballot argument is allowed to remain in place, misleading pamphlets and ballot
21 materials will be printed and distributed to voters, and Petitioners will suffer irreparable injury and
22 damage. Thus, Petitioners seek to have the false and misleading ballot argument stricken, and if
23 deemed appropriate by the Court, have the City Council duly approve any argument it wishes to put
24 forward related to this ballot initiative, so long as it does not substantially interfere with the conduct
25 of the election. Petitioners have no speedy or adequate remedy at law, unless the Court issues a writ
26 of mandate requiring Respondent to strike the offending ballot argument, and take further measures
27 necessary in compliance with the Elections Code. The issuance of the writ will not substantially
28 interfere with the conduct of the election.

**VII. THIRD CAUSE OF ACTION –
INACCURATE AND MISLEADING BALLOT ARGUMENT
(Violations of California Elections Code Sections 9282, 9295)**

80. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

81. Where measures are placed on the ballot by petition, “the persons filing an initiative petition pursuant to this article may file a written argument in favor of the ordinance, and the legislative body may submit an argument against the ordinance.” (Elec. Code § 9282). These “written arguments” are also subject to the requirements that they not be false or misleading, or otherwise inconsistent with the requirements of the Elections Code. (Elec. Code § 9295).

82. Here, the Argument Against Measure A provides false and misleading information from the outset. The first bullet point in the argument states: “Measure A prohibits oil production methods used in [La Habra Heights] for over 100 years with minimal community impact (drilling new wells, cleaning, and re-activation). (Argument Against Measure A at p. 1, Exh. 8.) This misleads by suggesting that Measure A prohibits all oil production methods historically used in the city, and that it would interfere with operations already underway. This is not the case, as Measure A was specifically designed to exempt operations with vested rights. (The Healthy City Initiative, Section 2 at p. 6, Exh. 1.) Furthermore, Measure A specifically exempts cleaning and maintenance activities. (*Ibid.* at p. 5, Exh. 1.)

83. The Argument Against Measure A quotes a leading oil producer in the City to falsely state, “[c]urrent operator, Oxy, states the Measure’s prohibitions would limit or end current operations that generate payments to Residents and the City.” (Argument Against Measure A at p. 1, Exh. 8.) However, Measure A does not impact current operations, and will not in fact limit or end current operations using conventional drilling and well treatment techniques. (The Healthy City Initiative, Section 2 at p. 6, Exh. 1.)

84. The Argument Against Measure A falsely states: “[p]assage of the Measure exposes [La Habra Heights] to potentially millions of dollars in liability for unconstitutional taking of property rights.” (Argument Against Measure A at p. 1, Exh. 8.) In fact, Measure A was designed

1 to not to apply in the rare instance where there would be an unconstitutional taking. (The Healthy
2 City Initiative, Section 2 at p. 7; Section 5 at pp. 14-15; Exh. 1.) It also provides a process for the
3 City Council to grant an exemption to Measure A, to prevent an unconstitutional taking of property,
4 without resorting to litigation. (*Ibid.*)

5 85. Voters may seek a writ of mandate to review ballot materials that are “false,
6 misleading, or inconsistent,” or otherwise inconsistent with the requirements of the Elections Code.
7 (Elec. Code § 9295, § 13314, Cal. Civ. Proc. § 1085).

8 86. Petitioners have met all the criteria for issuance of relief under these statutes. If the
9 false and misleading ballot argument is allowed to remain in place, misleading pamphlets and ballot
10 materials will be printed and distributed to voters, and Petitioners will suffer irreparable injury and
11 damage. Thus, Petitioners seek to have the false and misleading ballot argument stricken, and if
12 deemed appropriate by the Court, have the City Council duly approve any argument it wishes to put
13 forward related to this ballot initiative, so long as it does not substantially interfere with the conduct
14 of the election. Petitioners have no speedy or adequate remedy at law, unless the Court issues a writ
15 of mandate requiring Respondent to strike the offending ballot argument, and take further measures
16 necessary in compliance with the Elections Code. The issuance of the writ will not substantially
17 interfere with the conduct of the election.

18 **VIII. REQUEST FOR RELIEF**

19 Wherefore, Petitioners demand entry of judgment as follows:

20 1. For a Peremptory Writ of Mandate and Alternative Writ of Mandate directing
21 Respondent Clark to prepare a valid ballot question/label that accurately and impartially states the
22 nature of Measure A, prior to causing the same to be printed in the ballot pamphlet and other official
23 materials for the March 3, 2015 election. Revisions to the ballot question/label could restore the
24 language to that originally adopted by the City Council; or could be made in accordance with the
25 suggestions made in the November 30 Letter; or along other lines deemed proper by the Court;

26 2. For a Peremptory Writ of Mandate and Alternative Writ of Mandate directing
27 Respondent Clark to strike the current Argument Against Measure A, and if deemed appropriate by
28 the Court, and will not interfere with the conduct of the election, permit the City Council to submit a

1 duly approved and authorized primary argument against the measure, and permit proponents of the
2 measure to rebut such primary argument;

3 3. In the alternative, for an injunction directing Respondent Clark to take the
4 actions denoted above;

5 4. For the costs of suit;

6 5. For attorneys' fees as authorized by California Code of Civil Procedure
7 section 1021.5 and other provisions of law; and

8 6. For all other relief the Court deems just and proper.

9
10 DATED: December 12, 2014

Respectfully submitted,

EARTHJUSTICE

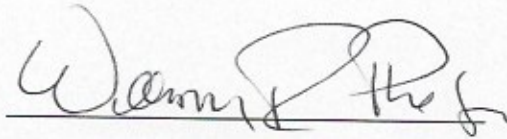
IRENE V. GUTIERREZ
Attorney for Petitioners/Plaintiffs

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2 **VERIFICATION**

3 I, William R. Phelps, hereby declare:

4 I am a member of the Center for Biological Diversity, and a registered voter, resident, and
5 taxpayer of the City of La Habra Heights, California. I have read the foregoing Petition and know
6 the contents thereof. The facts alleged in the above Petition are true to my personal knowledge and
7 belief.

8 I declare under penalty of perjury under the laws of the State of California that the above is
9 true and correct and that this verification is executed on this 12th day of December 2014 in the
10 City of La Habra Heights, California.

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