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7 Attorney for Plaintiffs

8 JEREMY COLTHARP and EDITH FRAZIER

9 IN THE UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 JEREMY COLTHARP, an
12 individual,

13 EDITH FRAZIER, an individual,

14 *Plaintiffs;*

15 vs.

16 LARRY HERRERA, in only his
17 official capacity as City Clerk for the
18 City of Long Beach, and DOES 1-5;

Defendants.

CASE NO.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

FEDERAL JURISDICTION INVOKED
PURSUANT TO 28 U.S.C. §1331,
§1983, AND §1367

19 **INTRODUCTION**

20 1. Plaintiffs Jeremy Coltharp and Edith Frazier bring this as-applied
21 constitutional challenge to defend and vindicate every voter's fundamental right to
22 express his or her political beliefs regarding proposed ballot measures.

23 2. Plaintiffs ask the Court to declare that California Elections Code §105
24 is *unconstitutional*, for that statute forced Defendant Herrera not to count the
25 lawfully executed signatures of Ms. Frazier and other City of Long Beach voters
26 who changed their voter-registration address *after* they signed Mr. Coltharp's
27 proposed ballot measure (the "Ballot Measure").

28 3. Furthermore, Defendant Herrera refused to count the lawfully executed

1 signatures of other voters who had signed the Petition, in violation of federal and
2 state law.

3 4. As a result, Defendant Herrera refused to count **97 percent** of the
4 43,159 signatures collected by Mr. Coltharp. In so doing, Defendant Herrera
5 blocked the Ballot Measure from qualifying for a *special*¹ election.

6 5. Plaintiffs ask that Defendant Herrera be ordered to *count all 43,159*
7 *signatures* that were lawfully executed by voters who supported the Ballot
8 Measure. In this manner, Defendant Herrera will properly determine whether Mr.
9 Coltharp submitted the required number of signatures to qualify the Ballot Measure
10 for a special election.

11 6. Alternatively, Plaintiffs ask that Defendant Herrera be ordered to place
12 the Ballot Measure on the City of Long Beach's next regularly scheduled election
13 (April 8, 2014) – because it is *undisputed* that Mr. Coltharp has submitted the
14 required number of signatures to qualify the Ballot Measure for that election.

15 THE PARTIES

16 7. Plaintiffs Jeremy Coltharp and Edith Frazier live in, and are registered
17 to vote in, the City of Long Beach (the "City"). Mr. Coltharp proposed the ballot
18 measure at issue, and both he and Ms. Frazier signed a petition in support of that
19 ballot measure.

20 8. Defendant Larry Herrera, in his official capacity as City Clerk, serves
21 as the City's chief elections officer; and administers and enforces the Elections
22 Code with respect to the City's elections.²

23
24 ¹ If held as a *standalone* election, a special election called for a ballot measure must be held
25 within 88 to 103 days after the election has been ordered; if held as a *consolidated* election, that
26 election may be held within 180 days after the election has been ordered. See Elections Code
27 §§1405(a) & (a)(1).

28 ² Plaintiffs do not know the true names and capacities of Defendants DOES 1 through 5,
and therefore sue those Defendants by fictitious names. Based on his information and belief,
Plaintiffs allege that each of the fictitiously named Defendants is in some manner responsible for
the actions described in this Complaint. When the true identities and capacities of those
fictitiously named Defendants are determined, Plaintiffs will seek leave to amend this Complaint
to insert those identities and capacities.

1 the ballot measure qualifies for a special or regularly scheduled election.

2 14. If, however, the number of valid signatures within that sample totals to
3 at least **110 percent** of the prorated number of signatures required to qualify for a
4 special or regularly scheduled election, then the elections official *must* certify that
5 the ballot measure has qualified for either a special election (at least 15 percent of
6 voter signatures required) or the City's next regularly scheduled election (at least 10
7 percent of voter signatures required).⁶

8 15. Under state law, the City Council has the power to call a special
9 election for *any* proposed ballot measure that receives at least 10 percent voter
10 support.⁷

11 16. After a proposed ballot measure has been given an official title and
12 summary, the proponent of that ballot measure must collect the required number of
13 voter signatures within **180 days**.⁸

14 17. Under Elections Code §100, every voter who is registered to vote in
15 the City has the right to sign any proposed ballot measure.

16 18. However, under Elections Code §105, election officials *are banned*
17 *from counting* the signature of any voter whose address listed on a proposed ballot
18 measure does not match the address listed for that voter in the official voter
19 database – even if that voter had moved and re-registered to vote *after* signing the
20 proposed ballot measure.

21 19. In contrast, if a voter moves *after* her vote-by-mail ballot has been
22 *received* by election officials, her vote *will be counted* under California law.⁹

23 20. Moreover, under federal law, if a voter moves within 30 days of a
24 Presidential election, she can vote using her *old* address, either by vote-by-mail or
25 in person – even if she has moved *out of state*.¹⁰

26 ⁶ Elections Code §9115, §9214 & §9215.

27 ⁷ Elections Code §9215(b).

28 ⁸ Elections Code §9208.

⁹ Elections Code §3019.

¹⁰ National Voter Registration Act of 1993, *codified at* 42 U.S.C. § 1973aa-1(e)

1 Defendant Herrera chose to examine only a *3 percent sample* (i.e., 1,295 signatures)
2 of those signatures.

3 29. Based on the statutory formula set forth above,¹⁵ Defendant Herrera
4 stated that if at least 1,107 of the 1,295 signatures¹⁶ were deemed valid, the Ballot
5 Measure would qualify outright for a *special* election.

6 30. Based on the statutory formula set forth above,¹⁷ Defendant Herrera
7 stated that if between 957 and 1,106 of the 1,295 signatures¹⁸ were deemed valid,
8 he would be legally required to examine the remaining 41,864 (97 percent)
9 signatures submitted by Mr. Coltharp. In so doing, he would determine whether the
10 Ballot had received the support of at least 15 percent of the City's voters, and thus
11 qualified for a *special* election.

12 31. Based on the statutory formula set forth above,¹⁹ if at least 738 of the
13 1,295 signatures²⁰ were deemed valid, the City would be legally required to place
14 the Ballot Measure on the ballot no later than the next regularly scheduled election
15 (April 8, 2014).

16 *Results of the City Clerk's Examination of 3 Percent Sample*

17 32. After examining 1,295 of the 43,159 voter signatures, Defendant
18 Herrera told Mr. Coltharp that his Ballot Measure did not qualify for a special

19
20 ¹⁵ See ¶¶11-14 *supra*; Defendant Herrera's Signature Verification Calculations for the
Petition, *attached as* Exh. 4.

21 ¹⁶ I.e., 110 percent of the prorated amount of signatures required to qualify for a special
election. Here, the 1,295-signature sample was multiplied by the proration factor of 0.7771959
[i.e., 33,543 (15 percent of the City's 223,617 voters) divided by 43,159 (the total number of
22 signatures submitted by Mr. Coltharp)], then multiplied by 1.1 (i.e., 110 percent).

23 ¹⁷ See *supra* note 15.

24 ¹⁸ I.e., between 95 to 110 percent of the prorated amount of 33,543 signatures (i.e., 15
percent of the City's 223,617 voters) required to qualify for a special election. Here, the 1,295-
signature sample was multiplied by the proration factor of 0.7771959 [i.e., 33,543 (15 percent of
25 the City's voters) divided by 43,159 (the total number of signatures submitted by Mr. Coltharp)],
then multiplied by 0.95 (i.e., 95 percent).

26 ¹⁹ See *supra* note 15.

27 ²⁰ I.e., 110 percent of the prorated amount of 22,362 signatures (i.e., 10 percent of the City's
223,617 voters) to qualify for a regularly scheduled election. Here, the 1,295-signature sample
was multiplied by the proration factor of 0.5181306 [i.e., 22,362 (10 percent of the City's 223,617
28 voters) divided by 43,159 (the total number of signatures submitted by Mr. Coltharp)], then
multiplied by 1.1 (i.e., 110 percent).

1 election.

2 33. Specifically, Defendant Herrera deemed **939** of the 1,295 voter
3 signatures to be valid. Thus, according to Defendant Herrera, the Petition fell 18
4 signatures short of the **957** voter signatures necessary to trigger a full, 100 percent
5 examination of all 43,159 signatures.²¹

6 34. Significantly, it is *undisputed* that Mr. Coltharp submitted the number
7 of signatures required to qualify for the City's next *regularly scheduled* election
8 (April 8, 2014). To qualify for a regularly scheduled election, Mr. Coltharp was
9 required to submit 738 valid signatures. According to Defendant Herrera, Mr.
10 Coltharp submitted 939 valid signatures – an *excess* of 201 signatures.

11 35. To date, Defendant Herrera has refused to certify to the City Council
12 that the Ballot Measure would qualify for the City's April 8, 2014 regularly
13 scheduled election.

14 *The City Clerk's Errors*

15 36. Defendant Herrera challenged 356 signatures from the 1,295-signature
16 sample.²²

17 37. After Defendant Herrera notified Mr. Coltharp that the Ballot Measure
18 did not qualify for a special election, Mr. Coltharp carefully examined the 356
19 signatures that had been challenged by Defendant Herrera. Toward this end, Mr.
20 Coltharp made repeated visits to the City Clerk's office in Long Beach, as well as
21 the Los Angeles County Registrar's office in Norwalk.

22 38. Of those 356 signatures, Defendant Herrera unlawfully did not count
23 the signatures of at least **18** voters.²³

24 39. Of those 18 voters, 5 voters were not counted because they allegedly

25 _____
26 ²¹ Defendant Herrera's Signature Verification Calculations for the Petition, *attached as* Exh.

27 ²² Defendant Herrera's Mar. 7, 2013 Petition Statistics, *attached as* Exh. 5, at 2.

28 ²³ To honor the confidentiality of voter-registration files, Plaintiffs will identify the voters only by name and Petition signature number (*see* notes 25 through 28 *infra*). Should the Court require their actual addresses, Plaintiffs will provide them under seal.

1 had unproven voter-registration status. Their signatures were not counted due to
2 what Defendant Herrera called “Fatal Pending” errors.²⁴

3 40. Subsequently, Mr. Coltharp discovered errors that had prompted
4 Defendant Herrera not to count the signatures of those 5 voters. In response to Mr.
5 Coltharp’s inquiries, the Los Angeles County Registrar’s office *corrected two of*
6 *those errors.*²⁵ Moreover, the signatures of three other voters should also have been
7 counted, but were not counted due to errors made by Defendant Herrera.²⁶

8 41. Accordingly, the signatures of all 5 voters mentioned above *should*
9 *have been counted.*

10 42. An additional 11 voters changed their voter-registration address *after*
11 they had signed Mr. Coltharp’s Petition. Those voters continue to live within the
12 City, but now reside at a different address.

13 43. Thus, those 11 voters (including Plaintiff Edith Frazier) had the right
14 to sign the Petition under Elections Code §100. However, Defendant Herrera did
15 not count their signatures, on account of Elections Code §105 – which bans a
16 voter’s signature from being counted if her address listed on the Petition did not
17 match her address listed on the voter-registration database. Thus, the signatures of
18 those 11 voters were classified under the category of “Different Address”).²⁷

19 44. Finally, the signatures of 2 voters were erroneously not counted (they
20

21 ²⁴ *Id.* at 2.

22 ²⁵ The Los Angeles County Registrar had entered incorrect addresses for Claydale Bird
(Petition signature no. 38559) and Raul Nunez (Petition signature no. 40752), but corrected those
addresses after examining Mr. Coltharp’s inquiries.

23 ²⁶ Those three voters were Albert Jones (Petition signature no. 22183 – the address listed on
the voter-registration database was misread by Defendant Herrera); Clarke Dviche (Petition
signature no. 9 – name was misspelled by Defendant Herrera); and Bart Verner (Petition signature
no. 10842 – Defendant Herrera erroneously stated that his address was not located within the
City, when it in fact was located with the City).

24 ²⁷ *Id.* at 2. The 11 Long Beach voters are Edith Frazier (Petition signature no. 43110),
25 Lamar Wormsley (Petition signature no. 3865), Georgina Hill (Petition signature no. 6546),
26 Martin Thelonious (Petition signature no. 10110), Marivica Shyman (Petition signature no.
15637), Harvey Hunt (Petition signature no. 17866), Andrew Orlando (Petition signature no.
27 19609), Silvia Sandoval (Petition signature no. 28740), Everett Carmody (Petition signature no.
32955), Awet Teame (Petition signature no. 34141), and Margaret Olszewski (Petition signature
28 no. 42591).

1 were misclassified under the category of “Different Address”), because Defendant
2 Herrera had looked up the voter registration of the *wrong names*.²⁸

3 *Plaintiffs’ Rejected Offer of Compromise*

4 45. As shown earlier, it is undisputed that Mr. Coltharp submitted
5 sufficient signatures in order to qualify his Ballot Measure for the City’s next
6 regularly scheduled election.

7 46. During phone conversations on April 8 and 10, 2013 and in an April
8 18, 2013 letter,²⁹ Plaintiffs offered to waive their potential right to a special
9 election, if the City Clerk agreed to place the Ballot Measure on the April 8, 2014
10 City election (i.e., the next regularly scheduled City election). By not holding a
11 special election, the City taxpayers will save nearly **\$1.5 million**.

12 47. Regrettably, the City Clerk did not agree to Plaintiffs’ proposed
13 compromise. On April 8 and 10, 2013, Plaintiffs told Defendant Herrera, through
14 his counsel (the City Attorney’s office), that they would file a lawsuit against him
15 in order to vindicate their fundamental rights. Plaintiffs further indicated that their
16 lawsuit would seek reasonable costs and attorney’s fees from the City to the fullest
17 extent allowable by law.

18 **FIRST CLAIM FOR RELIEF (Voters Who Moved Within the City)**

19 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

20 (Amendments I & XIV and 42 U.S.C. § 1983)

21 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

22 48. The allegations of paragraphs 1 through 47 are hereby incorporated by
23 reference.

24 49. The conduct of Defendant Herrera violated Plaintiffs’ fundamental

25 ²⁸ Instead of examining the voter registration of Milton Snell (Petition signature no. 4651),
26 Defendant Herrera mistakenly examined the registration of Matt Suey (who is registered to vote
27 at a different address). Furthermore, Defendant Herrera erroneously did not locate the correct
address for Valerie Gallaher Hall (Petition signature no. 10101), because he had looked under the
surname of “Hall”, not “Gallaher Hall”.

28 ²⁹ Attached as Exh. 6.

1 right to support and place a ballot measure on the City ballot, for he refused to
2 count the signatures of voters who re-registered their voter-registration address
3 *after* they had signed Mr. Coltharp's Petition. That fundamental right is protected
4 under the United States Constitution (Amendments I & XIV) and 42 U.S.C. §1983.

5 50. Plaintiffs suffered irreparable harm, because Defendant Herrera
6 unlawfully banned them from supporting and placing a ballot measure on the City
7 ballot. At the same time, Defendant Herrera illegally spent public funds to block
8 the Ballot Initiative from appearing on the City ballot. Consequently, Plaintiffs are
9 entitled to declaratory and permanent injunctive relief to restrain Defendant Herrera
10 from implementing Elections Code §105 with respect to the Ballot Initiative and
11 other proposed ballot measures.

12 51. An actual controversy now exists between Plaintiffs and Defendant
13 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
14 States Constitution (Amendments I & XIV) and 42 U.S.C. §1983. The parties
15 therefore need a declaration from the Court regarding whether Defendant Herrera's
16 actions, as alleged in this Complaint, violated the United States Constitution
17 (Amendments I & XIV) and 42 U.S.C. §1983.

18 **SECOND CLAIM FOR RELIEF (Voters Who Moved Within the City)**

19 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

20 (Due Process Clause, Amendment XIV, and 42 U.S.C. § 1983)

21 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

22 52. The allegations of paragraphs 1 through 47 are hereby incorporated by
23 reference.

24 53. The conduct of Defendant Herrera violated Plaintiffs' fundamental
25 right to support and place a ballot measure on the City ballot, for he refused to
26 count the signatures of voters who re-registered their voter-registration address
27 *after* they had signed Mr. Coltharp's Petition. That fundamental right is protected
28 under the United States Constitution's Due Process Clause (Amendment XIV) and

1 42 U.S.C. §1983.

2 54. Plaintiffs suffered irreparable harm, because Defendant Herrera
3 unlawfully banned them from supporting and placing a ballot measure on the City
4 ballot. At the same time, Defendant Herrera illegally spent public funds to block
5 the Ballot Initiative from appearing on the City ballot. Consequently, Plaintiffs are
6 entitled to declaratory and permanent injunctive relief to restrain Defendant Herrera
7 from implementing Elections Code §105 with respect to the Ballot Initiative and
8 other proposed ballot measures.

9 55. An actual controversy now exists between Plaintiffs and Defendant
10 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
11 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.
12 The parties therefore need a declaration from the Court regarding whether
13 Defendant Herrera's actions, as alleged in this Complaint, violated the United
14 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

15 **THIRD CLAIM FOR RELIEF (Refusal to Count Lawfully Executed Voter**
16 **Signatures)**

17 *As-Applied Violation of California Law (Supplemental Claim)*

18 (California Constitution art. ii §1 & Elections Code §100)

19 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

20 56. The allegations of paragraphs 1 through 47 are hereby incorporated by
21 reference.

22 57. The conduct of Defendant Herrera violated Plaintiffs' right to support
23 and place a ballot measure on the City ballot. Namely, he refused to count lawfully
24 executed voter signatures supporting the Petition, in violation of California
25 Constitution art. ii §1 and Elections Code §100.

26 58. Plaintiffs suffered irreparable harm, because by disqualifying those
27 lawfully executed voter signatures, Defendant Herrera unlawfully banned them
28 from supporting and placing a ballot measure on the City's ballot. At the same

1 time, Defendant Herrera illegally spent public funds to disqualify those voter
2 signatures. Consequently, Plaintiffs are entitled to declaratory and permanent
3 injunctive relief to restrain Defendant Herrera from further violating Elections Code
4 §100 with respect to the Ballot Initiative and other proposed ballot measures.

5 59. An actual controversy now exists between Plaintiffs and Defendant
6 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under California
7 Constitution art. ii §1 and Elections Code §100. The parties therefore need a
8 declaration from the Court regarding whether Defendant Herrera's actions, as
9 alleged in this Complaint, violated California Constitution art. ii §1 and Elections
10 Code §100.

11 **FOURTH CLAIM FOR RELIEF (Refusal to Count Lawfully Executed Voter**
12 **Signatures)**

13 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

14 (Due Process Clause, Amendment XIV, and 42 U.S.C. § 1983)

15 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

16 60. The allegations of paragraphs 1 through 47 are hereby incorporated by
17 reference.

18 61. The conduct of Defendant Herrera violated Plaintiffs' fundamental
19 right to support and place a ballot measure on the City ballot, for he refused to
20 count voter signatures that were lawfully executed in support of the Ballot Measure.
21 That fundamental right is protected under the United States Constitution's Due
22 Process Clause (Amendment XIV) and 42 U.S.C. §1983.

23 62. Plaintiffs suffered irreparable harm, because by disqualifying those
24 lawfully executed voter signatures, Defendant Herrera Defendant Herrera
25 unlawfully banned them from supporting and placing a ballot measure on the City's
26 ballot. At the same time, Defendant Herrera illegally spent public funds to
27 disqualify those voter signatures. Consequently, Plaintiffs are entitled to
28 declaratory and permanent injunctive relief to restrain Defendant Herrera from

1 further violating the United States Constitution's Due Process Clause (Amendment
2 XIV) and 42 U.S.C. §1983 with respect to the Ballot Initiative and other proposed
3 ballot measures.

4 63. An actual controversy now exists between Plaintiffs and Defendant
5 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
6 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.
7 The parties therefore need a declaration from the Court regarding whether
8 Defendant Herrera's actions, as alleged in this Complaint, violated the United
9 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

10 **FIFTH CLAIM FOR RELIEF (Refusal to Place Ballot Measure on the Ballot)**

11 *As-Applied Violation of California Law (Supplemental Claim)*

12 (California Constitution art. ii §1 & Elections Code §9215)

13 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

14 64. The allegations of paragraphs 1 through 47 are hereby incorporated by
15 reference.

16 65. Alternatively, the conduct of Defendant Herrera violated Plaintiffs'
17 right to support and place a ballot measure on the City ballot. Namely, he refused
18 to place the Ballot Measure on the City's next regularly scheduled election (April 8,
19 2014), in violation of California Constitution art. ii §1 and Elections Code §9215.

20 66. Plaintiffs suffered irreparable harm, because Defendant Herrera
21 unlawfully banned them from supporting and placing a ballot measure on the City's
22 April 8, 2014 ballot. At the same time, Defendant Herrera illegally spent public
23 funds to block the Ballot Initiative from appearing on the City's April 8, 2014
24 ballot. Consequently, Plaintiffs are entitled to declaratory and permanent injunctive
25 relief to order Defendant Herrera to comply with California Constitution art. ii §1
26 and Elections Code §9215 with respect to the Ballot Initiative and other proposed
27 ballot measures.

28 67. An actual controversy now exists between Plaintiffs and Defendant

1 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under California
2 Constitution art. ii §1 and Elections Code §9215. The parties therefore need a
3 declaration from the Court regarding whether Defendant Herrera's actions, as
4 alleged in this Complaint, violated California Constitution art. ii §1 and Elections
5 Code §9215.

6 **SIXTH CLAIM FOR RELIEF (Refusal to Place Ballot Measure on the Ballot)**

7 *As-Applied Violation of the United States Constitution and 42 U.S.C. §1983*

8 (Due Process Clause, Amendment XIV, and 42 U.S.C. § 1983)

9 By Plaintiffs Coltharp and Frazier Against Defendant Herrera

10 68. The allegations of paragraphs 1 through 47 are hereby incorporated by
11 reference.

12 69. Alternatively, the conduct of Defendant Herrera violated Plaintiffs'
13 fundamental right to support and place a ballot measure on the City ballot. Namely,
14 he refused to place the Ballot Measure on the City's next regularly scheduled
15 election (April 8, 2014). That fundamental right is protected under the United
16 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

17 70. Plaintiffs suffered irreparable harm, because Defendant Herrera
18 unlawfully banned them from supporting and placing a ballot measure on the City's
19 April 8, 2014 ballot. At the same time, Defendant Herrera illegally spent public
20 funds to block the Ballot Initiative from appearing on the City's April 8, 2014
21 ballot. Consequently, Plaintiffs are entitled to declaratory and permanent injunctive
22 relief to restrain Defendant Herrera from further violating the United States
23 Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

24 71. An actual controversy now exists between Plaintiffs and Defendant
25 Herrera as to whether Defendant Herrera violated Plaintiffs' rights under the United
26 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.
27 The parties therefore need a declaration from the Court regarding whether
28 Defendant Herrera's actions, as alleged in this Complaint, violated the United

1 States Constitution's Due Process Clause (Amendment XIV) and 42 U.S.C. §1983.

2 **REQUEST FOR RELIEF**

3 Plaintiffs Jeremy Coltharp and Edith Frazier request the following relief from
4 the Court:

5 A. That the Court declare that Elections Code §105 is unconstitutional
6 and unenforceable, as applied to voters who re-registered their voter-registration
7 address *after* they had signed Mr. Coltharp's Petition.

8 B. That the Court declare that Defendant Herrera violated Plaintiffs'
9 fundamental rights under the United States Constitution (Amendments I & XIV &
10 Due Process Clause) and 42 U.S.C. §1983, by (1) implementing and enforcing
11 Elections Code §105 as to Mr. Coltharp's Petition and Ballot Measure, and (2)
12 illegally spending public funds to implement and enforce Elections Code §105.

13 C. That the Court issue a preliminary injunction prohibiting Defendant
14 Herrera, and all persons acting under his direction and control, (1) from
15 implementing and enforcing Elections Code §105 as to Mr. Coltharp's Petition and
16 Ballot Measure, and (2) from illegally spending public funds to implement and
17 enforce Elections Code §105.

18 D. That the Court declare that Defendant Herrera violated Plaintiffs'
19 fundamental rights under California Constitution art. ii §1 and Elections Code
20 §100, by refusing to count the lawfully executed signatures of voters who supported
21 Mr. Coltharp's Ballot Initiative.

22 E. That the Court order Defendant Herrera, and all persons acting under
23 his direction and control, to fully examine all 43,159 signatures submitted by Mr.
24 Coltharp, in order to determine whether his Ballot Measure qualifies for a special
25 election.

26 F. That the Court order Defendant Herrera, and all persons acting under
27 his direction and control, to count all voter signatures that were lawfully executed
28 in support of the Petition.

1 G. Alternatively, that the Court declare that Defendant Herrera violated
2 Plaintiffs' fundamental rights under California Constitution art. ii §1 and Elections
3 Code §9215, by (1) refusing to place the Ballot Measure on the April 8, 2014 City
4 ballot, and (2) illegally spending public funds to do so.

5 H. Alternatively, that the Court declare that Defendant Herrera violated
6 Plaintiffs' fundamental rights under the United States Constitution's Due Process
7 Clause (Amendment XIV) and 42 U.S.C. §1983, by (1) refusing to place the Ballot
8 Measure on the April 8, 2014 City ballot, and (2) illegally spending public funds to
9 do so.

10 I. Alternatively, that the Court order Defendant Herrera to place Mr.
11 Coltharp's Ballot Measure on the April 8, 2014 City ballot.

12 J. That the Court award Plaintiffs all reasonable costs and expenses,
13 including attorney's fees, pursuant to 42 U.S.C. §1988(b) and California Civil Code
14 of Procedure §1021.5.

15 K. That the Court award Plaintiffs all other relief deemed just and
16 equitable.

17
18
19 DATED: May 7, 2013

20
21 Respectfully submitted,

22
23 By: _____
GAUTAM DUTTA, ESQ.

24 Attorney for Plaintiffs
25 JEREMY COLTHARP AND
26 EDITH FRAZIER
27
28

1 G. Alternatively, that the Court declare that Defendant Herrera violated
 2 Plaintiffs' fundamental rights under California Constitution art. ii §1 and Elections
 3 Code §9215, by (1) refusing to place the Ballot Measure on the April 8, 2014 City
 4 ballot, and (2) illegally spending public funds to do so.

5 H. Alternatively, that the Court declare that Defendant Herrera violated
 6 Plaintiffs' fundamental rights under the United States Constitution's Due Process
 7 Clause (Amendment XIV) and 42 U.S.C. §1983, by (1) refusing to place the Ballot
 8 Measure on the April 8, 2014 City ballot, and (2) illegally spending public funds to
 9 do so.

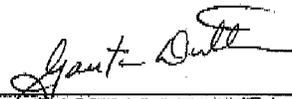
10 I. Alternatively, that the Court order Defendant Herrera to place Mr.
 11 Coltharp's Ballot Measure on the April 8, 2014 City ballot.

12 J. That the Court award Plaintiffs all reasonable costs and expenses,
 13 including attorney's fees, pursuant to 42 U.S.C. §1988(b) and California Civil Code
 14 of Procedure §1021.5.

15 K. That the Court award Plaintiffs all other relief deemed just and
 16 equitable.

17
 18
 19 DATED: May 7, 2013

20 Respectfully submitted,

21
 22 By: 
 23 GAUTAM DUTTA, ESQ.

24 Attorney for Plaintiffs
 25 JEREMY COLTHARP AND
 26 EDITH FRAZIER

27
 28



CITY CLERK DEPARTMENT
Long Beach, California

LARRY HERRERA
City Clerk

ADMINISTRATIVE DIVISION
Monique De La Garza
Administrative Officer

ELECTIONS BUREAU
Ronam Davis
City Clerk Bureau Manager

LEGISLATIVE BUREAU
Merianne Nakagawa
City Clerk Bureau Manager

August 21, 2012

Jeremy Coltharp
7034 E. Rendina Street
Long Beach, CA 90815

Dear Mr. Coltharp,

Pursuant to California Elections Code Section 9203, enclosed is the ballot title and summary of the proposed measure you submitted to this office on August 6, 2012, relating to regulation of medical marijuana collectives.

Prior to circulating the petition, be sure that you have achieved compliance with the requirements of the Elections Code, commencing with Section 9200 through 9226, and Long Beach Municipal Code Chapter 1.22.

Once you meet publication requirements of Election Code Section 9205, you will then have 180 days to file a petition, from the date upon which you receive the ballot title and summary provided herein. The petition must be filed during normal business hours; and if the petition is not filed within the time period permitted, the petition shall be void for all purposes.

As of May 21, 2012, the Los Angeles County Registrar's web site reports that there are 223,617 registered voters in the City of Long Beach; however, the signature qualification thresholds prescribed by Election Code Sections 9215 and 9216, is not certain until you publish the Notice of Intention.

I can be reached at (562) 570-6489, should you need to speak with me.

Sincerely,

Larry Herrera
City Clerk

Exh. 1

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BALLOT TITLE AND SUMMARY

Ballot Title: Regulation of Medical Marijuana Collectives

Summary: The ordinance proposed by initiative petition (the "Measure") would regulate and tax medical marijuana collectives in the City of Long Beach. If passed, the measure would have the effect of repealing the City's current ban on medical marijuana collectives. The Measure defines "Medical Marijuana Collective" to include an incorporated or unincorporated association composed of four (4) or more qualified patient members and their designated primary caregivers who associate at a property in the City of Long Beach to collectively or cooperatively cultivate or distribute marijuana for medical purposes. The Measure requires that collectives obtain a business license from the City and that each collective adhere to certain operating conditions. The operating conditions include requirements relating to exterior lighting, signage, site security, ventilation, product labeling, video surveillance, fire and burglar alarm systems, record keeping, product testing, hours of operation, accounting procedures, age restrictions, compliance with applicable laws, and annual reporting to the City.

Collectives would not be allowed to locate in areas that are zoned exclusively for residential use and would not be allowed to operate within a one thousand five hundred (1500) foot radius of a public or private high school or within a one thousand (1000) foot radius of a public park, public beach, or a public or private kindergarten, elementary, middle, or junior high school. In addition, collectives could not be located within a one thousand foot (1000) radius of any other collective, except that certain collectives permitted to operate by the City Council after February 14, 2012 would be exempted from this specific locational restriction. All licensed collectives would be required to cultivate their marijuana exclusively within the City of Long Beach.

The Measure also imposes a sales tax not to exceed four (4) percent of gross sales as reported by a collective to the California State Board of Equalization. Taxes would be paid to the City quarterly by all licensed collectives. The Measure would require the City Council to annually set the amount of the sales tax to be assessed. Any failure of the City Council to set the tax for the following year would result in the tax automatically being set at a rate of two (2) percent of gross sales reported.

Initiative Measure To Be Submitted Directly To The Voters

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Ballot Title: Regulation of Medical Marijuana Collectives

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We the voters of the City of Long Beach California request that the ordinance be submitted immediately to a vote of the people at a special election.

The People of the City of Long Beach do ordain as follows:

Shall a ballot measure be submitted to the voters of the City of Long Beach at a special municipal election that will allow Medical Marijuana Collectives to operate in the City of Long Beach?

If approved by the voters of the City of Long Beach, that measure (hereinafter, the "Measure") shall add the following subsection to Chapter 3.80.243 Taxes on Service, of the Long Beach Municipal Code: Chapter 3.80.243A.

- (1) An additional tax (hereinafter, the "Tax") shall be imposed on a licensed Medical Marijuana Collective, and shall not exceed four (4) per cent of gross sales as reported to the California State Board of Equalization. The Tax shall be paid quarterly to the City of Long Beach and within ten (10) days of filing a report of quarterly sales to the State Board of Equalization. A copy of that report shall accompany the Tax payment to the City of Long Beach.
- (a) The Tax shall be set annually by the City Council, and any failure of the City Council to set the Tax for the following calendar year shall automatically set the Tax rate for that year at two (2) per cent of the gross sales as reported to the State Board of Equalization on a quarterly basis for that year.

The Measure shall also amend, in its entirety, Chapter 5.89 of the Long Beach Municipal Code as follows: Chapter 5.89 MEDICAL MARIJUANA COLLECTIVE

5.89.010 Purpose and intent

A. It is the purpose and intent of this Chapter is to promote the public health, safety and welfare of the residents of the City of Long Beach. The Compassionate Use Act (Cal. Health & Safety Code §11362.5) and the Medical Marijuana Program Act (Cal. Health & Safety Code §11362.765) do not interfere with a patient's right to use medical marijuana as authorized under State Law (as defined below), nor do they criminalize the possession or cultivation of Medical Marijuana (as defined below) by classes of persons who are authorized to do so under State Law. Only Qualified Patient Members (as defined below), persons with identification cards, and primary caregivers may legally cultivate medical marijuana collectively under State Law. Medical Marijuana Collectives (as defined below) shall comply with all provisions of the Long Beach Municipal Code, State Law, and all other applicable local and state laws.

Nothing in this Chapter permits activities that are banned by federal, state, or local law.

5.89.015 Definitions

Unless the particular provision or the context otherwise requires, the definitions and provisions in this Section shall govern the construction, meaning, and application of words and phrases as used in this Chapter:

- A. "Attending Physician" shall have the same definition as provided in Cal. Health and Safety Code Section §11362.7 (as may be amended), which defines "Attending Physician" as an individual (1) who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California, and (2) who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.
- B. "Business License" shall mean the license issued by the Director of Financial Management to a Collective that has applied for a City of Long Beach business license in accordance with this Chapter.
- C. "Chief of Police" shall mean the Chief of the Long Beach Police Department (or his or her designee).
- D. "Concentrated Cannabis" shall have the same definition as provided in Cal. Health and Safety Code §11006.5 (as may be amended), which defines "Concentrated Cannabis" as the separated resin, whether crude or purified, obtained from marijuana.
- E. "Director of Financial Management" shall mean the Director of Financial Management for the City of Long Beach (or his or her designee).
- F. "Edible Medical Marijuana" shall mean any article used for human food, drink, confectionery, coniment or chewing gum (regardless of whether that article is simple, mixed or compound) that (1) contains physician-recommended quantities of Medical Marijuana, and (2) within the City of Long Beach at a Collective in accordance with state law and this Chapter.
- G. "Identification Card" shall have the same definition as provided in Cal. Health and Safety Code §11362.7 (as may be amended),

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- which defines "Identification Card" as a document issued by the State Department of Health Services which (1) identifies a person authorized to engage in the medical use of marijuana, and (2) identifies the person's designated primary caregiver (if any).
- H. "Management Member" shall mean a Medical Marijuana Collective Member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a Collective, including but not limited to members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the Collective.
- I. "Marijuana" shall have the same definition provided in California Health and Safety Code Section 11018 (as may be amended), which defines "Marijuana" as Cannabis Sativa L. (whether growing or not) (hereinafter, the "Plant"), the seeds thereof, the resin extracted from any part of the Plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the Plant, its seeds or resin. It does not include the mature stalks of the Plant, fiber produced from the stalks, oil or cake made from the seeds of the Plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- J. "Medical Marijuana" shall mean Marijuana used for medical purposes in accordance with California Health and Safety Code §§11362.5 et seq.
- K. "Medical Marijuana Collective" (hereinafter, the "Collective") shall mean an incorporated or unincorporated association, composed of four (4) or more Qualified Patient Members and their designated Primary Caregivers who associate at a Property (as defined below) within the City of Long Beach to collectively or cooperatively cultivate Marijuana for medical purposes or distribute that Medical Marijuana to Collective members and Management Members, in accordance with California Health and Safety Code §§11362.5, et seq. For purposes of this Chapter, the term Medical Marijuana "Cooperative" shall have the same meaning as Medical Marijuana Collective.
- L. "Park" or "Public Park" shall mean publicly owned natural or open areas set aside for active and passive public use for recreational, cultural or community service activities.
- M. "Primary Caregiver" shall have the same definition as provided in California Health and Safety Code §§ 11362.5 and 11362.7 (as may be amended), which define "Primary Caregiver" as an individual, designated by a Qualified Patient, who has consistently assumed responsibility for the housing, health, or safety of that Qualified Patient.
- N. "Property" shall mean the location or locations within the the City of Long Beach at which the Medical Marijuana Collective members and Management Members associate to collectively or cooperatively cultivate or distribute Medical Marijuana exclusively for this Collective members and Management Members.
- O. "Qualified Patient" shall mean a person who (1) is entitled in the protections of Health and Safety Code §11362.5 for Patient Members, and (2) may obtain and use marijuana for medical purposes upon the recommendation of an Attending Physician, regardless of whether that person applied for and received a valid identification Card issued pursuant to State Law.
- P. "Reasonable Compensation" shall mean compensation commensurate with reasonable wages and benefits paid to employees of IRS-qualified nonprofit organizations who have similar job descriptions and duties, required level of education and experience, prior individual earnings history, and number of hours worked. The payment of a bonus shall not be considered "Reasonable Compensation."
- Q. "State Law" shall mean the state regulations set forth in the Compassionate Use Act and the Medical Marijuana Program Act, codified at California Health and Safety Code §§11362.5, et seq.
- R. "Personal Service Type Business." A Medical Marijuana Collectives shall be considered a personal service type business in the City of Long Beach with respect to issuing a Business License and setting taxes.
- S. "Sale" shall mean any sale, exchange, donation, reimbursement or barter.

5.89.020 Business License Required

It shall be unlawful for any person or entity to engage in, operate, or conduct a Medical Marijuana Collective on any Property, unless that Collective has obtained and continues to maintain in full force and effect a Business License.

5.89.030 Medical Marijuana Collective Business License

Any Medical Marijuana Collective seeking to operate a Collective in the City of Long Beach shall first fill out a Business License application provided by the Director of Financial Management (or his or her designee). If the Collective's location (a) meets the general requirements for doing business in a commercial, retail and/or industrial zone, and (b) meets the City of Long Beach's building code requirements for businesses that fall under the personal service section of the licensing code, the Collective shall be issued a Business License.

5.89.040 Operating Conditions

No Medical Marijuana Collective shall be allowed to operate in the City of Long Beach without meeting the following conditions and standards:

- A. The Collective's Property shall not be located in an area zoned in the City for exclusive residential use. Medical Marijuana Collectives shall not be permitted to operate in an exclusive residential zone as established pursuant to Title 21 of this Code.
- B. The Medical Marijuana Collective shall not be located within a one-thousand-five-hundred (1,500) foot radius of a public or private High School or Educational Partnership High School (hereinafter, "EPHS") or within a one-thousand (1,000) foot radius of a public park, public beach or a public or private kindergarten, elementary, middle or junior high school. The distances specified in this subdivision shall be determined by the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the Medical Marijuana Collective is located, without regard to intervening structures.
- C. The Medical Marijuana Collective shall not be located within a one-thousand (1,000) foot radius of any other Medical Marijuana Collective. The distance specified in this subdivision shall be determined by the horizontal distance measured in a straight line from the property line of any other Medical Marijuana Collective, to the closest property line of the lot on which the licensed Medical Marijuana Collective is located, without regard to intervening structures. Any Collective that had been permitted by the City Council to operate after February 14, 2012 shall be exempted from the requirements of this provision.
- D. Exterior building and parking area lighting on the Property shall be in compliance with all applicable provisions of this Code.
- E. Any exterior or interior sign visible from the exterior of the Property shall be unlighted.
- F. Windows and roof hatches at the Property shall be secured so as to prevent unauthorized entry, and shall be equipped with latches that (1) may be released quickly from the inside to allow exit in the event of an emergency, and (2) are in compliance with all applicable building code provisions.
- G. Each Collective shall designate a Community Relations Liaison (hereinafter, the "Liaison"), who shall be at least eighteen (18) years of age; and shall provide the Liaison's name to the Director of Financial Management. The Liaison shall receive all complaints received by the Director of Financial Management (or his or her designee), regarding his or her own Collective. The Liaison shall have the responsibility and duty to address and promptly resolve all complaints. To address community complaints and concerns, the name and telephone number for the Liaison shall be made publicly available.
- H. The Property shall contain an odor-absorbing ventilation and exhaust system to ensure that odor generated inside the Property is not detected outside the Property.
- I. The Collective shall install and maintain a video surveillance system that monitors at least the front and rear of the Property. The surveillance system shall:
 - 1. Capture a full view of the public right-of-way and any parking lot under the control of the Collective.
 - 2. Be of adequate quality, color rendition and resolution to allow the ready identification of any individual who commits a crime anywhere on or adjacent to the exterior of the Property.
 - 3. Record and maintain video for a minimum of thirty (30) days.
- J. Each Collective shall produce recordings from the video surveillance system to the Police Department of the City of Long Beach when a search warrant, subpoena or court order has been provided.
- K. The Property shall have a centrally monitored fire and burglar alarm system.
 - 1. A sign shall be posted in a conspicuous location inside the Property advising:
 - 1. The diversion of marijuana for non-medical purposes is a violation of State Law.

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2. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.
 3. Loitering at the location of a Medical Marijuana Collective for an illegal purpose is prohibited by California Penal Code §647(h).
 4. This Medical Marijuana Collective is licensed in accordance with the laws of the City of Long Beach.
 5. The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of State Law.
- L. Each Collective shall meet all applicable state laws consistent with the protection of the health, safety, and welfare of (1) the community, (2) Qualified Patient Members, and (3) Primary Caregivers.
- M. Collective cultivation of Medical Marijuana shall be limited to the Medical Marijuana Collective Members and Management Members.
- N. Cultivation of Medical Marijuana by the Medical Marijuana Collective Members and Management Members shall occur exclusively within the City of Long Beach.
- O. Every Medical Marijuana Collective shall maintain cultivation records, signed under penalty of perjury by each Management Member, that identify (1) the location within the City of Long Beach at which the Medical Marijuana was cultivated, and (2) the total number of Plants cultivated at each location.
- P. Representative samples of Medical Marijuana distributed by the Collective shall be analyzed by an independent laboratory to ensure that they are free of harmful pesticides and other contaminants regulated under local, state or federal law.
- Q. Any Medical Marijuana whose representative sample has tested positive for a harmful pesticide or other contaminant at a level which exceeds the local, state, or federal regulatory or statutory standards shall be promptly destroyed.
- R. Any Medical Marijuana provided to Collective Members shall be properly labeled in strict compliance with state and local laws.
- S. The operation of medical Marijuana Collectives shall be limited to the hours between nine o'clock (9:00) A. M. and eight o'clock (8:00) P. M.
- T. Any and all business identification signs comply with the provisions of Chapter 21.44 "On Premises Signs" as set forth in this Code.
- 5.89.050 Each Medical Marijuana Collective shall cultivate Medical Marijuana on a membership basis and in accordance with the needs of its members.
- 5.89.060 License Not Transferable and Required Conduct.
- A. A Business License issued pursuant to this Chapter shall become null and void if a Collective (1) closes or dissolves, and/or (2) relocates to a different Property.
- B. The lawful conduct of activity regulated by this Chapter by a Collective shall be limited to those activities expressly indicated on the Business License application.
- C. The holder of a Business License shall not allow non-members of a Collective to cultivate Medical Marijuana on the Collective's Property.
- 5.89.070 Maintenance of Records
- A. A Medical Marijuana Collective shall maintain the following records on the Property.
1. The full name, address, and telephone number(s) of the owner, landlord and/or lessee of the Property.
 2. The full name, address and telephone number(s) and a fully legible copy of a government issued form of identification of each Collective member engaged in the management of the Collective and a description of the exact nature of the participation in the management of the Collective. Acceptable forms of government issued identification include, but are not limited to: Driver licenses or photo identity cards issued by State Department of Motor Vehicles (or equivalent) that meets REAL ID benchmarks, a passport issued by the United States or by a foreign government, U.S. Military ID cards (active duty or retired military and their dependents), or a Permanent Resident Card.
 3. The full name, address, and telephone number(s) of each Collective member and Management Member who participates in the Collective cultivation of Medical Marijuana.
 4. The full name, date of birth, residential address, and telephone number(s) of each Collective member and Management Member; the date each member and management Member joined the Collective; the exact nature of each member's and management Member's participation in the Collective; and the status of each member and Management Member as a Qualified Patient or Primary Caregiver.
 5. A written accounting of all cash and in-kind contributions, reimbursement, and reasonable compensation provided by the Collective Management Members and members of the Collective, and all expenditures and costs incurred by the Collective.
 6. An inventory record documenting the dates and amounts of Medical Marijuana cultivated at the Property, and the daily amounts of Medical Marijuana stored on the Property.
 7. Proof of a valid Business License issued by the Director of Financial Management Department, in accordance with this Chapter.
 8. Any and all records described in §5.89.070 (A) shall be maintained by the Medical Marijuana Collective for a period of five (5) years, and shall be made available by the Collective to the City upon request, subject to the authority set forth in §5.89.080.
- B. Annual Reports. Each Medical Marijuana Collective operating in the City shall submit to the City Manager (or his or her designee) an annual financial report (hereinafter, the "Annual Report") prepared by the Collective, using the following criteria.
1. Each Annual Report shall be filed and submitted every calendar year no later than April 30 for each preceding calendar year (for example a Collective's 2010 Annual Report shall be submitted to the City manager no later than April 30, 2011).
 2. The Annual Report shall be a summary of the quarterly reports that were filed with the State Board of Equalization in the previous year.
 3. The Annual Report shall document the number of Medical Marijuana transactions that took place during the reporting year to a Qualified Patient or Management Member for cash, credit, or in-kind contributions.
 4. Appended to the Annual Report shall be a copy of any and all documents, records or forms submitted to the State Board of Equalization for the reporting year, including but not limited to Board of Equalization Form 401 (or its electronic equivalent) which in any manner documents transaction activities relating to the operation of the Medical Marijuana Collective.
 5. Appended to the Annual Report shall be an accounting of the number of Plants or clones cultivated by the dispensary during the reporting year.
 6. Any and all records or documents that serve as the basis for preparing the annual report shall be maintained by the Medical Marijuana Collective for a period of five (5) years and shall be made available to the city upon request, pursuant to §5.89.080.
- 5.89.080 Inspection Authority
- City representatives (Fire and Building Inspectors) may enter and inspect the Property of every Medical Marijuana Collective between the hours of nine o'clock (9:00) A. M. and eight o'clock (8:00) P.M. or at any reasonable time to ensure compliance and enforcement of the provisions of City Codes. The Police Department may be allowed to enter the Property if invited by a member of the Collective or in case of an emergency. Otherwise access shall only be available to the Police Department through a properly executed search warrant, subpoena, or court order. It shall be unlawful for any Property owner, landlord, and lessee, Medical Marijuana Collective member or Manager Member or any other person having any responsibility over the operation of the Medical Marijuana Collective to refuse to allow, impede, obstruct or interfere with an inspection.
- 5.89.090 Existing Medical Marijuana Collectives
- A. Any existing Medical Marijuana Collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this Chapter must immediately cease operation until it fully complies with the requirements of this Chapter. No Medical Marijuana Collective, dispensary, operator, establishment, or provider that existed before this Chapter was enacted shall be deemed to be a legally established use or a legal non-conforming use under the provisions of this Chapter or the Code.
- 5.89.100 Prohibited Activity
- A. It shall be unlawful for any person to cause, permit or engage in the cultivation, possession, distribution, exchange or giving away of Marijuana for medical or non-medical purposes except as provided in this Chapter, and pursuant to all other applicable local and state law.
- B. It shall be unlawful for any person to cause, permit or engage in any activity related to Medical Marijuana except as provided in this Chapter and in Health and Safety Code §§11362.5 et seq., and pursuant to all other applicable local and state law.
- C. It shall be unlawful for any person to knowingly make any false, misleading or inaccurate statement or representation in any form, record, filing or documentation required to be maintained, filed or provided in the City of Long Beach under this Chapter.
- D. No Medical Marijuana Collective, Management Member or member shall cause or permit the sale, distribution or exchange of Medical

Marijuana or of any Edible Medical Marijuana product to any non-Collective Management Member or Member.

E. No cultivation of Medical Marijuana on the Property shall be visible with the naked eye from any public or other private property, nor shall cultivated Medical Marijuana or dried Medical Marijuana be visible from the building exterior. No cultivation shall occur on the Property unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry.

F. The manufacture of Concentrated Cannabis in violation of California Health and Safety Code §11379.6 is hereby banned.

G. No Medical Marijuana Collective shall be open to or provide Medical Marijuana to its members or Management Members between the hours of eight o'clock (8:00) P.M. and nine o'clock (9:00) A.M.

H. No person under the age of eighteen (18) shall be allowed on the Property, unless that minor is a Qualified Patient and is accompanied by his or her licensed Attending Physician, parent(s) or documented legal guardian.

I. No Medical Marijuana Collective, Management Member or member shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on the Property or in the parking area of the property.

J. No dried Medical Marijuana shall be stored at the property in structures that are not completely enclosed, in an unlocked vault or safe, in any other unsecured storage structure, or in a safe or vault that is not bolted to the floor of the property.

K. Medical Marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed on the Property, or in the parking areas of the Property or in those areas restricted under the provisions of California Health and Safety Code §11362.79, which include:

1. Any place where smoking is prohibited by law.
2. Within one thousand (1,000) feet of the grounds of a school, recreation center, or youth center.
3. While on a school bus.
4. While in a motor vehicle that is being operated.
5. While operating a boat.

L. No person who has been convicted within the previous ten (10) years of a felony or a crime of moral turpitude, or who is currently on parole or probation for the sale or distribution of a controlled substance shall be engaged directly or indirectly in the management of the Medical Marijuana Collective nor, further, shall manage or handle the receipts and expenses of the Collective.

5.89.110 Violations and Enforcement.

A. Any person violating any provision of this Chapter or knowingly or intentionally misrepresenting any material fact in procuring the license herein provided for, shall be deemed guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than twelve (12) months, or both such fine and imprisonment.

B. Any person who engages in any Medical Marijuana Collective operations (1) after a Business License has been denied, or (2) after a Business License has been suspended or revoked; but before a new license is issued, shall be guilty of a misdemeanor.

C. Any violation of the terms and conditions of the Business License, of this Chapter, or of applicable local or state regulations and laws shall be grounds for suspending or revoking its license.

5.89.120 Suspension, Revocation, and Appeals Process

A. If a City Department determines that a Collective has failed to comply with any provision of this Chapter on at least three occasions, the Director of Financial Management shall revoke or suspend the Business License.

B. The Director of Financial Management shall notify a Collective that its license has been suspended or revoked by means of a dated written notice, which shall advise the Collective of its right to appeal the decision to the City Council. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based, and shall be filed with the Director of Financial Management within thirty (30) calendar days from the date the notice was mailed along with an appeal deposit, in an amount determined by the City Council by resolution. If an appeal is filed, a license may not be suspended or revoked before that appeal has been fully adjudicated.

C. The City Council shall conduct a hearing (hereinafter, the "City Council Hearing") on the appeal or refer the matter to a hearing officer pursuant to Chapter 2.93 of this Code, within forty-five (45) calendar days from the date the completed request for appeal was received by the Director of Financial Management, except where good cause exists to extend this period. The appellant shall be given at least fifteen (15) calendar days' written notice of the City Council Hearing. The City Council Hearing shall be conducted pursuant to Chapter 2.93 of this Code. The determination of the City Council on the appeal shall be final, unless the licensee chooses to file a court action within thirty (30) calendar days of that determination.

D. Whenever a Medical Marijuana Collective's license has been revoked or suspended, no other Business License application shall be considered for that Collective for a period of one (1) year from either (a) the date on which the notice of the revocation or suspension was mailed, or (b) the date of the final decision of the City Council, whichever is later.

5.89.130 Operative Date of Cultivation Requirement

Each Medical Marijuana Collective that has been issued a Business License pursuant to this Chapter shall have one-hundred-and-twenty (120) calendar days from the date the license is issued to comply with the Medical Marijuana cultivation requirements set forth in §5.89.040.

5.89.140 Severability

The provisions of this Chapter are severable. If any provision of this Chapter is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

NOTICE OF INTENT TO CIRCULATE PETITION

NOTICE IS HEREBY GIVEN by the person(s) whose name appears hereon of their intention to circulate the petition within the City of Long Beach for two purposes; (1) Adding to Chapter 3.80.243 A., taxes on service the following subsections 1 and 1 (a), which sets out the tax rate for Medical Marijuana Collectives; and (2) amending in its entirety Chapter 5.89 Medical Marijuana Collectives, which authorizes the City of Long Beach to issue business licenses to Medical Marijuana Collectives.

Respectfully,

Jeremy Allen Coltharp

Long Beach, CA

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Initiative Measure To Be Submitted Directly To The Voters

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Ballot Title: Regulation of Medical Marijuana Collectives

Summary: The ordinance proposed by initiative petition (the "Measure") would regulate and tax medical marijuana collectives in the City of Long Beach. If passed, the measure would have the effect of repealing the City's current ban on medical marijuana collectives. The measure defines "Medical Marijuana Collective" to include an incorporated or unincorporated association composed of four (4) or more qualified patient members and their designated primary caregivers who associate at a property in the City of Long Beach to collectively or cooperatively cultivate or distribute marijuana for medical purposes. The Measure requires that collectives obtain a business license from the City and that each collective adhere to certain operating conditions. The operating conditions include requirements relating to exterior lighting, signage, site security, ventilation, product labeling, video surveillance, fire and burglar alarm systems, record keeping, product testing, hours of operation, accounting procedures, age restrictions, compliance with applicable laws, and annual reporting to the City.

Collectives would not be allowed to locate in areas that are zoned exclusively for residential use and would not be allowed to operate within a one thousand five hundred (1500) foot radius of a public or private high school or within a one thousand (1000) foot radius of a public park, public beach, or a public or private kindergarten, elementary, middle, or junior high school. In addition, collectives could not be located within a one thousand foot (1000) radius of any other collective, except that certain collectives permitted to operate by the City Council after February 14, 2012 would be exempted from this specific locational restriction. All licensed collectives would be required to cultivate their marijuana exclusively within the City of Long Beach.

The Measure also imposes a sales tax not to exceed four (4) percent of gross sales as reported by a collective to the California State Board of Equalization. Taxes would be paid to the city quarterly by all licensed collectives. The Measure would require the City Council to annually set the amount of the sales tax to be assessed. Any failure of the City Council to set the tax for the following year would result in the tax automatically being set at a rate of two (2) percent of gross sales reported.

VOLUNTEER CIRCULATOR

NOTICE TO THE PUBLIC
THIS PETITION IS BEING CIRCULATED BY A VOLUNTEER.

NOTICE TO THE PUBLIC
THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

All Signers Must Be Registered Voters of the City of Long Beach, California			OFFICIAL USE ONLY
1	Print Your Name	Residence Address ONLY (No P.O. Box)	
	Your Signature as Registered to Vote	City or Town	
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Exh. 2

23

Initiative Measure To Be Submitted Directly To The Voters

The city attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

Ballot Title: Regulation of Medical Marijuana Collectives

Summary: The ordinance proposed by initiative petition (the "Measure") would regulate and tax medical marijuana collectives in the City of Long Beach. If passed, the measure would have the effect of repealing the City's current ban on medical marijuana collectives. The measure defines "Medical Marijuana Collective" to include an incorporated or unincorporated association composed of four (4) or more qualified patient members and their designated primary caregivers who associate at a property in the City of Long Beach to collectively or cooperatively cultivate or distribute marijuana for medical purposes. The Measure requires that collectives obtain a business license from the City and that each collective adhere to certain operating conditions. The operating conditions include requirements relating to exterior lighting, signage, site security, ventilation, product labeling, video surveillance, fire and burglar alarm systems, record keeping, product testing, hours of operation, accounting procedures, age restrictions, compliance with applicable laws, and annual reporting to the City.

Collectives would not be allowed to locate in areas that are zoned exclusively for residential use and would not be allowed to operate within a one thousand five hundred (1500) foot radius of a public or private high school or within a one thousand (1000) foot radius of a public park, public beach, or a public or private kindergarten, elementary, middle, or junior high school. In addition, collectives could not be located within a one thousand foot (1000) radius of any other collective, except that certain collectives permitted to operate by the City Council after February 14, 2012 would be exempted from this specific locational restriction. All licensed collectives would be required to cultivate their marijuana exclusively within the City of Long Beach.

The Measure also imposes a sales tax not to exceed four (4) percent of gross sales as reported by a collective to the California State Board of Equalization. Taxes would be paid to the city quarterly by all licensed collectives. The Measure would require the City Council to annually set the amount of the sales tax to be assessed. Any failure of the City Council to set the tax for the following year would result in the tax automatically being set at a rate of two (2) percent of gross sales reported.

VOLUNTEER CIRCULATOR

NOTICE TO THE PUBLIC
THIS PETITION IS BEING CIRCULATED BY A VOLUNTEER.

NOTICE TO THE PUBLIC
THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

All Signers Must Be Registered Voters of the City of Long Beach, California			OFFICIAL USE ONLY
9	Print Your Name	Residence Address ONLY (No P.O. Box)	
	Your Signature as Registered to Vote	City or Town	
10	Print Your Name	Residence Address ONLY (No P.O. Box)	
	Your Signature as Registered to Vote	City or Town	
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**DECLARATION OF PERSON CIRCULATING SECTION OF INITIATIVE PETITION
(MUST BE IN CIRCULATOR'S OWN HANDWRITING)**

I _____ (print full name of circulator) am registered to vote or am qualified to register to vote in the City of Long Beach, California.

My residence address is _____ (street, city, state, zip)

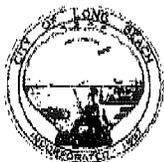
I personally circulated the attached petition for signing. I witnessed each of the appended signatures being written on the petition and to my best information and belief, each signature is the genuine signature of the person whose name it purports to be; and the appended signatures were obtained between the dates of _____ (starting date) and _____ (ending date) inclusive.

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

Executed on _____ (Date) at _____ (City), California.

Signature of Circulator _____ (complete signature indicating full name of circulator)

23c



CITY CLERK DEPARTMENT
Long Beach, California

LARRY HERRERA
City Clerk

ADMINISTRATIVE DIVISION

Monique De La Garza
Administrative Officer

ELECTIONS BUREAU

Popnam Davis
City Clerk Bureau Manager

LEGISLATIVE BUREAU

Merianne Nakagawa
City Clerk Bureau Manager

March 7, 2013

Jeremy Coltharp
7034 E. Rendina Street
Long Beach, CA 90815

Dear Mr. Coltharp,

We have concluded verification of signatures on your petition calling for the Regulation of Medical Marijuana Collectives in the City of Long Beach. Our verification was conducted pursuant to Elections Code Section 9115 and the California Code of Regulations, Title 2, Division 7, Title 5 – Election Petition Signature Verification Random Sampling Verification Methodology.

Pursuant to California Elections Code Section 9115(e), you are hereby notified that the total number of signatures to the petition is less than the number of qualified voter signatures required to find the petition sufficient; and therefore, the petition has failed.

Along with this letter, please find enclosed my Certificate of Insufficiency dated March 7, 2013.

Please do not hesitate to contact me should you have any questions, I can be reached at (562) 570-6489.

Sincerely,


Larry Herrera
City Clerk



CERTIFICATE OF INSUFFICIENCY OF INITIATIVE PETITION

I, Larry Herrera, City Clerk of the City of Long Beach, County of Los Angeles, State of California, hereby certify that:

The petition entitled "Initiative Regulation of Medical Marijuana Collectives" was filed with the City Clerk Office on February 8, 2013;

That said petition consists of 2,473 sections, and that each section contains signatures purporting to be signatures of qualified electors of the City of Long Beach, California;

That attached to this petition at the time it was filed, was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

That the affidavit stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her own information and belief, each signature to that section was the genuine signature of the person whose name it purports to be;

That after the proponents filed this petition and based on the County of Los Angeles Registrar-Recorder/County Clerk's petition and signature verification system, I have determined the following facts regarding this petition:

- | | |
|---|--------|
| 1. Total number of signatures filed by proponents: | 43,159 |
| 2. Total number of signatures verified (3% per EC 9115(a): | 1,295 |
| 3. Number of signatures found sufficient: | 939 |
| 4. Number of signatures found not sufficient: | 356 |
| 5. Number of signatures not sufficient because of Duplication: | 0 |
| 6. Total number of signatures deemed valid ((939/1,295) x 43,159) | 31,294 |

Based on this examination and in accordance with Elections Code Section 9115, the initiative petition is insufficient.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Long Beach this 7th day of March, 2013.

Larry Herrera
City Clerk
City of Long Beach

Signature Verification Calculations

City Initiative Submitted to Voters

EC Div. 9, Ch. 2, Art. 1 -- §§ 9100-9190

Petition Title: LONG BEACH MEDICAL MARIJUANA COLLECTIVES

Initiative Petition Calculations

Registration (Reported by LARRCC 5/21/2012) 223,617
EC 9215

Total Signatures Submitted: 43,159

Signatures needed to qualify for election: 33,543
15% threshold -- EC 9214

The random sample shall include 500 signatures or 3% of those submitted, whichever is greater. EC 9115(a)

Number of signatures to verify: 1,295

Number of valid signatures: 939
1,107- PASS
957 - 1106 - WOULD REQUIRE FULL SIG
956 - INITIATIVE FAILS

Number of duplicate signatures: 0

Number of challenged signatures: 356 3/5/2013

SOS Signature Validation Formula

Factors	Description
A	Value of each signature
B	Penalty value for duplicate signature
C	Total value of all duplicate signatures
V	Adjusted number of valid signatures

Factor	Formula	
A	Total Signatures/signatures to verify = A	33.33
B	A x (A - 1) = B Penalty value for duplicate signatures	1,110
C	B x the number of duplicate signatures = C	0
V	Signatures submitted x (valid signatures in sample/sample size) = V	31,294
V - C = Statistically valid total		31,294

If the statistical sample is within 95% to 110% of the required number signatures, the elections official must verify ALL petition signatures. EC 9115(b)

Statistical total as percent of total needed: 93.30%

Initiative Fails to Qualify

Exh. 4

26

Petition Statistics

3/7/2013 4:56:41PM

LONG BEACH MEDICAL MARIJUANA COLLECTIVES
CITY OF LONG BEACH 2013

Petition ID:11966

Total Sigs Required	1,295
Total Sigs Submitted	43,159
Total Sample Size	1,295
Total Sigs Verified	1,295

		TOTAL CHALLENGED
ADD	DIFFERENT ADDRESS	
	Total	95
AEV	INFO ENTERED BY CIRCULATOR	
	Total	28
CAN	CANCELED	
	Total	15
FP	FATAL PENDING	
	Total	35
MADD	PO BOX/MAILING ADDRESS	
	Total	1
NR	NOT REGISTERED	
	Total	106
SIG	MISMATCH SIGNATURE	
	Total	60
WDIST	WRONG DISTRICT	
	Total	16
TOTAL		356

TOTAL VALID : 939

Exh. 5

27

GAUTAM DUTTA, Attorney-at-Law

39270 Paseo Padre Pkwy. # 206 • Fremont, CA 94538 • 415.236.2048 • 213.405.2416 fax

April 18, 2013

Via Electronic & U.S. Mail

The Honorable Robert E. Shannon
 City Attorney
 Attn: Charles Parkin, Esq.
 Long Beach City Hall, 11th Floor
 333 West Occan Boulevard
 Long Beach, CA 90802

Re: Let the Voters Decide Whether to Regulate and Tax Medical Marijuana

Dear City Attorney Shannon:

We represent Long Beach resident Jeremy Coltharp, who recently filed a 43,159-signature petition (the "Petition") to authorize the City of Long Beach to regulate and tax the medical-marijuana dispensaries. As you know, the California Compassionate Use Act¹ and Medical Marijuana Program Act² give every patient the right to cultivate and possess medical marijuana.

We have reason to believe that our Petition contains sufficient voter signatures (i.e., 15 percent of the City's registered voters) to qualify for a special election.³ We hereby *demand* that the City review all 43,159 voter signatures submitted by Mr. Coltharp, so that the voters will know whether they have the *right* to vote on the Petition at a special election.

Alternatively, in the spirit of compromise, we ask that the Petition be placed on the ballot of the City's April 8, 2014 Primary Nominating Election.⁴ In this manner, Long Beach taxpayers would save nearly **\$1.5 million** that must otherwise be spent on a special election.

We appreciate the respectful dialogue we have had with City Clerk Larry Herrera and Assistant City Attorney Charles Parkin. However, we are disappointed that the City has denied our reasonable requests.

First, we are disappointed that the City Clerk has declined to review all 43,159 voter signatures, because he claims that our Petition fell 18 signatures short of the 957 signatures required⁵ to qualify for a full signature evaluation. However, the City Clerk's claim does not withstand careful analysis. In fact, 14 of those signatures were not

¹ Codified at Health & Safety Code §11362.5.

² Codified at Health & Safety Code §11362.7 *et seq.*

³ Elections Code §9214.

⁴ Elections Code §9215.

⁵ The City sampled 3 percent (1,259) of the 43,159 voter signatures submitted by Mr. Coltharp. Based on a statutory formula, if 957 signatures of that sample are valid, the City must fully review *all* 43,159 signatures. See Elections Code §9115. The City Clerk claims that 938 signatures from the 1,259-signature sample are valid.

Exh. 6

28

GAUTAM DUTTA, Attorney-at-Law

39270 Paseo Padre Pkwy. # 206 • Fremont, CA 94538 • 415.236.2048 • 213.405.2416 fax

counted for an improper reason: after signing our Petition, those 14 voters had moved to a different address. Furthermore, an additional 4 signatures were not counted due to erroneous voter-database records. Because our Petition satisfies the requirements for a full signature evaluation, the City must review all 43,159 voter signatures that were submitted by Mr. Coltharp.

Second, we are disappointed that you have rejected our proactive effort to save Long Beach taxpayers nearly \$1.5 million dollars, by declining to place our proposed initiative on the City's April 8, 2014 Primary Nominating Election. By law, if a proposed initiative has been signed by at least 10 percent of registered voters, a city must either (a) enact that initiative into law, or (b) place that initiative on the ballot no later than the next regular municipal election.⁶

Here, it is *beyond question* that our Petition was signed by at least 10 percent of Long Beach voters. Therefore, the City *must* either (a) enact the proposed initiative into law, or (b) place that initiative *on the ballot* no later than the next regular municipal election (here, April 8, 2014). See, e.g., *MHC Financing v. City of Santee* (2005) 125 Cal.App.4th 1372, 1383 & n. 11; *Native American Sacred Site & Environmental Protection Ass'n. v. City of San Juan Capistrano* (2004) 120 Cal.App.4th 961, 966-67.

Unless this matter is resolved by **Apr. 24, 2013**, we will have no choice but to (1) ask a court to vindicate the rights of all Long Beach voters, and (2) seek all reasonable attorney's fees and costs pursuant to Section 1021.5 of the Code of Civil Procedure.

We hope that the City will let the voters decide whether to regulate and tax medical marijuana. We look forward to your prompt response.

Sincerely,



Gautam Dutta

Cc: The Mayor, Members of the City Council, and the City Clerk

⁶ Elections Code §9215 & §1405.