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7 CRAIG K. POWELL, GREG HATFIELD and ERIK
8 SMITT, Appearing *In Propria Persona*

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**

12 CRAIG K. POWELL, an individual; GREG
13 HATFIELD, an individual; and ERIK SMITT,
an individual,

14 Petitioners,

15 v.

16 SHIRLEY CONCOLINO, as the City Clerk of
the CITY OF SACRAMENTO

17 Respondents.

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19 CITY OF SACRAMENTO, a municipal
20 corporation; and JILL LAVINE, in her official
capacity as REGISTRAR OF VOTERS for the
COUNTY OF SACRAMENTO,

21 Real Parties In Interest.
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Case No.

**DECLARATION OF CRAIG K.
POWELL IN SUPPORT OF VERIFIED
PETITION FOR WRIT OF MANDATE**

Date:

Time:

Dept:

Judge:

Petition Filed: 08/16/12

[City of Sacramento Measure U]

23 1. I, CRAIG K. POWELL, am the President of Eye on Sacramento, a California
24 nonprofit public benefit corporation ("EOS"), which serves as a watchdog monitor of the actions
25 of local government in Sacramento County, including Respondent CITY OF SACRAMENTO.
26 EOS also provides policy recommendations to policy makers and the general public which
27 address intractable municipal problems. I concurrently serve as Vice-President of the Sacramento
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1 Taxpayers Association, which monitors local government in Sacramento County to protect the
2 interests of Sacramento taxpayers. I make this declaration of personal knowledge and if called as
3 a witness I could and would testify competently to the facts stated herein.

4 2. I was out-of-state on the evening of July 24, 2012 when the Sacramento City
5 Council took formal action to place Measure U, a proposal to increase the city's sales tax rate by
6 one-half of 1%, on the November 6, 2012 general election ballot. I learned of the Council's July
7 26th action placing Measure U on the ballot and Mayor Kevin Johnson's July 31st acceptance of
8 the City Council's assignment to write the ballot argument opposing Measure U by reading stories
9 on the subject published on SacBee.com, including a story dated August 3, 2012 by the Bee's
10 metro news reporter Ryan Lillis. That article was entitled "Mayor to write argument against
11 Sacramento sales tax hike," a copy of which is attached hereto as **Exhibit Powell-1**. Mr. Lillis'
12 story quotes the Mayor as saying at the July 31st Council meeting that he was "*totally*
13 *comfortable in being the author for the opposition argument on the sales tax measure.*"

14 3. The option of placing a sales tax hike measure on the November 2012 ballot had
15 been under active consideration by the City Council for the past few months and had been widely
16 reported in local media. At a regular Eye on Sacramento Board of Directors meeting on July 20,
17 2012, I discussed with Petitioners GREG HATFIELD and ERIK SMITT the option of us
18 individually authoring a ballot argument opposing an increase in the city sales tax if the City
19 Council took action to place such a measure on the ballot (an action it took six days later on July
20 26th). We decided to author such an argument unless the Council assigned one of their own
21 members to write the argument opposing the sales tax hike. We thought that the Council might
22 try to control the "con" argument on Measure U as it had previously announced that it would
23 assign the job of writing both the "pro" and "con" ballot statements to various councilmembers on
24 *another* city ballot measure, Measure M (a measure to create a charter review commission).

1 4. As a long-time observer of Sacramento city government, I have never before
2 observed the City Council take control of both the "pro" and "con" arguments of a city ballot
3 measure prior to this year. At a public meeting on July 12, 2012 called by Respondent
4 CONCOLINO's office to brief the public on the charter review commission ballot measure, long-
5 time Assistant City Clerk Stephanie Mizuno stated that the Council had selected members of the
6 Council to write both the "pro" and "con" side of the charter review commission ballot measure
7 (Measure M). When I asked Ms. Mizuno to comment on the Council's unusual action of
8 commandeering both the "pro" and "con" arguments on the charter commission measure, Ms.
9 Mizuno said that is was a highly unusual action and, to her knowledge, had never previously
10 occurred in Sacramento city government.

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12 5. At that same July 12, 2012 public meeting, Ms. Mizuno explained that the
13 California Elections Code (Section 9287) provided that, if the City Council assigned the job of
14 writing a ballot argument to one or more councilmembers, the argument authored by those
15 councilmembers would be the one selected for inclusion in the ballot pamphlet, regardless of
16 whether members of the public submitted ballot arguments advocating the same position.

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18 6. Ms. Mizuno thereafter submitted to the City Council a staff report, a copy of
19 which is attached hereto as **Exhibit Powell-2**, in advance of the Council's July 31, 2012 meeting.
20 Ms. Mizuno's report advised the Council of its authority to designate councilmembers to write
21 ballot statements on city ballot measures. Page 2 of Ms. Mizuno's staff report summarizes, under
22 the heading "Rationale for Recommendation," the impact of Elections Code Section 9287:

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24 *If more than one argument for or against any approved measure is filed with the City*
25 *Clerk, and the City Council has selected and authorized argument authors by resolution,*
26 *the City Clerk would be required to select the City Council's argument [EC Sec. 9287's*
27 *impact is more fully described on page 3 of her report].*

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1 7. Following my return to Sacramento on August 2nd, I spoke again with Petitioners
2 GREG HATFIELD and ERIK SMITT regarding Measure U. We each agreed that it would be
3 futile to submit such an argument since the City Council had assigned and the Mayor had
4 accepted the responsibility for authoring an argument against the Measure at the July 31st
5 Council meeting. We discussed how Elections Code Section 9287 mandated that the Mayor's
6 "con" argument would be selected by Respondent CONCOLINO for inclusion in the ballot
7 pamphlet and that it would be an utter waste of our time to prepare and submit an opposition
8 argument of our own. I never considered for a single moment that Mayor Johnson, the highest
9 elected official in the city, would fail to discharge a relatively simple official responsibility
10 formally assigned to him by the City Council, one which he had publicly and enthusiastically
11 accepted, as well as one which had received significant local media coverage.

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13 8. I learned very late in the evening of Wednesday, August 8th that the Mayor had
14 failed to timely file his argument opposing Measure U with Respondent CONCOLINO's office by
15 the deadline she had established, which she had set for 4:30 p.m. that afternoon. The next day,
16 August 9th, I placed a telephone call to Robert Graswich, a long-time aide to Mayor Kevin
17 Johnson, to discuss the problem of the mayor's failure to timely file the ballot argument against
18 Measure U. I had been contacted via e-mail earlier that day by Ms. Cecily Hastings who
19 reported to me that she had been approached a few days earlier by Mr. Graswich, on the Mayor's
20 behalf, who had asked her to sign the Mayor's argument opposing Measure U. She reported to
21 me that she had, in fact, signed the Mayor's argument and had assumed - mistakenly - that it had
22 been timely filed with Respondent CONCOLINO by the Mayor's staff. She e-mailed to me a
23 copy of the Mayor's ballot argument that she had signed, a copy of which is attached hereto as
24 **Exhibit Powell-3.**

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1 9. In our telephone conversation, Mr. Graswich was apologetic about missing the
2 deadline. He told me that once he had realized that he had mixed up the deadline date, he had
3 called Respondent CONCOLINO at 5:05 p.m. the day of the deadline and asked her if he could
4 file the Mayor's argument opposing Measure U even though it was 35 minutes passed the City
5 Clerk's deadline. He told me that she refused to accept it. Mr. Graswich complained to me that
6 the City Clerk was being unfairly strict with her deadline. I asked him if he had attempted to file
7 the ballot argument that day (Thursday, August 9th, the day after the deadline). He replied that
8 he had not. I thereupon urged him to immediately file the Mayor's ballot argument even though it
9 was a day late. He subsequently confirmed to me via telephone that he filed it later that day,
10 August 9th.

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12 10. In my phone conversation with Mr. Graswich, I asked him if he or anyone in the
13 Mayor's office had sought legal counsel to assist them in the matter. He said they had not. I
14 suggested that he immediately call Jeffrey Dorso, a long-time legal advisor to the Mayor, and ask
15 him for immediate assistance. He had not spoken to Mr. Dorso, but he said the City Clerk had
16 told him that the Mayor had 10 days to file a lawsuit on the issue. I again urged him to call Mr.
17 Dorso and call me back as soon as he had spoken to him. I received no further calls from Mr.
18 Graswich.

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20 11. On August 9th, the Sacramento Bee posted a news story written by metro reporter
21 Ryan Lillis entitled "Mayor Johnson Fails to Write Argument Against Tax Measure," a copy of
22 which is attached hereto as **Exhibit Powell-4**. The Bee article generated a huge number of posted
23 comments, 138 as of August 13th. Of those comments, over 60% expressed clear disdain, distrust
24 or cynicism of city government, the City Council and/or the Mayor. Twenty-two commentators
25 expressed their suspicion that the Mayor's failure to timely file a ballot argument against Measure
26 U was intentional, a sampling of which are included in Exhibit Powell-4.
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1 12. On Friday, August 10th, I spoke with Assistant City Clerk Stephanie Mizuno by
2 telephone. We discussed the August 8th deadline for submission of ballot arguments and the
3 Mayor's failure to file the argument he had agreed to file. I told Ms. Mizuno that while state law
4 granted Respondent CONCOLINO the authority to establish deadlines for the filing of ballot
5 arguments (EC Sec. 9502), there was no provision of state law which disempowered her or
6 prohibited her from granting a brief extension of time to file ballot arguments against Measure U
7 in these highly unusual and irregular circumstances (to wit, the City Council's and the Mayor's
8 failure to keep its commitment to file an opposing argument to Measure U). I stated that EC Sec.
9 9502's grant of authority to the City Clerk to set a deadline for ballot arguments carried with it the
10 implicit authority to grant extensions to such deadlines in the absence of any contrary provision of
11 state law. I argued that a brief extension would not compromise the government's schedule for
12 compiling and printing sample ballots and that if her office did not grant an extension,
13 Sacramento voters would be unjustly cheated out of their basic, democratic right to view both
14 supporting and opposing arguments to Measure U due to the failures of city government officials.
15 She claimed that her office did not have the legal authority to grant a brief extension and would
16 not do so unless to do so ordered by a court.

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19 13. To help determine whether the extension of a brief extension of time to file the
20 Proffered Argument and a rebuttal argument to Measure U would impair Respondent
21 CONCOLINO's or Real Party in Interest JILL LAVINE's ability to timely prepare and print ballot
22 materials, I conducted on August 11, 2012 a random internet survey, using the Google search
23 engine, of California cities who have local ballot measures appearing on the November 6, 2012
24 ballot. Initiating a Google search using the search words "California Elections Code Deadline for
25 Ballot Arguments," I selected nine California cities at random for examination to determine the
26 final deadlines established by the election officials in those cities for the submission of final
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1 rebuttal arguments concerning local ballot measures. In consultation with Real Party in Interest
2 JILL LAVINE, Sacramento County's Registrar of Voters, Respondent CONCOLINO established
3 August 15th as the deadline for submittal of rebuttal arguments on the three local ballot measures
4 that will appear on the November 6th ballot. The results of my survey of other California cities is
5 set forth below:

<u>California City</u>	<u>Deadline for Submission of Rebuttal Arguments</u>
San Francisco	August 16
Dunsmuir	August 16
Santa Monica	August 17
San Jose	August 21st
Los Angeles	August 23rd
El Paso Robles	August 23rd
Berkeley	August 24th
Indian Wells	August 30th
Santa Rosa	August 30th

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14 The rebuttal argument deadline set by Respondent CONCOLINO is the *earliest* of all nine
15 California cities surveyed. The *median* deadline date of the nine cities is August 23rd, eight days
16 beyond the rebuttal deadline date set by Respondent CONCOLINO. Respondents believe that a
17 brief extension of time to file primary ballot arguments and rebuttal arguments against Measure B
18 will not impair Respondent's and Real Party in Interest JILL LAVINE's ability to timely produce
19 and print ballot materials for the November 6, 2012 election.

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21 14. Based on my three decades of political experience in Sacramento, including a four-
22 year stint as Chair of the Sacramento County Republican Party, I am very much aware that
23 proponents of Sacramento ballot measures that increase city taxes historically outspend those who
24 oppose such tax hikes by a margin of at least four-to-one and often ten-to-one. It is very easy for
25 proponents of city tax increases to raise funds from special interests who financially benefit from
26 increased city government spending, such as well-funded public employees unions. This huge
27 financial advantage allows proponents of higher city taxes to very effectively drown out the
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1 voices of those who oppose city tax hikes, depriving voters of anything close to a balanced
2 presentation of views. As a consequence, the only real opportunity voters have of seeing and
3 considering arguments that both support and oppose a city tax hike measure is by reading their
4 sample ballot. The inclusion of a ballot argument opposing Measure U in the sample ballot is
5 absolutely essential if Sacramento voters are to have any realistic chance of making an informed,
6 balanced decision on Measure U in the November election.
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8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed in Sacramento, California on August 16, 2012.

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13 CRAIG K. POWELL

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