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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SONOMA  
10 UNLIMITED JURISDICTION

11 DAVID HENSON and GE-FREE  
12 SONOMA COUNTY,

13 Petitioners,

14 v.

15 EEVE T. LEWIS, in her capacity as Sonoma  
16 County Clerk-Recorder-Assessor,

17 Respondent.

18 \_\_\_\_\_  
19 RODNEY A. DOYLE, in his capacity as  
20 Sonoma County Auditor-Controller;  
21 MICHAEL B. STRUNK, STEVE  
22 DUTTON, MITCH MULAS, SARALEE  
23 MCCLELLAND KUNDE, and FRED  
24 LEVIN,

25 \_\_\_\_\_  
26 Real Parties in Interest.

27 CASE NO.

28 VERIFIED PETITION FOR  
WRIT OF MANDATE  
(ELEC. CODE, §§ 9190, 13314)

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

DEPARTMENT:  
JUDGE:  
DATE:  
TIME:

1 Petitioners DAVID HENSON and GE-FREE SONOMA COUNTY allege as follows:

2 **GENERAL ALLEGATIONS**

3 1. Petitioner DAVID HENSON is a resident and voter in the County of Sonoma,  
4 California. He is the Executive Director of the Occidental Arts and Ecology Center, the principal  
5 sponsor of Sonoma County Measure M. A true and correct copy of Measure M is attached to and  
6 incorporated in this petition as Exhibit A.

7 2. Petitioner GE-FREE SONOMA COUNTY is the ballot measure committee that is the  
8 proponent of Measure M. GE-FREE SONOMA COUNTY is sponsored by Community  
9 Alliance with Family Farmers, California Certified Organic Farmers, Occidental Arts and  
10 Ecology Center, Sierra Club, North Bay Labor Council, Sonoma County Conservation Action,  
11 and the Small Boat Commercial Salmon Fishermen's Association.

12 3. Respondent EEVE T. LEWIS is the County Clerk-Recorder-Assessor for the County of  
13 Sonoma. She is responsible for preparing and distributing the official voter information  
14 pamphlet for the November 8, 2005 county special election, which has been consolidated with  
15 the statewide special election. Fiscal impact analyses and ballot arguments for and against  
16 county ballot measures are filed with the office of the Registrar of Voters, which acts under the  
17 authority of the County Clerk-Recorder-Assessor.

18 4. Real Party in Interest RODNEY A. DOYLE is the Sonoma County Auditor-Controller  
19 and authored the Fiscal Impact Analysis of Sonoma County Measure M, an initiative ordinance  
20 that has qualified for the November 8, 2005 ballot. A true and correct copy of the fiscal impact  
21 analysis is attached hereto as Exhibit B.

22 5. Real Parties in Interest MICHAEL B. STRUNK, STEVE DUTTON, MITCH MULAS,  
23 SARALEE MCCLELLAND KUNDE, FRED LEVIN signed the ballot argument against Sonoma  
24 County Measure M. Real Party in Interest MICHAEL B. STRUNK signed and submitted the  
25 Argument Against Measure M on behalf of Real Party in Interest SONOMA COUNTY FARM  
26 BUREAU. A true and correct copy of the Argument Against Measure M is attached to and  
27 incorporated in this petition as Exhibit C.



1           13. The bracketed portion of the foregoing sentence is misleading because it makes  
2 highly inaccurate and speculative assumptions regarding the number of acres that may need to be  
3 tested for prohibited GMO crops in the event that the Agriculture Commissioner determines a  
4 violation has occurred. The bracketed portion of the foregoing sentence is also highly misleading  
5 and in most cases false in that it assumes that any complaint will result in a testing of hundreds of  
6 acres of land for GMO organisms. This erroneously assumes that every prohibited GMO can  
7 possibly or will likely contaminate hundreds of acres of nearby land.

8           14. The first and second sentences of paragraph 4 of the fiscal impact analysis state as  
9 follows:

10                   The Agricultural Commissioner has estimated a cost as high as  
11                   \$86,000 per acre to remove, dispose, and replace the soil  
12                   contaminated by GMOs. Other soil treatment options include  
                    chemical soil fumigation and heat treatment with an approximate  
                    cost of \$15,000 per acre.

13           15. The foregoing sentences are false and misleading. The first sentence, by its use of  
14 the definite “the” before “soil contaminated by GMOs,” falsely assumes that GMO crops  
15 currently grown or likely to be grown during the 10-year life of Measure M do in fact  
16 contaminate soil. It also falsely assumes that Measure M would require removal, disposal, and  
17 replacement of soil under any but the most unusual circumstances. The reverse is true. Finally,  
18 the first sentence creates a misleading impression of skyrocketing costs by setting forth only the  
19 high end of the Agricultural Commissioner’s estimate of the cost per acre for this process. A  
20 more typical remedy would be to merely plow under or otherwise remove the prohibited plants  
21 before they go to seed. This would leave no further living, reproducing GMOs in the  
22 environment.

23           16. The second sentence quoted in paragraph 15 is misleading because, again, it falsely  
24 assumes that Measure M would require chemical soil fumigation and heat treatment under any  
25 but the most unusual circumstances.

26           17. The final sentence of the fifth paragraph of the fiscal impact analysis states:  
27  
28

1 The destruction of property could be considered a “taking” by the  
2 court, and the County would be responsible for the value of the  
3 destroyed property.

4 18. The foregoing sentence is false and misleading because a large number of statutes  
5 and ordinances mandating eradication of plants and crops found to be public nuisances have  
6 withstood legal challenges on “taking” grounds, while there are no reported appellate court  
7 decisions holding that such statutes and ordinances effect a compensable “taking.”

8 19. Respondent LEWIS has no authority as County Clerk-Recorder-Assessor to reject the  
9 fiscal impact analysis submitted by Real Part in Interest DOYLE, the County Auditor-Controller.  
10 Respondent LEWIS is named in this lawsuit pursuant to Elections Code sections 9190 and  
11 13314, which require that she be named.

12 20. Any Sonoma County voter may seek a writ of mandate under Elections Code sections  
13 9190 and 13314 to correct materials submitted for the ballot pamphlet. A writ shall issue upon  
14 clear and convincing proof that the material in question is false or misleading, and that issuance  
15 of a writ will not interfere with the printing or distribution of the ballot pamphlet. The public  
16 inspection period (August 22 through September 1 in this case) is provided specifically for voters  
17 to challenge the legality of such ballot materials without interfering with the conduct of the  
18 election.

19 21. Petitioners have no other adequate or speedy remedy at law. The voters deserve, and  
20 the Elections Code requires, that all fiscal impact statements comply with section 9190.

21 **SECOND CAUSE OF ACTION**

22 **(Writ of Mandate, Elections Code Sections 9190(b), 13314(a))**

23 22. The allegations in paragraphs 1 through 21 are realleged and incorporated herein.

24 23. The second sentence in the first paragraph of the Argument Opposed to Measure M  
25 states:

26 That’s why every major farming organization in Sonoma County  
27 opposes Measure M.

28 24. The foregoing statement is false and misleading because not every major farming  
organization in Sonoma County opposes Measure M. At least two major farming organizations

1 in Sonoma County, the Community Alliance with Family Farmers (CAFF) and California  
2 Certified Organic Farmers (CCOF) support Measure M.

3 25. The second paragraph of the Argument Opposed to Measure M states:

4 Banning farm families, ranchers and winegrowers from growing  
5 and selling genetically modified crops puts them at a competitive  
6 disadvantage which will have a crippling effect on Sonoma County  
7 agriculture.

8 26. The foregoing statement is false and misleading because, for many farm families,  
9 ranchers and winegrowers who practice organic methods, just the opposite is true. Permitting the  
10 growing and selling of genetically modified crops threatens their livelihood. The statement is  
11 also false and misleading because, even for those who grow genetically modified crops, pesticide  
12 usage and expense increases.

13 27. The third paragraph of the Argument Opposed to Measure M states:

14 For years, GMOs have made farming safer, more efficient and  
15 more environmentally sensitive. Science has proven that GMO  
16 crops reduce pesticide use, fuel emissions and water use while  
17 improving air quality.

18 28. The foregoing statements are false and misleading. Scientific studies show that  
19 GMOs make farming less safe, less efficient and less environmentally sensitive. And science has  
20 proven that GMO crops actually increase pesticide use while having no impact on fuel emissions,  
21 water use or air quality.

22 29. The second sentence of the fourth paragraph of the Argument Opposed to Measure M  
23 states:

24 Proponents of Measure M ignored the needs of local farmers and  
25 taxpayers[, and didn't consult with local agriculture]. (Brackets  
26 added.)

27 30. The bracketed portion of the foregoing statement is false. Proponents of Measure M  
28 consulted with, and distributed drafts of the proposed initiative ordinance to, a broad range of  
29 individuals and organizations involved in Sonoma County agriculture.

30 31. The second and third sentences of the fifth paragraph of the Argument Opposed to  
31 Measure M states:

1 It will cost taxpayers millions and is so poorly written that it  
2 provides no exemption for medical or veterinary vaccines or life  
3 saving treatments for cancer, heart disease or other illnesses. If  
4 farm families can't compete, farm land will be further developed –  
5 accelerating suburban sprawl and the destruction of Sonoma  
6 County's natural beauty.

7 32. The first sentence of the foregoing statement is false and misleading because  
8 Measure M on its face provides a categorical exemption for medical research (which includes  
9 veterinary research), whether the research is aimed at developing vaccines, life saving treatments  
10 for cancer, heart disease or other illnesses, or for any other medical purpose. The second  
11 sentence is false and misleading because its doomsday prediction of accelerated suburban sprawl  
12 falsely assumes that Measure M will make it impossible for farm families to continue farming.  
13 The competitiveness of the many Sonoma County farm families who practice organic farming  
14 will be helped, not hurt, by Measure M's prohibition on genetically engineered crops.  
15 Conversely, the cost of increased pesticide use by farm families who do grow genetically  
16 engineered crops undercuts any notion that Measure M will be fatal to their competitiveness.

17 33. The second sentence of the sixth paragraph of the Argument Opposed to Measure M  
18 states in relevant part:

19 We're supported by [every major farming organization, like] the  
20 Sonoma County Farm Bureau, Sonoma County Grape Growers. . . .  
21 (Brackets added.)

22 34. The bracketed portion of the foregoing statement is false. The Family Farmers  
23 Alliance, the coalition organized to defeat Measure M to which the statement refers, is not  
24 supported by every major farming organization. At least two major farming organizations in  
25 Sonoma County, the Community Alliance with Family Farmers (CAFF) and California Certified  
26 Organic Farmers (CCOF), oppose the Family Farmers Alliance and support Measure M.

27 35. Respondent LEWIS has no authority as County Clerk-Recorder-Assessor to reject the  
28 Argument Opposed to Measure M submitted by Real Parties in Interest MICHAEL B. STRUNK,  
STEVE DUTTON, MITCH MULAS, SARALEE MCCLELLAND KUNDE, and FRED LEVIN.  
Respondent LEWIS is named in this lawsuit pursuant to Elections Code sections 9190 and  
13314, which require that she be named.

1           36. Any Sonoma County voter may seek a writ of mandate under Elections Code sections  
2 9190 and 13314 to correct materials submitted for the ballot pamphlet. A writ shall issue upon  
3 clear and convincing proof that the material in question is false or misleading, and that issuance  
4 of a writ will not interfere with the printing or distribution of the ballot pamphlet. The public  
5 inspection period (August 22 through September 1 in this case) is provided specifically for voters  
6 to challenge the legality of such ballot materials without interfering with the conduct of the  
7 election.

8           37. Petitioners have no other adequate or speedy remedy at law. The voters deserve, and  
9 the Elections Code requires, that all authors of ballot arguments comply with section 9190.

10  
11 **WHEREFORE**, Petitioners pray for relief as follows:

12 **ON COUNT ONE:**

13           1. For issuance of an alternative writ/order to show cause and peremptory writ of  
14 mandate directing Respondent LEWIS to delete the following statements from the Fiscal Impact  
15 Statement of Sonoma County Measure M submitted by Real Party in Interest RODNEY A.

16 **DOYLE:**

17           [If we assume a testing protocol of one (1) sample for every five (5) to ten (10)  
18 acres, sampling potential areas of pollen, seed and/or plant material drift, and  
19 shipping for laboratory analysis, the investigation of one complaint could cost  
20 \$10,000 or more], possibly offset by fines/fees. (Only bracketed portion to be  
21 deleted.)

22           The Agricultural Commissioner has estimated a cost as high as \$86,000 per acre  
23 to remove, dispose, and replace the soil contaminated by GMOs. Other soil  
24 treatment options include chemical soil fumigation and heat treatment with an  
25 approximate cost of \$15,000 per acre.

26           The destruction of property could be considered a “taking” by the court, and the  
27 County would be responsible for the value of the destroyed property.

28 **ON COUNT TWO:**

1           2. For issuance of an alternative writ/order to show cause and peremptory writ of  
2 mandate directing Respondent LEWIS to delete the following statements from the Argument  
3 Against Sonoma County Measure M submitted by Real Parties in Interest MICHAEL B.  
4 STRUNK, STEVE DUTTON, MITCH MULAS, SARALEE MCCLELLAND KUNDE, and  
5 FRED LEVIN:

6                   That’s why every major farming organization in Sonoma County  
7                   opposes Measure M.

8                   Banning farm families, ranchers and winegrowers from growing  
9                   and selling genetically modified crops puts them at a competitive  
10                  disadvantage which will have a crippling effect on Sonoma County  
11                  agriculture.

12                  For years, GMOs have made farming safer, more efficient and  
13                  more environmentally sensitive. Science has proven that GMO  
14                  crops reduce pesticide use, fuel emissions and water use while  
15                  improving air quality.

16                  Proponents of Measure M ignored the needs of local farmers and  
17                  taxpayers[, and didn’t consult with local agriculture]. (Only  
18                  bracketed phrase to be deleted.)

19                  It will cost taxpayers millions and is so poorly written that it  
20                  provides no exemption for medical or veterinary vaccines or life  
21                  saving treatments for cancer, heart disease or other illnesses. If  
22                  farm families can’t compete, farm land will be further developed –  
23                  accelerating suburban sprawl and the destruction of Sonoma  
24                  County’s natural beauty.

25                  We’re supported by [every major farming organization, like] the  
26                  Sonoma County Farm Bureau, Sonoma County Grape Growers. . . .  
27                  (Only bracketed phrase to be deleted.)

28           3. Under the Elections Code, Petitioners must file their Rebuttal to the Argument  
Opposed to Measure M before the Court will have the opportunity to rule on the petition.  
Accordingly, Petitioners respectfully request that the Court retain jurisdiction to consider  
modifications to the Rebuttal that may, depending on the Court’s ruling on the petition, be  
necessary to have it correspond to the actual ballot argument it is meant to rebut.

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**ON COUNTS I AND II:**

4. For an award of private attorney general attorney’s fees and costs pursuant to Code of Civil Procedure section 1021.5.

5. For such other and further relief as the Court deems just and proper.

DATED: August 31, 2005

LAW OFFICES OF LOWELL FINLEY

\_\_\_\_\_  
Lowell Finley  
Attorney for Petitioners

1 **VERIFICATION**

2 I am a Petitioner in this action. I have read the foregoing Petition for Writ of Mandate and  
3 am familiar with its contents. I certify that the same is true of my own personal knowledge.

4 I declare under penalty of perjury and the laws of the State of California that the foregoing is  
5 true and correct. Executed this 31<sup>st</sup> day of August, 2004, at \_\_\_\_\_, California.

6  
7 \_\_\_\_\_  
8 David Henson  
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1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, certify and declare that I am a citizen of the United States, over the age of  
3 18 years, employed in Alameda County, California, and not a party to this action. My business  
4 address is 1604 Solano Avenue, Berkeley, California 94707. On August 31, 2005, I served true  
5 copies of the attached VERIFIED PETITION FOR WRIT OF MANDATE on the Respondent  
6 and Real Parties in Interest in the action by facsimile transmission to the numbers listed below  
7 and by placing them in postage-prepaid envelopes addressed to the following and depositing the  
8 envelopes in the United States Mail:

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

13 Fax: 707-565-2624

14 Counsel for Respondent Eeve T. Lewis and  
15 Real Party in Interest Rodney A. Doyle

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

20 Fax: 916-442-1280

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

25 I declare under penalty of perjury and the laws of the State of California that the foregoing is  
26 true and correct and that this declaration was executed on August 31, 2004 at \_\_\_\_\_,  
27 California.

28 \_\_\_\_\_  
Lowell Finley