Case No.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

SAFE STREETS FOR MURRIETA, NO ON MEASURE N,
Petitioner,

v.

CITY COUNCIL OF THE CITY OF MURRIETA,
Respondent.

ORIGINAL WRIT PROCEEDING
IMMEDIATE RELIEF REQUESTED

Related Cases:
***Flynn v. Vinson, et al., Superior Court* (Aug. 3, 2012)**
Superior Court of California, County of Riverside
Case No. RIC1208403
Hon. Daniel Ottolia

***Serafin et al. v. The Superior Court of Riverside County* (Sept. 18, 2012)**
Court of Appeal, State of California, Fourth Appellate Dist., Div. Two
Case No. E056868
McKinster, P.J,; King, J.; Codrington, J.

PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF AND REQUEST FOR IMMEDIATE STAY

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State of California, Court of Appeal
Fourth Appellate District, Division Two

CERTIFICATE OF INTERESTED ENTITIES OR PARTIES
California Rules of Court 8.208, 8.490(I), 8.494(c), or 8.498(d)

Court of Appeal Case Caption:

Flynn v. Vinson, et al.

Serafin, et al. v. Superior Court of Riverside County

Court of Appeal Case Number:

☑ There are no interested entities or persons to list in this Certificate as defined Rule 8.208 by the California Rules of Court.

Name of Interested Entity of Person	Nature of Interest
1.	
2.	
3.	

Please attach additional sheets with Entity or Person Information, if necessary.

November 14, 2012

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TO THE HONORABLE PRESIDING JUSTICE AND THE ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO:

INTRODUCTION

This Petition asks the Fourth District Court of Appeal to rule on the substantive legal issue which this Court reserved ruling on in the case of *Serafin et al. v. Superior Court*, Fourth District Court of Appeal Case No. E056868 ("*Serafin*"). The *Serafin* case arrived at this Court after Riverside Superior Court Judge Daniel Ottolia issued a writ of mandate in the case of *Flynn v. Vinson*, Riverside Superior Court Case No. RIC 1208403, removing the "Murrieta Prohibition of Automated Traffic Enforcement Systems Act" ("Initiative") from the ballot at the November 6, 2012 general election in the City of Murrieta. In the *Flynn* case, Judge Ottolia found, as a matter of law, the Initiative could not be submitted to the voters of Murrieta because "Petitioner has established the clear illegality of the initiative."

Following the issuance of a writ of mandate in *Flynn*, the proponents of the Initiative filed a Petition for Writ of Mandate with the California Supreme Court, which quickly referred the case to the Fourth District Court of Appeal. This Court issued a stay of Judge Ottolia's order on August 10, 2012, and later issued a short unpublished Opinion on September 18, 2012, which ordered the Initiative to remain on the ballot, but without ruling on any of the legal issues in the case. Relying on *Independent Energy*

Producers Assn. v. McPherson (2006) 38 Cal. 4th 1020, this Court stated on page four of its opinion: "It was not improper for the trial court to grant preelection review of this challenge, but we must conclude it was unwise."

On November 6, 2012, the Initiative was passed by the voters of the City of Murrieta and according to estimates provided by the Murrieta City Attorney, the Initiative (such as it is) will become effective on or about December 15, 2012. (Notice of Lodgment, ("NOL"), and Exhs. A & B thereto.) As a result, an initiative measure that has already been declared illegal by a judge in the Riverside Superior Court – a ruling left untouched by this Court in the *Serafin* opinion – will cause an expensive and needless removal of all red light cameras in Murrieta.

A. Relief Requested

Petitioner SAFE STREETS FOR MURRIETA, NO ON MEASURE N ("Petitioner") asks this Court to rule on a single question of law: Has the State Legislature exclusively delegated the subject of traffic regulation generally and red light cameras specifically to the city council, to the exclusion of the local electorate by initiative?

As indicated more fully below, this Appellate District has previously concluded that the subject of traffic regulation is, in fact, a matter of statewide concern and that local initiative power may not be used to interfere with the Legislature's determination in that regard. (*Mervynne v. Acker* (1961) 189 Cal.App.2d 558.) This precedent was cited with approval

by the California Supreme Court in *Comm. of Seven Thousand v. Superior Court* (1998) 45 Cal.3d 491 ("*COST*").

The affirmative vote on the Measure N did not and cannot cure the legal maladies which undermine the measure. Measure N is still beyond the power of the voters of the City to enact because traffic regulation is a matter of statewide concern (*Mervynne v. Acker* (1961) 189 Cal. App. 2d 558, 561-562) and the Legislature has specifically delegated the authorization of automated traffic enforcement systems to city councils, thereby precluding the municipal electorate from using the initiative process to either authorize or prohibit red light cameras. Therefore it is imperative that this Court issue an immediate stay prohibiting the Murrieta City Council from taking any action on the Initiative (known as Measure N) until this Court has ruled on the legality of the measure.

B. Jurisdiction

Original jurisdiction is sought in the Appellate Court because it was this Court that reserved ruling on the merits of the *Serafin* matter when it held that the trial court's preelection review of the legality of Measure N was "unwise" and that post-election review would be more appropriate. (*Serafin et al. v. The Superior Court of Riverside County* (Sept. 18, 2012) Case No. E056868.) Now that the voters have approved Measure N, this Petition seeks such post-election review.

Since the trial court has already ruled on the substantive legal issue in the preelection case, and this Court did not, Petitioner respectfully requests that it is appropriate to obtain this Court's review of the legal issue presented.

The provisions of Measure N will become effective **on December 15, 2012**. (Elec. Code, § 9217.) Therefore, an immediate stay prohibiting implementation and enforcement of the initiative on or before December 15, 2012 will allow adequate time for full briefing and argument on the substantive issue raised on this Petition as the Court sees fit, and consistent with this Court's direction in its decision in *Serafin* overturning the trial court's preelection order.

The Murrieta City Council will certify the election results in which Measure N was passed on December 4, 2012. (Elec. Code, § 15372.) Pursuant to Elections Code section 9217, Measure N will become effective on December 15, 2012, 10 days after the certification.

Petitioner, thus, hereby respectfully brings this original proceeding for Writ of Mandate or other extraordinary relief to prohibit the implementation and enforcement of Measure N, which is clearly invalid under a long line of California appellate and Supreme Court cases.

PROCEDURAL BACKGROUND

On August 3, 2012, the Superior Court of California, County of Riverside issued a peremptory writ of mandate and order striking the City

of Murrieta's Measure N from the ballot on grounds the measure was an illegal use of the local initiative power with respect to traffic control and specifically red-light camera control, which was preempted by state law. (*Flynn v. Vinson, et al., Superior Court*, Case No. RIC1208403; see NOL, and Exh. C thereto.)

On August 10, 2012, this Court stayed the trial court's decision and on September 18, 2012, this Court overturned the lower court's decision granting the order without ruling on the substantive issues of the case. (*Serafin et al. v. The Superior Court of Riverside County* (Sept. 18, 2012) Case No. E056868; see NOL, and Exh. D thereto.)

In *Serafin*, this Court opined:

> The Supreme Court has stated that "it is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people's franchise, in the absence of some clear showing of invalidity." (*Brosnahan v. Eu* (1982) 31 Cal. 3d 1, 4 (Brosnahan 1).)
> ***
> As in *Independent Energy* [*Producers Ass'n v. McPherson* (2006) 38 Cal.4th 1020], it was not improper for the trial court to grant preelection review of this challenge, but we must conclude that it was unwise. We acknowledge that courts have intervened in similar circumstances and ordered removal of an initiative measure from the ballot, such as in *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491. However, these rulings occurred somewhat earlier in the ballot process. In addition, the trial court may not have addressed all issues arising from this matter, including the effect of the severability clause. Even if the severability clause is ultimately determined not to have any impact on the overall validity of the initiative, the failure to address the issue demonstrates that it was ill-advised for the trial court to entertain the challenge. Real party in interest delayed several months before bringing a legal action to

remove the proposal from the ballot, and this delay, combined with the fact that the measure can be challenged after the election if it is approved, are decisive factors in persuading this court to order that the proposal remain on the ballot.

PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF AND REQUEST FOR STAY

A. Timeliness of Petition

1. Petitioner brings this Petition on November 14, 2012, four weeks prior to the December 15, 2012 mandated deadline for implementation of election results. (See, Elec. Code, §§ 9217, 15372.) This Petition is therefore timely.

B. The Parties

2. Petitioner SAFE STREETS FOR MURRIETA, NO ON MEASURE N is a duly qualified, registered primarily formed campaign committee in the City of Murrieta. Petitioner SAFE STREETS FOR MURRIETA was primarily formed to promote the defeat of Measure N at the November 6, 2012 election. The committee remains an active and ongoing committee. Petitioner believes that the measure enacted by the voters of the City of Murrieta on November 6, 2012, entitled "Murrieta Prohibition of Automated Traffic Enforcement Systems Act" is beyond the power of the City of Murrieta to enforce, for the reasons set forth herein.

3. Respondent, CITY COUNCIL OF THE CITY OF MURRIETA, are responsible to certify the elections results of the November 6, 2012 election pursuant to the California Elections Code, and for the enforcement of the

"Murrieta Prohibition of Automated Traffic Enforcement Systems Act." (Elec. Code, §§ 9269, 15372, 15400.)

C. Previous Proceedings

4. On August 3, 2012, the Superior Court of California, County of Riverside, Honorable Judge Daniel Ottolia, found the "Murrieta Prohibition of Automated Traffic Enforcement Systems Act" to be beyond the power of the electorate to enact and not an initiative measure at all. (See NOL, ¶ 1 and Exh. C thereto, and incorporated by this reference herein.)

5. On August 10, 2012, the Court of Appeal for the Fourth Appellate District, Division 2, Case No. E056868, stayed the order of the Superior Court, and on September 18, 2012, issued an opinion overturning the issuance of a peremptory writ of mandate by the Superior Court, on the grounds that "it was not improper for the trial court to grant pre-election review of this challenge, but we must conclude it was unwise." (See NOL, ¶ 2 and Exh. D thereto, p. 4, incorporated by this reference herein.)

6. The instant proceeding for original Writ of Mandate is related to the underlying matter, but is not a direct writ challenge to that decision.

7. While this Court's earlier opinion concerned the merits of pre-election review, the present matter concerns post-election review of the same statutory language, only now the language has been approved by voters and is set for enactment by Respondent City of Murrieta.

D. Jurisdiction

8. Petitioner plainly possesses the direct, substantial beneficial interest required to seek a writ of mandate under Code of Civil Procedure section 1086. Petitioner's primary purpose was to oppose Measure N at the November 6, 2012 election. As a result, Petitioner has a "particular right to be preserved or protected over and above the interest held in common with the public at large." (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796.) Petitioner also has standing to bring the instant matter under the "public interest exception" to the rule that a party must be beneficially interested in the issuance of a writ in order to petition for the writ. (See, e.g., *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal. App. 4th 899, 912, reh'g denied (Aug. 24, 2012), review filed (Oct. 29, 2012); *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1232–1233, disapproved on other grounds in *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 169–170.) This case involves matters of public importance, including limits on the power of initiative afforded to voters, and determination of the powers of Respondent City's electorate.

9. The California Constitution, Code of Civil Procedure and case law authority provide that original writs of mandate may be taken in the California Court of Appeal. (Cal. Const., art. VI, § 10; Code Civ. Proc., §§ 1085, 1086; and see *Andal v. Miller* (1994) 28 Cal.App.4th 358, 361; and

Hollywood Park Land Co., LLC v. Golden State Transp. Financing Corp. (App. 3 Dist. 2009) 178 Cal.App.4th 924 [The "appellate jurisdiction" vested in the Courts of Appeal, by the state constitutional clause defining the jurisdiction of appellate courts, encompasses review by extraordinary writ as well as by direct appeal].)

10. This Court possesses original jurisdiction to consider this petition upon principles of judicial efficiency, and may choose to hear the instant Writ Petition if the Petition presents an issue of great public importance that must be resolved promptly. (See *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 845; and see *Acton v. Henderson* (1957) 150 Cal.App.2d 1, 7–8 [Where the issues raised are substantial, the matter is one of widespread interest, and the issue is one which should speedily be resolved, appellate courts have discretion to review the issue immediately on petition for extraordinary writ].) This case unquestionably presents a matter of great public importance, as it asks the Court to consider an issue which encompasses matters of statewide concern and the limits on the power of initiative afforded to voters under the California Constitution. Determination of the powers of Respondent City's electorate is in the public interest. The instant Petition also raises issues which necessarily need to be quickly resolved as implementation of Measure N is set of occur on or before December 15, 2012. The facts are undisputed and the issues

raised are issues of law. The criteria for review by means of petition for extraordinary writ are thus satisfied.

11. This Court further retains its appellate jurisdiction over the earlier appeal and may freely take briefing and rule on the merits of this action so that the issue may be resolved at an appellate level. (See, e.g. *Independent Energy Producers Ass'n v. McPherson* (2006) 38 Cal.4th 1020, 1031 [California Supreme Court retained jurisdiction over challenge to ballot measure for post-election review to allow for the "proper interpretation" of the challenged measure, such that the issue could be "resolved in a setting that affords the opportunity for full briefing, oral argument, and unrushed deliberation…."].)

12. The relief sought in this petition is within the jurisdiction of this Court.

E. Need for Writ Relief In General and Immediate Stay in Particular

13. Petitioner brings this action in the instant Court to prevent redundancy of rulings by the superior court, which already has ruled on the merits of this matter; to preserve judicial resources; and to provide adequate time for the Appellate Court to consider the issues of this matter prior to the December 15, 2012 implementation date of Measure N.

14. Bringing the present action directly to the Appellate Court offers Petitioner a plain, speedy and adequate remedy at law, in particular because the trial court already has ruled on the substantive question presented here

(*Flynn v. Vinson, et al., Superior Court,* Case No. RIC1208403). As a matter of law, the voters of the City of Murrieta have approved an invalid measure – one that is a matter of statewide concern and, as such, may not enacted by the voters of a municipality. Without this Court's immediate action, Respondent City Council of Murrieta will proceed with certifying the results of the election and thus, implementing and enforcing the unconstitutional provisions of Measure N.

15. Because Respondent Murrieta City Council is prepared to proceed on or before December 15, 2012 with implementation of Measure N, which was approved at the November 6, 2012 election, an extraordinary stay is warranted until this Court can consider the matter on its merits.

16. If a temporary stay is not issued, the previous ruling by this Court will remain in effect, which will cause the City Council to undertake an expensive and needless removal of all red light cameras in City of Murrieta.

17. This Petition serves a pressing and vital public interest which if not addressed presently, could recur, and foreseeably so, countless times in the future. That is: will the City Council will be required to follow the results of an election that was illegal, since only the State Legislature or state voters, not city voters, have the power to regulate traffic, and in specific, red light automated traffic enforcement systems, as a matter of statewide concern, and the City Council of the City of Murrieta is not bound by

Measure N with respect to its delegated authority under state law, under the state's powers under the California Constitution.

18. This Court may grant a temporary stay pending review of the instant Writ, whether it requests oral argument or not. Neither Respondent City Council nor voters will suffer any harm until such time.

19. This case meets the procedural prerequisites for issuance of a peremptory writ of mandate in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Andal v. Miller*, *supra*, 28 Cal.App.4th at p. 368.)

20. Deciding with these issues now, as pressing as they are for the parties here, are even more so for the public given the impact on the City of Murrieta and its voters.

21. The Court's efforts here will have immediate impact and will, in actuality, preserve state law as it is meant to operate with respect to matters of statewide concern.

22. A stay until this instant Court can hear and decide the present writ is practical and reasonable.

PRAYER

WHEREFORE, Petitioner prays that a writ of mandate and extraordinary stay issue under seal of this Court commanding Respondent City Council of the City of Murrieta, its officers, agents and all other persons acting on its behalf to desist and refrain from taking any further

action relative to certification, implementation and/or enforcement of Measure N, and further directing Respondent to show cause before this Court, at a time and place then or thereafter specified by Court order, why a peremptory writ of mandate should not be issued prohibiting Respondent City Council of the City of Murrieta, its officers, agents and all other persons acting on its behalf from implementing or enforcing Measure N as a matter law.

Date: November 14, 2012

Respectfully Submitted,

BELL, McANDREWS & HILTACHK, LLP

By: _____
Charles H. Bell, Jr.
Attorneys for Petitioner
SAFE STREETS FOR MURRIETA,
NO ON MEASURE N

VERIFICATION

I, Thomas W. Hiltachk, declare as follows:

I am the treasurer of Safe Streets for Murrieta, No on Measure N. I have read the foregoing Petition for Writ of Mandate or Other Extraordinary Relief and Request for Immediate Stay and know its contents. The facts alleged in the Petition are within my knowledge, and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, on behalf of Petitioner Safe Streets for Murrieta, No on Measure N, verify this Petition.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 14, 2012, in Sacramento, California.

_____

Thomas W. Hiltachk

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE

INTRODUCTION

Petitioner SAFE STREETS FOR MURRIETA, NO ON MEASURE N ("Petitioner") asks this Court to consider the single question of law regarding the legality of a local initiative that this Court asked to be challenged after election rather than before. Petitioner comes now to this Court for such post-election relief.

Petitioner hereby respectfully brings this original Writ of Mandamus under Code of Civil Procedure Sections 1085 and 1086, Article VI, Section 10 of the California Constitution, and *Andal v. Miller* (1994) 28 Cal.App.4th 358, 361.

Petitioner seeks original jurisdiction with this Court because it was this Court which determined in a substantively related matter that the Trial Court's preelection review of the legality of the initiative was "unwise" and that post-election review would be more appropriate.

Now that the election has passed, and Measure N has been enacted by voters, this Petition seeks post-election review of the question of whether Measure N was an appropriate subject matter for consideration by voters. (It was not.) Since the trial court has already ruled on the substantive legal issue in the pre-election case, and this Court did not, it is appropriate to obtain this court's review of the legal issue presented.

An immediate stay prohibiting implementation of the initiative **on or before December 15, 2012** is appropriate relief in this matter. Such a stay will allow adequate time for full briefing and argument as the Court sees fit, and consistent with this Court's earlier direction in its decision in overturning the trial court's preelection order.

GROUNDS FOR EXTRAORDINARY STAY

Pursuant to the Elections Code, Measure N will become effective on December 15, 2012, unless the Court issues a stay, so that the status quo is preserved and this Court can consider the important legal question presented more fully. If a temporary stay is not issued, the previous ruling by this Court will remain in effect, which will cause the City Council to undertake an expensive and needless removal of all red light cameras in City of Murrieta.

GROUNDS FOR ORIGINAL JURISDICTION

This case presents solely a question of law. The case meets the procedural prerequisites for issuance of a peremptory writ of mandate in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Andal v. Miller, supra,* 28 Cal. App. 4th at p. 368; and see *Hollywood Park Land Co., LLC v. Golden State Transp. Financing Corp.* (App. 3 Dist. 2009) 178 Cal.App.4th 924 [The "appellate jurisdiction" vested in the Courts of Appeal, by the state constitutional clause defining the jurisdiction

of appellate courts, encompasses review by extraordinary writ as well as by direct appeal].)

A Court of Appeal possesses original jurisdiction to consider this Petition in the first instance under article VI, section 10 of the California Constitution. (See *County of Sacramento v. Hastings* (1955) 132 Cal.App.2d 419, 420–421.) Because this rule is discretionary and rests upon principles of judicial efficiency, this Court may choose to hear the instant Writ Petition even though it could have been heard first by the trial court if, for example, the Petition presents an issue of great public importance that must be resolved promptly. (See *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 845; and see *Acton v. Henderson* (1957) 150 Cal.App.2d 1, 7–8 [Where the issues raised are substantial, the matter is one of widespread interest, and the issue is one which should speedily be resolved, appellate courts have discretion to review the issue immediately on petition for extraordinary writ].)

Petitioner possesses the direct, substantial beneficial interest required to seek a writ of mandate under Code of Civil Procedure section 1086. Petitioner's primary purpose was to oppose Measure N at the November 6, 2012 election. As a result, Petitioner has a "particular right to be preserved or protected over and above the interest held in common with the public at large." (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796.)

However, this case also unquestionably presents a matter of great public importance, including the extent of the voters' initiative power as afforded them under the California Constitution in light of matters of statewide concern. Moreover, if this Court's ruling in the *Serafin* matter is left untouched, the City will undertake an expensive and needless removal of all red light cameras in Murrieta. Determination of the powers of Respondent City's electorate is in the public interest. The instant Petition also raises issues which necessarily need to be quickly resolved as implementation of Measure N is set of occur on or before December 15, 2012. The facts are undisputed and the issues raised are issues of law. The criteria for review by means of petition for extraordinary writ are thus satisfied.

Moreover, the unique procedural history of this dispute invokes immediate review by this Appellate Court.

On August 3, 2012, the trial court made an affirmative decision that the "Murrieta Prohibition of Automated Traffic Enforcement Systems Act" was an invalid initiative measure and should have been preempted from citizen voting on this year's ballot. (*Flynn v. Vinson, et al., Superior Court,* Case No. RIC1208403; see NOL, and Exh. C thereto.) The trial court based this decision on the fact that the regulation of red lights cameras and other automated traffic enforcement systems is one for which the State Legislature has barred the use of initiative and referendum by specifically delegating exclusive authority to the City Council. (*Id*.)

Initiative proponents action challenged the trial court decision solely on the issue "pre-election review," by original writ – originally filed in the State Supreme Court, which transferred the case to this Appellate Court, which declined to issue a judicial determination on the merits pre-election and thus allowed the City of Murrieta's voters to vote on the measure, but nevertheless invited a post-election challenge. (*Serafin et al. v. The Superior Court of Riverside County* (Sept. 18, 2012) Case No. E056868; see NOL, ¶ 2 and Exh. DB thereto.)

The voters approved the invalid measure at the November 6, 2012 election and, at this time, the substance of the Petitioner Safe Streets for Murrieta's challenge is ripe and ready to be heard in this Appellate Court in order to prevent an improper measure from evading substantive judicial review any longer.

As noted, the trial court has already determined that this measure should not have been placed on the ballot because it was "clearly invalid" and yet it was, and voters approved it. It follows that a return to the trial court when the outcome is virtually certain will only serve to delay the ultimate appellate review that is certain to be needed.

At this point, Petitioner respectfully requests the Appellate Court to review a purely legal question, and make the judicial determination of the state preemption issue, *i.e.*, that the voters of the City of Murrieta were preempted by state regulation of the subject of the initiative measure and

enacted an invalid measure affecting traffic regulation, to wit: banning the use of the "red light camera" automated traffic enforcement system in the City of Murrieta. (See, e.g., *California Alliance for Utility etc. Education v. City of San Diego* (App. 4 Dist. 1997) 65 Cal.Rptr.2d 833, 56 Cal.App.4th 1024 [Courts are encouraged to resolve concrete disputes if consequences of deferred decision will result in lingering uncertainty in the law, especially when there is widespread public interest in answer to particular legal question], review denied.)

I. MEASURE N IS PREEMPTED BY STATE LAW

This case concerns the purely legal issue of whether the subject of Measure N involved a "matter of statewide concern," and whether the Legislature has exclusively delegated the authority to make such decisions to the City Council of the City of Murrieta, not its voters.

The issue is directly governed by two cases, one decided by this Appellate Court and the other arose from this appellate district which was decided by the California Supreme Court.

Over 50 years ago, this Appellate Court in *Mervynne v. Acker* (1961) 189 Cal.App.2d 558, 561-562, decided that traffic regulation is a matter of statewide concern governed by state law and that the regulation of traffic was a matter the Legislature had denied to local voters through the initiative process. The *Mervynne* decision is discussed in more detail below, in part IA and in part IB, which discusses that regulation of automated traffic

enforcement systems ("red light cameras") is an aspect of traffic regulation, a matter of statewide concern for which the Legislature excluded from local initiative regulation.[1]

Determining whether a matter is of statewide concern only resolves part of the question, however, because in matters of statewide concern, the Legislature may delegate its powers of regulation in a manner that permits, or prohibits, the use of the initiative process by the local electorate in furtherance of locally-desired regulation.

The Supreme Court in *Comm. of Seven Thousand v. Superior Court* (1998) 45 Cal.3d 491, *resolved for the lower courts whether the language used by the Legislature extends or denies to local voters delegated powers*

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[1] As the Court of Appeal also noted in *Mervynne*, *supra*:

> Thus, we find, in the case at bar, that the Legislature has, by apparently careful wording of section 22508, literally and specifically delegated the power over parking-meter traffic regulation to the city council. Reasonable construction dictates that this wording was an intended retention of control in the state so as to give the necessary fluidity to changes which are so frequently required in such a field. *It must be remembered that this is in nowise a disenfranchisement of the electors, nor is it a derogation of their constitutionally reserved power of the initiative, for the initiative is still retained for the whole people of the state and by initiative the people of the state may, if they wish, change the whole policy of traffic regulation. It simply means that since the subject of traffic regulation on the public streets and highways of the state is a matter of statewide concern, it is not a "municipal affair" unless the state shall completely abandon all or some part of that field.*
> (189 Cal.App.2d at p. 565 (emphasis added).)

with respect to traffic regulation. In *COST,* the Supreme Court held that Government Code section 66484.3, part of the Subdivision Map Act which provided for the funding of major thoroughfares as part of the state highway system, constituted an exclusive, specific delegation of authority to city councils in Orange County and that the initiative would conflict with this provision by reposing authority to enact such ordinances in Irvine's electorate rather than its city council.

In *COST,* the Supreme Court reviewed the lengthy case law history, including *Mervynne*, *supra*, which addressed whether the exercise of the initiative power in local jurisdictions was appropriate. The Court concluded:

> In explaining why the Legislature may bar local initiatives in matters of statewide concern, courts have sometimes resorted to an awkward and confusing characterization of the delegated power as "administrative." Thus it has been said that when a local legislative body acts pursuant to a power delegated to it by state law, "the action receives an 'administrative' characterization, hence is outside the scope of the initiative and referendum." [Citations omitted.] Courts using this approach have also stated, however, that this test for determining the scope of the initiative and referendum powers at the local level is in addition to the usual test for determining whether a measure is administrative or legislative [citations omitted] and that acts are deemed administrative for purposes of this test "which, in a purely local context, would otherwise be legislative .... [Citations omitted.]
>
> This use of an administrative characterization for delegated powers is an unnecessary fiction. *The state's plenary power over matters of statewide concern is sufficient authorization for legislation barring local exercise of initiative and*

> *referendum as to matters which have been specifically and exclusively delegated to a local legislative body.*

(*Id*., at pp. 511-512.) (Italics added.)

The Supreme Court held that when the Legislature used the terms "Board of Supervisors" or "City Council" in delegating its authority to regulate some aspect of regulation of a matter of statewide concern, as opposed to the use of the term "governing body," such exclusive delegation barred the "local exercise of the initiative and referendum." (*Id.*)

Measure N, which concerns traffic regulation and specifically the power to approve "automated traffic enforcement devices" known as "red light cameras," follows precisely the path forged by *Mervynne* and *COST*.

In establishing its regulation of automated traffic enforcement systems, the Legislature has not delegated this regulation to local governing bodies generally. As discussed more fully herein, the Legislature has delegated the power to regulate "automated traffic enforcement systems" to the City Council, a specific delegation that the courts have found to exclude local initiative regulations. *COST*, *supra*, 45 Cal.3d at pp. 511-12.)

Thus, the Legislature has specifically excluded the local electorate from regulating such systems, and it is powerless to use the initiative process to affect such regulation.

A. Traffic Regulation is a Matter of Statewide Concern.

In *Mervynne*, *supra*, the Appellate Court of this Appellate District ruled that an initiative that purported to repeal ordinances enacted by the City Council providing for the regulation of parking on the public streets of City with the aid of parking meters was a matter of statewide concern, beyond the power of the electorate to enact by initiative.

The court described the initiative's target:

> These ordinances were passed by the City Council pursuant to authority granted by section 22508 of the Vehicle Code. They limited the time for parking on certain public streets of City and provide a convenient means of checking the parking time by the use of parking meters, into which meters the person parking a vehicle is required to deposit a coin. The funds derived from such deposits are required to be recorded in a special account by the city treasurer and are devoted solely to matters connected with the regulation of traffic. The ordinances also provide civil and criminal penalties for violation thereof.

(189 Cal.App.2d at p. 560.)

The court cited cases from 1920 to 1961, holding that traffic regulation is a matter of "statewide concern," not a "municipal affair":

> The right of the state to exclusive control of vehicular traffic on public streets has been recognized for more than 40 years. While local citizens quite naturally are especially interested in the traffic on the streets in their particular locality, the control of such traffic is now a matter of statewide concern. Public highways belong to all the people of the state. Every citizen has the right to use them, subject to legislative regulation. Traffic control on public highways is not a "municipal affair" in the sense of giving a municipality (whether holding a constitutional charter or not) control thereof in derogation of the power of the state. (*Ex parte Daniels*, 183 Cal. 636, 639-

641 [speed]; *In re Murphy,* 190 Cal. 286, 287-288 [reckless driving]; *Atlas Mixed Mortar Co. v. City of Burbank,* 202 Cal. 660, 662 [weight]; *Rafferty v. City of Marysville,* 207 Cal. 657, 665 [safe construction]; *Sincerney v. City of Los Angeles,* 53 Cal.App. 440, 447 telephone poles in street]; *Pacific Tel. & Tel. Co. v. City & County of San Francisco,* 51 Cal.2d 766, 768 [telephone lines in street]; *Biber Electric Co., Inc. v. City of San Carlos,* 181 Cal.App.2d 342, 343 [license]; *Wilton v. Henkin,* 52 Cal.App.2d 368, 372 [pedestrian crosswalks]; *Pipoly v. Benson,* 20 Cal.2d 366, 369 [pedestrian crosswalks].)

(*Mervynne, supra,* 185 Cal.App.2d at pp. 561-562.)

This holding has not been overruled. In fact, in *COST, supra,* the Supreme Court cited *Mervynne* for the proposition that traffic regulation, as well as other aspects of state regulation of highways and streets, are matters of statewide concern. (45 Cal.3d at p. 516 ["[I]n two of the three cases the initiative was barred because the Legislature *did* preempt the field. (See *Ferrini v. City of San Luis Obispo*, *supra*, 150 Cal.App.3d at p. 246 ["[W]e are persuaded that the Legislature's intent to occupy the field ... is clearly established"]; *Mervynne***,** *supra,* 189 Cal.App.2d at p. 564 **[**"[T]he Legislature appears to have directly occupied that field"**]**.)

B. The Legislature Has Specifically Committed Regulation of "Automated Traffic Enforcement Systems" (Red Light Cameras) to City Councils.

The Legislature has exercised its powers with respect to traffic regulation in the California Vehicle Code in accordance with the rules of *Mervynne* and *COST*. The term "automated enforcement system" is defined in Vehicle Code section 210 to include "an official traffic control

signal described in [Vehicle Code] Section 21450… designed to obtain a clear photograph of a vehicle's license plate and the driver of the vehicle." Vehicle Code section 21100 provides that "[l]ocal authorities may adopt rules and regulations by ordinance or resolution regarding the following matters: … (d) Regulating traffic by means of official traffic control devices meeting the requirements of [Vehicle Code] Section 21400." Vehicle Code section 21455.5 comprehensively specifies the requirements for authorization, contracting, use, and enforcement of violations identified by "automated enforcement systems." That section provides, in relevant part:

> 21455.5 (a) The limit line, the intersection, or a place designated in Section 21455, where a driver is required to stop, may be equipped with an automated enforcement system if the governmental agency utilizing the system meets all of the following requirements:
>
> (1) Identifies the system by signs that clearly indicate the system's presence and are visible to traffic approaching from all directions, or posts signs at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes.
>
> (2) If it locates the system at an intersection, and ensures that the system meets the criteria specified in Section 21455.7.
>
> (b) Prior to issuing citations under this section, a local jurisdiction utilizing an automated traffic enforcement system shall commence a program to issue only warning notices for 30 days. The local jurisdiction shall also make a public announcement of the automated traffic enforcement system at least 30 days prior to the commencement of the enforcement program.
>
> (c) Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system.

As used in this subdivision, “operate” includes all of the following activities:

(1) Developing uniform guidelines for screening and issuing violations and for the processing and storage of confidential information, and establishing procedures to ensure compliance with those guidelines.

(2) Performing administrative functions and day-to-day functions, including, but not limited to, all of the following:

(A) Establishing guidelines for selection of location.

(B) Ensuring that the equipment is regularly inspected.

(C) Certifying that the equipment is properly installed and calibrated, and is operating properly.

(D) Regularly inspecting and maintaining warning signs placed under paragraph (1) of subdivision (a).

(E) Overseeing the establishment or change of signal phases and the timing thereof.

(F) Maintaining controls necessary to assure that only those citations that have been reviewed and approved by law enforcement are delivered to violators.

(d) The activities listed in subdivision (c) that relate to the operation of the system may be contracted out by the governmental agency, if it maintains overall control and supervision of the system. However, the activities listed in paragraph (1) of, and subparagraphs (A), (D), (E), and (F) of paragraph (2) of, subdivision (c) may not be contracted out to the manufacturer or supplier of the automated enforcement system.

(e)(1) Notwithstanding Section 6253 of the Government Code, or any other provision of law, photographic records made by an automated enforcement system shall be confidential, and shall be made available only to governmental agencies and law enforcement agencies and only for the purposes of this article.

(2) Confidential information obtained from the Department of Motor Vehicles for the administration or enforcement of this article shall be held confidential, and may not be used for any other purpose.

(3) Except for court records described in Section 68152 of the Government Code, the confidential records and information described in paragraphs (1) and (2) may be retained for up to six months from the date the information was first obtained, or until final disposition of the citation, whichever date is later, after which time the information shall be destroyed in a manner that will preserve the confidentiality of any person included in the record or information..

(f) Notwithstanding subdivision (e), the registered owner or any individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation shall be permitted to review the photographic evidence of the alleged violation.

(g)(1) A contract between a governmental agency and a manufacturer or supplier of automated enforcement equipment may not include provision for the payment or compensation to the manufacturer or supplier based on the number of citations generated, or as a percentage of the revenue generated, as a result of the use of the equipment authorized under this section.

(2) Paragraph (1) does not apply to a contract that was entered into by a governmental agency and a manufacturer or supplier of automated enforcement equipment before January 1, 2004, unless that contract is renewed, extended, or amended on or after January 1, 2004.

Under the California Vehicle Code provisions related to "automated traffic enforcement systems," the Legislature has provided that a "***city council*** or county board of supervisors shall conduct a public hearing on the proposed use of an automated enforcement system … prior to authorizing the city or county to enter into a contract for the use of the

system." (Veh. Code, § 21455.6 (emphasis added).) Section 21455.6 provides in full:

> 21455.6. (a) A city council or county board of supervisors shall conduct a public hearing on the proposed use of an automated enforcement system authorized under Section 21455.5 prior to authorizing the city or county to enter into a contract for the use of the system.
>
> (b) (1) The activities listed in subdivision (c) of Section 21455.5 that relate to the operation of an automated enforcement system may be contracted out by the city or county, except that the activities listed in paragraph (1) of, and subparagraphs (A), (D), (E), or (F) of paragraph (2) of, subdivision (c) of Section 21455.5 may not be contracted out to the manufacturer or supplier of the automated enforcement system.
>
> (2) Paragraph (1) does not apply to a contract that was entered into by a city or county and a manufacturer or supplier of automated enforcement equipment before January 1, 2004, unless that contract is renewed, extended, or amended on or after January 1, 2004.
>
> (c) The authorization in Section 21455.5 to use automated enforcement systems does not authorize the use of photo radar for speed enforcement purposes by any jurisdiction.

Section 21455.6 was added to the Vehicle Code in 1998 to supplement Section 21455.5 (Ch. 828, Stats. 1998, § 17), and together, these statutes comprehensively regulate the subject of "automated traffic enforcement systems," reflecting the Legislature's recognition of its statewide concern. From its enactment, section 21455.6 specifically delegated the authority for authorizing automated traffic enforcement systems to city councils. (California Bill Analysis, Assembly Committee,

1997-1998 Regular Session, S.B. 1637 Assem., 6/29/1998.) Subsequent amendments to section 21455.6 did not alter this fundamental delegation. (See, A.B. 2908 (Ch. 860, Stats. 2000; and A.B. 1022 (Ch. 511, Stats. 2003).)

The key term used in Vehicle Code section 21455.6 is "city council. As noted in a series of critical cases, in the Legislature's delegation of authority to the "city council," the use of that term has been authoritatively interpreted by two leading cases to have preemptive effect – depriving local voters of the power of initiative with respect to a matter of statewide concern.

Petitioner Safe Streets for Murrieta does *not* contend that "voters" have no right of initiative with respect to traffic regulation matters. However, it is the *State's voters* who have the power to repeal, amend or extend the *State's power* over automated traffic enforcement devices for the State as a whole. (*Mervynne, supra.* 189 Cal.App.2d at p. 565.) The voters of the City of Murrieta, while they do not have the power to use the local initiative to "take a bite" out of the State's authority to provide for city council approval of automated traffic enforcement systems for the City of Murrieta, retain the power to influence their City Council to act on

modification or termination of its automated traffic enforcement system. Petitioner Safe Streets for Murrieta does not challenge that right.[2]

Moreover, Petitioner also does *not* ask this Court to anyway enjoin or prohibit the Respondent City Council of Murrieta from directly enacting its own legislation relative to this subject matter. Rather, Petitioner seeks narrow relief by this Court -- a finding that the subject matter of Measure N is a matter of statewide concern and, thus, may not be enacted by the electorate via ballot measure, thereby preventing the certification and implementation of Measure N.

C. The Initiative Purports to Regulate Automated Traffic Enforcement Systems (Red Light Cameras) In the City of Murrieta in Clear Violation of Established Case Law.

The language of the Initiative states in section 2, "An *ordinance shall be adopted by the City Council* which would prohibit the installation of and require removal of any existing red light camera or other automated traffic enforcement system in the City of Murrieta." (Emphasis added.)

Because the state has pre-empted the field of traffic regulation, the attempt in section 2 of the Initiative to remove or prohibit the future installation of any automated traffic enforcement systems in the City of Murrieta is also an improper use of the initiative power.

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[2] Petitioner also recognizes that voters further retain the opportunity to use their political influence and powers of persuasion through the political process of elections and recalls to affect the decisions of city council members.

To prevent certification and implementation of Measure N is not a derogation of the initiative process itself, but rather an affirmation that as to matters of statewide concern such as traffic regulation, and in particular, the regulation of authorization of city and county adoption of automated traffic enforcement systems – matters of statewide concern, the power to act by initiative resides in the people of the whole state, not those of a particular community.

CONCLUSION

For the foregoing reasons, this Court should grant an immediate stay and Petitioner's request for Writ of Mandate relief upon a finding that subject matter of Measure N is a matter of statewide concern and further preventing and prohibiting the City Council from certifying the results of the November 6, 2012 election as they pertain to Measure N, and also from implementing Measure N on December 15, 2012, and from enforcing the measure in any way.

Date: November 14, 2012

Respectfully submitted,

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SAFE STREETS FOR MURRIETA
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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) and 8.360(b)(1) of the California Rules of the Court, the enclosed PETITION FOR WRIT OF MANDATE OR OTHER EXTRAORDINARY RELIEF AND REQUEST FOR IMMEDIATE STAY is produced using 13-point Times New Roman type including footnotes and contain approximately 7,566 words, which is less than the total words permitted by the rules of the court. Counsel relies on the word count of the computer program, Microsoft Word, used to prepare this brief.

Date: November 14, 2012

Respectfully submitted,

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