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5 SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 IN AND FOR THE COUNTY OF SONOMA
7 UNLIMITED JURISDICTION
8

9 DAVID HENSON and GE-FREE)
SONOMA COUNTY,)
10)
Petitioners,)
11 v.)
12 EEVE T. LEWIS, in her capacity as Sonoma)
County Clerk-Recorder-Assessor,)
13)
Respondent.)
14)

15 _____)
16 RODNEY A. DOYLE, in his capacity as)
Sonoma County Auditor-Controller;)
17 MICHAEL B. STRUNK, STEVE)
DUTTON, MITCH MULAS, SARALEE)
18 MCCLELLAND KUNDE, and FRED)
LEVIN,)

19 _____)
Real Parties in Interest.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO.

SUPPLEMENTAL DECLARATION OF
DAVID HENSON IN SUPPORT OF
VERIFIED PETITION FOR
WRIT OF MANDATE
(ELEC. CODE, §§ 9190, 13314(a))

IMMEDIATE ACTION REQUESTED,
ELECTION LAW MATTER CALENDAR
PREFERENCE PURSUANT TO ELEC.
CODE, § 13314(a)(3)

DEPARTMENT:
JUDGE:
DATE:
TIME:

1 **SUPPLEMENTAL DECLARATION OF DAVID HENSON**

2 I, David Henson, declare as follows:

3 1. I make this declaration based on my own personal knowledge and if called to testify as
4 to its contents could and would competently do so.

5
6 2. I am the Executive Director of the Occidental Arts and Ecology Center (“OAEC”), the
7 principal proponent of Sonoma County Measure M. OAEC is a nonprofit education center and
8 organic farm set on 80 acres in western Sonoma County. OAEC’s programs include the
9 Horticultural Biodiversity Program, for which we curate a living plant and seed collection of
10 hundreds of varieties of food crops; the School Garden Program, which has helped establish 75
11 school gardens and accompanying curriculum in Bay Area public schools; the Water Institute,
12 which has helped establish 25 watershed restoration groups throughout Northern California; and
13 the Permaculture Program, which has trained and certified over 400 permaculture students.
14

15 3. The Fiscal Impact Analysis for Measure M states that “The Agriculture Commissioner
16 has also estimated a cost of \$25 per test for the presence of a GMO. If we assume a testing
17 protocol of one (1) sample for every five (5) to ten (10) acres, sampling potential areas of pollen,
18 seed and/or plant material drift, and shipping for laboratory analysis, the investigation of one
19 complaint could cost \$10,000 or more, possibly offset by fines/fees.”
20

21 4. The claim that “the investigation of one complaint could cost \$10,000 or more” is
22 clearly misleading, and is false in all but the most extraordinary hypothetical situations which
23 might actually occur.
24

25 5. That evaluation and statement is based on an extreme case; the worst-case scenario,
26 and not at all representative of the likely costs required for testing for GMO crops or other
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1 organisms that are currently available (e.g. GMO corn, soy, canola and cotton), or those likely to
2 be commercialized in the near-term. If we assume a shipping cost of \$40 per sample, to reach the
3 predicted cost of “\$10,000 or more” for “one complaint” based on “a cost of \$25 per test for the
4 presence of a GMO”, using “a testing protocol of one (1) sample for every five (5) to ten (10)
5 acres”, the Agricultural Commissioner would have to be expecting to test an area of 765 acres or
6 1530 acres per complaint. ($\$25/\text{test} + \$40/\text{shipping} = \$65/\text{test} @ 5 \text{ or } 10 \text{ acres/test}$ divided into
7 \$10,000 = an area of 769 or 1538 acres tested).

8
9
10 6. Further, if the Agricultural Commissioner determines that there is cause to investigate
11 a complaint that a farmer is growing a GMO crop in Sonoma County, the assumption that
12 hundreds of acres would need to be tested for the presence of a GMOs in very misleading and
13 factually false in many or most cases the county might expect to experience.

14
15 7. To understand why this is misleading and false requires walking through several steps.
16 First, one must understand what exactly is prohibited by the ordinance that would be created if
17 the initiative passes. The ballot initiative prohibits “the propagation, cultivation, raising, growing,
18 sale or distribution of transgenic organisms in Sonoma County” (Pet. Ex. A.) The initiative
19 defines “transgenic organisms” as “an organism whose DNA is modified by transgenic
20 manipulation”. The initiative defines “transgenic manipulation” as “the extraction of DNA from
21 an organism followed by its introduction into the same or a different organism in such a manner
22 that the introduced DNA can be transmitted through the reproduction of the recipient organism”.
23 (italics added for emphasis). The initiative is clear about prohibiting only those transgenic
24 organisms (also known as “GMOs”) which can transmit their DNA through reproduction.

25
26 8. Second, the initiative states in the “Enforcement” Section 7(f): “Upon making a
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1 destroy” prohibited GMO crops after s/he determines a violation has occurred, the initiative
2 clearly seeks to ensure that multiple seasons of GMO crop growth don’t slowly but steadily move
3 through neighbors’ related crops and create a long-term situation of extensive contamination.
4

5 12. In sum on this issue, the statement in The Fiscal Impact Analysis for Measure M that
6 “The Agriculture Commissioner has also estimated a cost of \$25 per test for the presence of a
7 GMO. If we assume a testing protocol of one (1) sample for every five (5) to ten (10) acres,
8 sampling potential areas of pollen, seed and/or plant material drift, and shipping for laboratory
9 analysis, the investigation of one complaint could cost \$10,000 or more, possibly offset by
10 fines/fees”, is very misleading and, in most cases, false.
11

12 13. The Fiscal Impact Analysis for Measure M states that “The Agriculture
13 Commissioner has estimated a cost as high as \$86,000 per acre to remove, dispose, and replace
14 the soil contaminated by GMOs. Other soil treatment options include chemical soil fumigation,
15 and heat treatment with and approximate cost of \$15,000 per acre.” This claim is clearly
16 misleading, and is false in all but the most extraordinary hypothetical situations which might
17 actually occur.
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19 14. As is argued above, based on the enforcement protocol required in the initiative text
20 to “ensure that such organisms are confiscated and/or destroyed”, the far more adequate action to
21 effect this objective would be to plow-under or otherwise physically remove the prohibited
22 plants. If the prohibited plants had not yet flowered or gone to seed (and many crops are
23 harvested before the plant creates mature flowers or goes to seed), then plowing-under or
24 physically removing the plants are very inexpensive and widely used methods of insuring that the
25 GMO crops in question (or non-GMO crops for that matter) are no longer living organisms, and
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1 cannot further reproduce. After removing the GMO plants, there would be no need to “remove,
2 dispose, and replace the soil contaminated by GMOs” as declared in the Fiscal Impact Analysis,
3 and no extremely exorbitant cost of \$86,000 per acre.
4

5 15. As the removed GMO crops are no longer “living organisms”, they could be safely,
6 easily and very inexpensively disposed of through composting or plowing into the field, or by
7 burning them in burn piles. These three are the methods farmers use routinely to process dead
8 plant material.
9

10 16. If a GMO crop has already flowered and expressed pollen, then, as noted above, it is
11 possible that nearby related plants could be cross-pollinated and contaminated with the
12 genetically engineered trait (depending on the distance that pollen travels by wind, insect, bird,
13 etc, for that particular plant). In this case there is no “soil contaminated by GMOs”. Pollen itself
14 is not a living, reproducing organism. It only becomes so when it encounters the flower of a
15 related plant and reproduces. There is no mandate in the initiative for the Agricultural
16 Commissioner to seek to “confiscate and/or destroy” pollen expressed from a GMO plant. Thus,
17 again, after removing the GMO plants, there would be no need to “remove, dispose, and replace
18 the soil contaminated by GMOs” as declared in the Fiscal Impact Analysis, and no extremely
19 exorbitant cost of \$86,000 per acre.
20

21 17. If a GMO crop had already flowered and produced seed (and many crops are
22 harvested before the plant creates mature flowers or goes to seed), then is it probable that those
23 plants will have released seed by rupture of the seed pod or fruit, or by dispersal of viable seed by
24 insect, bird, mammal, wind or water. In these cases, there would likely be viable GMO seed that
25 would likely germinate (especially if watered), and grow into new GMO plants the next growing
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1 season for that crop. That GMO seed on the ground would be likely be living GMO organisms
2 prohibited by the initiative.

3
4 18. When a farmer's crop goes to seed and, and that crop leaves viable seed on the
5 ground that will likely grow into new plants, if the farmer does not want that crop in his or her
6 field, s/he can plow that crop under, mow that crop, or use herbicide to kill the crop. All are
7 routinely used by farmers and are simple, inexpensive ways to make sure last season's crops do
8 not grow next season. Any of those remedies would succeed in insuring that a new crop of GMO
9 plants (sprouted from seed from the previous GMO crop) would be destroyed and could not
10 reach sexual maturity. There would be no need to "remove, dispose, and replace the soil
11 contaminated by GMOs" as declared in the Fiscal Impact Analysis, and no extremely exorbitant
12 cost of \$86,000 per acre.
13

14 19. Thus, the Fiscal Impact Analysis' projection of "a cost as high as \$86,000 per acre to
15 remove, dispose, and replace the soil contaminated by GMOs" is highly speculative, using only
16 the most unlikely, most extreme, and most expensive scenario. This is clearly misleading and is
17 false all but the most extreme hypothetical case one could imagine.
18

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct and that this declaration was executed on August 31, 2005 at Santa Rosa,
21 California.
22

23
24 _____
25 David Henson
26
27
28

1 **CERTIFICATE OF SERVICE**

2

3 I, the undersigned, certify and declare that I am a citizen of the United States, over the age

4 of 18 years, employed in Alameda County, California, and not a party to this action. My

5 business address is 1604 Solano Avenue, Berkeley, California 94707. On August 31, 2005, I

6 served true copies of the attached SUPPLEMENTAL DECLARATION OF DAVID HENSON

7 IN SUPPORT OF VERIFIED PETITION FOR WRIT OF MANDATE on the Respondent and

8 Real Parties in Interest in the action by facsimile transmission to the numbers listed below and by

9 placing them in postage-prepaid envelopes addressed to the following and depositing the

10 envelopes in the United States Mail:

11 Kathleen Laroque
12 Deputy County Counsel
13 575 Administration Drive 105A
14 Santa Rosa, CA 94503

15 Fax: 707-565-2624

16 Counsel for Respondent Eeve T. Lewis and
17 Real Party in Interest Rodney A. Doyle

18 Deborah Caplan
19 Olson, Hagel & Fishburn
20 555 Capitol Mall Suite 1425
21 Sacramento, CA 95814

22 Fax: 916-442-1280

23 Counsel for Real Parties in Interest
24 Michael B. Strunk, Steve Dutton,
25 Mitch Mulas, Saralee McClelland Kunde
26 and Fred Levin

27 I declare under penalty of perjury and the laws of the State of California that the

28 foregoing is true and correct and that this declaration was executed on August 31, 2004 at

_____, California.

Lowell Finley