

1 Charles H. Bell, Jr. (SBN 060553)  
Thomas W. Hiltachk (SBN 131215)  
2 BELL, McANDREWS & HILTACHK, LLP  
455 Capitol Mall, Suite 600  
3 Sacramento, California 95814  
Telephone: (916) 442-7757  
4 Facsimile: (916) 442-7759

5 Paul Gough (SBN 075502)  
BELL, McANDREWS & HILTACHK, LLP  
6 13406 Valleyheart Drive North  
Sherman Oaks, CA 91423  
7 Telephone: (818) 971-3660  
Facsimile: (877) 619-3791  
8

9 *Attorneys for Petitioner and Plaintiff,*  
SAFE STREETS FOR MURRIETA, NO ON PROPOSITION N

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF RIVERSIDE

13  
14 SAFE STREETS FOR MURRIETA, NO ON  
PROPOSITION N

15 Petitioner and Plaintiff,

16 vs.

17 CITY COUNCIL OF THE CITY OF  
18 MURRIETA; DOES 1-10,

19 Respondents and Defendants.

Case No. **RIC**

12 175 4 5

VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY RELIEF AND  
TEMPORARY RESTRAINING ORDER AND  
FOR PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF

(C.C.P., § 1085; C.C.P., § 1060; C.C.P., §526a )

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**BY FAX**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

NOV 30 2012

C. Mundo

1 Petitioner and Plaintiff SAFE STREETS FOR MURRIETA, NO ON MEASURE N alleges as  
2 follows:

3 **GENERAL ALLEGATIONS**

4 **A. Timeliness of Petition**

5 1. Petitioner/Plaintiff brings this Petition for Writ of Mandate and Complaint for  
6 Declaratory and Injunctive Relief on November 30, 2012, two weeks prior to the December 15,  
7 2012, mandated deadline for implementation of election results. (See, Elec. Code, §§ 9217,  
8 15372.) This Petition is therefore timely.

9 **B. The Parties**

10 2. Petitioner/Plaintiff SAFE STREETS FOR MURRIETA, NO ON MEASURE N is  
11 a duly qualified, registered primarily formed campaign committee in the City of Murrieta.  
12 Petitioner SAFE STREETS FOR MURRIETA, NO ON MEASURE N was primarily formed to  
13 promote the defeat of Measure N at the November 6, 2012 election. The committee remains an  
14 active and ongoing committee. Petitioner believes that the measure enacted by the voters of the  
15 City of Murrieta on November 6, 2012, entitled "Murrieta Prohibition of Automated Traffic  
16 Enforcement Systems Act," See Exhibit A to the Petition/Complaint, incorporated by reference  
17 herein, is beyond the power of the City of Murrieta to enforce, for the reasons set forth herein.

18 3. Respondent, CITY COUNCIL OF THE CITY OF MURRIETA, is responsible to  
19 certify the elections results of the November 6, 2012, election pursuant to the California Elections  
20 Code (Elec. Code, §§ 9269, 15372, 15400), and for the enforcement and implementation of the  
21 "Murrieta Prohibition of Automated Traffic Enforcement Systems Act."

22 **C. Previous Proceedings**

23 4. On August 3, 2012, the Superior Court of California, County of Riverside,  
24 Honorable Judge Daniel Ottolia, found the "Murrieta Prohibition of Automated Traffic  
25 Enforcement Systems Act" to be beyond the power of the electorate to enact and not an initiative  
26 measure at all. (See Exhibit B attached hereto, and incorporated by this reference herein.)

27 5. On August 10, 2012, the Court of Appeal for the Fourth Appellate District,  
28 Division 2, Case No. E056868, stayed the order of the Superior Court, and on September 18,

1 2012, issued an opinion overturning the issuance of a peremptory writ of mandate by the Superior  
2 Court, on the grounds that “it was not improper for the trial court to grant pre-election review of  
3 this challenge, but we must conclude it was unwise.” (Exhibit C attached hereto, p. 4,  
4 incorporated by this reference herein.)

5 6. On November 6, 2012, the voters of the City of Murrieta passed Measure N. A  
6 true and correct copy of the statement of the vote is attached hereto as Exhibit D and incorporated  
7 by this reference herein.

8 7. On November 14, 2012, the Petitioner filed a Petition for Writ of Mandate, an  
9 original proceeding, in the Court of Appeal for the Fourth Appellate District, Division 2, Case No.  
10 E057493, seeking the relief requested in this Petition/Complaint. On November 29, 2012, the  
11 Court of Appeal dismissed the Petition “without prejudice to seeking appropriate relief in the  
12 superior court.” (See Exhibit E attached hereto and incorporated by reference herein.)

13 8. The present matter concerns post-election review of the same statutory language,  
14 only now the language has been approved by voters and is set for enactment by Respondent City  
15 of Murrieta.

16 **D. Jurisdiction**

17 9. Petitioner/Plaintiff plainly possesses the direct, substantial beneficial interest  
18 required to seek a writ of mandate under Code of Civil Procedure section 1085 and a Complaint  
19 for Declaratory and Injunctive Relief under Code of Civil Procedure sections 1060 and 526a.  
20 Petitioner/Plaintiff’s primary purpose was to oppose Measure N at the November 6, 2012  
21 election. As a result, Petitioner/Plaintiff has a “particular right to be preserved or protected over  
22 and above the interest held in common with the public at large.” (*Carsten v. Psychology*  
23 *Examining Com.* (1980) 27 Cal.3d 793, 796.) Petitioner/Plaintiff also has standing to bring the  
24 instant matter under the “public interest exception” to the rule that a party must be beneficially  
25 interested in the issuance of a writ in order to petition for the writ. (See, e.g., *Rialto Citizens for*  
26 *Responsible Growth v. City of Rialto* (2012) 208 Cal. App. 4th 899, 912, reh’g denied (Aug. 24,  
27 2012), review filed (Oct. 29, 2012); *Waste Management of Alameda County, Inc. v. County of*  
28 *Alameda* (2000) 79 Cal.App.4th 1223, 1232–1233, disapproved on other grounds in *Save the*

1 *Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 169–170.) This case  
2 involves matters of public importance, including limits on the power of initiative afforded to  
3 voters, and determination of the powers of Respondent City’s electorate.

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

5 **FIRST CAUSE OF ACTION**

6 **(Writ of Mandate – C.C.P., § 1085)**

7 11. Petitioner incorporates by reference the allegations of paragraphs 1-10 as if fully  
8 set forth herein.

9 12. Code of Civil Procedure, section 1085, authorizes the filing of a petition for writ  
10 of mandate seeking to prevent a public official from taking official actions prohibited by the law  
11 or Constitution.

12 13. Petitioner has no other adequate or speedy remedy at law and he and the taxpayers  
13 of the City of Murrieta will suffer severe and irreparable injury if the Court (a) does not enjoin  
14 Respondent CITY COUNCIL OF THE CITY OF MURRIETA from violating the California  
15 Constitution in the ways enumerated herein by enforcing the provisions of the “Murrieta  
16 Prohibition of Automated Traffic Enforcement Systems Act” [if] as enacted by the voters,  
17 because the Initiative is beyond the power of the electorate to enact. Article II, section 11(a) of  
18 the California Constitution authorizes the electors of cities and counties to exercise initiative  
19 powers, subject to procedures the Legislature may provide. Municipal governments such as the  
20 City of Murrieta , a general law city, as well as charter cities and counties, may only regulate  
21 municipal affairs, not matters of statewide concern. Further, even a proposed initiative measures  
22 within the power of a general law city to adopt must actually propose the adoption of a statute or  
23 ordinance, and a measure that merely directs the City Council to enact regulations does not  
24 propose a statute or ordinance.

25 14. Under California law, the Legislature can limit the exercise of initiative power in  
26 matters of statewide concern. (*See Comm. of Seven Thousand v. Superior Court* (1998) 45  
27 Cal.3d 491, 511-12 (“*COST*”) [“The Legislature’s power over matters of statewide concern is

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1 sufficient authorization” to bar the use of local initiative on such issues]. Traffic regulation is a  
2 matter of statewide concern. (*Mervynne v. Acker* (1961) 189 Cal.App.2d 558, 561-562 .)

3 15. The Legislature has exercised its powers with respect to traffic regulation in the  
4 California Vehicle Code. The term “automated enforcement system” is defined in Vehicle Code,  
5 §210 to include “an official traffic control signal described in [Vehicle Code] Section 21450...  
6 designed to obtain a clear photograph of a vehicle’s license plate and the driver of the vehicle.”  
7 Vehicle Code, § 21100 provides that “[l]ocal authorities may adopt rules and regulations by  
8 ordinance or resolution regarding the following matters: ... (d) Regulating traffic by means of  
9 official traffic control devices meeting the requirements of [Vehicle Code] Section 21400.”  
10 Vehicle Code, §21455.5 comprehensively specifies the requirements for authorization,  
11 contracting, use, and enforcement of violations identified by “automated enforcement systems.”  
12 Under the California Vehicle Code provisions related to “automated traffic enforcement  
13 systems,” a “city council or county board of supervisors shall conduct a public hearing on the  
14 proposed use of an automated enforcement system ... prior to authorizing the city or county to  
15 enter into a contract for the use of the system.” (Veh. Code § 21455.6, emphasis added.)

16 16. The regulation of red light cameras and other automated traffic enforcement  
17 systems is one for which the State Legislature has barred the use of initiative and referendum, by  
18 specifically delegating exclusive authority on the issue to the City Council. The specific  
19 delegation of authority to the “city council” is a key piece of evidence in determining the  
20 Legislature’s intent bar the use of initiative over the subject matter. (*COST*, 45 Cal.3d at pp. 511-  
21 512).

22 17. Petitioner has no other adequate or speedy remedy at law and it and the taxpayers  
23 of the City of Murrieta will suffer severe and irreparable injury if the Court does not enjoin  
24 Respondent CITY COUNCIL OF THE CITY OF MURRIETA from enforcing the “Murrieta  
25 Prohibition of Automated Traffic Enforcement Systems Act.”

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1 **SECOND CAUSE OF ACTION**

2 **(Declaratory Relief: CCP § 1060, Declaring the Initiative Measure Unconstitutional)**

3 18. Paragraphs 1 through 17 are incorporated herein as if set forth in this Second  
4 Cause of Action.

5 19. An actual controversy has arisen and now exists between Plaintiff and Defendants  
6 CITY COUNCIL OF THE CITY OF MURRIETA and its agents, concerning the validity of the  
7 “Murrieta Prohibition of Automated Traffic Enforcement Systems Act” and the Plaintiff’s rights  
8 with respect thereto. Plaintiff contends that the “Murrieta Prohibition of Automated Traffic  
9 Enforcement Systems Act” is unconstitutional and violates their constitutional rights as state  
10 voters and city taxpayers. Plaintiff is informed and believes, and on that basis alleges, that  
11 Defendants contend otherwise. A judicial determination and declaration as to the legality and  
12 validity of the “Murrieta Prohibition of Automated Traffic Enforcement Systems Act” is  
13 therefore necessary and appropriate.

14 **THIRD CAUSE OF ACTION**

15 **(Injunctive Relief: CCP § 526a)**

16 20. Paragraphs 1 through 19 are incorporated as if set forth in this Second Cause of  
17 Action.

18 21. In the absence of this Court’s injunction, Defendants CITY COUNCIL OF THE  
19 CITY OF MURRIETA and its agents, will enforce and implement the unconstitutional “Murrieta  
20 Prohibition of Automated Traffic Enforcement Systems Act” as enacted and terminate operation  
21 of the City of Murrieta’s “red light” automated traffic enforcement system as enacted by the  
22 voters at the November 6, 2012 election.

23 22. Because the Initiative Measure is unconstitutional, Plaintiff is entitled to a  
24 temporary restraining order, preliminary and permanent injunctive relief enjoining Defendants  
25 CITY COUNCIL OF THE CITY OF MURRIETA and its agents, from enforcement and  
26 implementation of the “Murrieta Prohibition of Automated Traffic Enforcement Systems Act.”  
27 Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law in that no

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1 damages or other legal remedy can adequately compensate it and taxpayers for the irreparable  
2 harm that they will suffer from the denial of their constitutional rights.

3 **PRAYER**

4 WHEREFORE, Petitioners pray for relief as follows:

5 1. On the First Cause of Action, for a peremptory writ of mandate issued under seal  
6 of this Court prohibiting Respondents CITY COUNCIL OF THE CITY OF MURRITA and their  
7 agents, from enforcing “Murrieta Prohibition of Automated Traffic Enforcement Systems Act”;

8 2. On the Second Cause of Action, for a declaration that the “Murrieta Prohibition of  
9 Automated Traffic Enforcement Systems Act” is void, illegal and unconstitutional because it  
10 violates the constitutional rights of the Plaintiff as a voter of the State of California and a local  
11 taxpayer

12 3. On the Third Cause of Action, that this Court issue a temporary restraining order,  
13 preliminary and permanent injunctions enjoining and restraining Defendants CITY COUNCIL  
14 OF THE CITY OF MURRITA and their agents from taking any action to enforce or implement  
15 the “Murrieta Prohibition of Automated Traffic Enforcement Systems Act”;

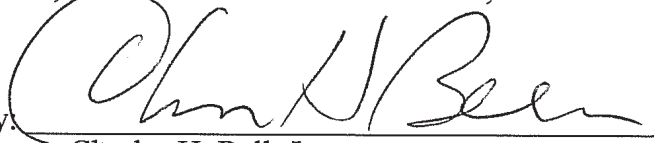
16 4. For an award of attorneys’ fees and costs;

17 5. And for such other legal or equitable relief as the Court deems just and proper.

18 Dated: November 30, 2012

Respectfully Submitted,

19 BELL, McANDREWS & HILTACHK, LLP

20  
21 By: 

Charles H. Bell, Jr.

22 *Attorneys for Petitioner and Plaintiff, SAFE*  
23 *STREETS FOR MURRIETA, NO ON*  
24 *MEASURE N*