

MAR 30 2022

BY *J. Bryant*
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF YOLO

DAN CARSON)

Petitioner,)

vs.)

ZOE S. MIRABILE, in her official)
capacity DAVIS CITY CLERK, and)
JESSE SALINAS, in his official capacity)
as YOLO COUNTY ASSESSOR/CLERK)
RECORDER/REGISTRAR OF VOTERS)

Respondents.)

ALAN PRYOR, an individual; MICHAEL)
CORBETT, an individual; STEPHEN)
WHEELER, an individual; DARREL)
DICKEY, an individual; JULIETTE)
BECK, an individual; and ROBERTA)
MILLSTEIN, an individual,)

Real Parties in Interest.)

Case No. CV 2022-0451

RULING AND JUDGMENT ON PETITION
FOR WRIT OF MANDATE

1 On March 29, 2022, the Court heard argument on the *Petition for Writ of Mandate* filed by Dan
2 Carson, seeking relief under Election Code sections 9295 and 13314. The petition was opposed
3 by Real Parties in Interest Alan Pryor, Michael Corbett, Stephen Wheeler, Darrell Dickey,
4 Juliette Beck, and Roberta Millstein. The Court took the matter under submission at the
5 conclusion of the hearing, and now *grants in part* the request for a peremptory writ amending
6 the *Argument Against Measure H*.

7
8 **1. Requests for Judicial Notice.**

9 All requests for judicial notice are hereby granted.

10
11 **2. Ruling on Challenged Portions of the *Argument Against Measure H***

12 **2.1. *“and is still non-compliant with the City of Davis General Plan.”***

13 The Court does not strike or amend this statement, for two reasons.

14
15 First, as all agree, the project does necessitate a change to the current General Plan. Second, Real
16 Parties in Interest are entitled to express their opinion that the project is incompatible with
17 certain goals and policies in both the current and proposed amended General Plan, including
18 LU 1 (“[m]aintain Davis as a small, University-oriented city surrounded by and containing
19 farmland, greenbelt, and natural habitat and reserves”), and LU 1.5 (City should “[a]ggressively
20 work to prevent urban sprawl on the periphery of Davis”).

21
22 **2.2. *“The Developer had made almost no binding commitments and has no viable ways to***
23 ***improve this traffic mess.”***

24 The Court does not strike or amend this statement, as the evidence is not “clear and convincing”
25 that the statement is objectively false or misleading. (Elec. Code, § 9295, subd. (b)(2) [“[a]

1 peremptory writ of mandate or an injunction shall be issued only upon clear and convincing
2 proof that the material in question is false, misleading, or inconsistent with the requirements of
3 this chapter”].) The qualifier “almost” imports an element of subjectivity or opinion, which
4 brings the statement within the wide ambit of acceptable political speech. (*Huntington Beach*
5 *City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1432 [court must allow “typical
6 hyperbole and opinionated comments common to political debate”].)
7

8 ***2.3. “Their only promise is to develop a Traffic Demand Management Plan if the project is***
9 ***approved. But figuring this traffic mess out later is not a plan!”***

10 The Court finds clear and convincing evidence that this statement is verifiably false, because the
11 Transportation Demand Management Plan is one of nine separate traffic-related commitments
12 among the Baseline Project Features: (*Huntington Beach City Council v. Superior Court* (2002)
13 94 Cal.App.4th 1417, 1432 [affirming excision of a statement upon a showing of “verifiable
14 falsity”].) Real Parties in Interest are free to argue that the other eight commitments are vague,
15 speculative, contingent, or otherwise ineffectual, but as a matter of objective fact they cannot
16 deny the existence of these commitments, which the word “only” does.

17 This statement will be amended to excise the word “only,” as follows:

18 “They promise to develop a Traffic Demand Management Plan if the project is approved.

19 ***But figuring this traffic mess out later is not a plan!”¹***

20 ///

21 ///

22 ///

23 ///

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25 ¹ Emphasis in original.

1 **2.4. “Unmitigated Greenhouse Gas Emissions”**

2 Petitioner argues that this phrase should be interpreted as a factual statement that the project
3 contains no greenhouse gas emission mitigation measures. So construed, it would be objectively
4 false.

5
6 However, Real Parties in Interest construe the phrase as a prediction that the project will result in
7 significant unmitigated greenhouse emissions. So construed, the phrase would stand as an
8 opinion “about the future effects . . . if the measure was enacted.” (*Mandicino v. Maggard*
9 (1989) 210 Cal.App.3d 1413, 1420.)

10
11 These words are challenging to interpret because they are a heading, not a sentence or assertion.
12 The text following the heading discusses the Environmental Impact Report, lending credence to
13 the Petitioner’s interpretation that this is a false assertion that the project contains no greenhouse
14 gas emission mitigation measures. However, the brevity of the text and the inherent ambiguity in
15 converting a heading to an assertion lead the court to conclude that the evidence is not “clear and
16 convincing” that this heading is objectively false or misleading. Therefore, the court will not
17 amend or strike this heading.

18
19
20 **2.5. DiSC is projected to produce 54 million pounds of new greenhouse gases annually”**

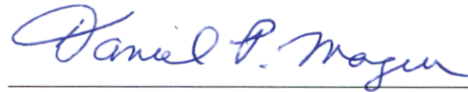
21 The Court finds clear and convincing evidence that the “54 million pounds” figure is misleading,
22 as it is expressed in the less common unit of Troy weight. This error was made inadvertently and
23 not in bad faith, but still should be corrected, and the figure of 20,000 metric tons will be used
24 instead, as requested by Real Parties in Interest at the hearing.

1 **3. Preparation of Writ of Mandate**

2 Petitioner shall forthwith prepare, circulate to counsel, and submit to the Court a Writ of
3 Mandate in conformity with this *Ruling and Judgment on Petition for Writ of Mandate*.

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6 IT IS SO ORDERED.

7 Dated: March 30, 2022



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9 DANIEL P. MAGUIRE
10 JUDGE OF THE SUPERIOR COURT
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