

**FILED**  
San Francisco County Superior Court

MAR 18 2014

CLERK OF THE COURT

BY: *Anna Gonzales*  
Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA**

**County of San Francisco**

**Department No. 302**

CORINNE WOODS, et al.,

Petitioners/Plaintiffs,

vs.

JOHN ARNTZ, in his official capacity as  
Director of Elections of the City and County  
Of San Francisco, and CITY OF COUNTY  
OF SAN FRANCISCO,

Respondents/Defendants.

Case No.: CPF-14-513503

ORDER DENYING PETITION FOR WRIT  
OF MANDATE AND FOR INJUNCTIVE  
RELIEF

REBECCA EVANS,

Real Party in Interest

1 This matter came on for hearing before me on March 17, 2014. Petitioners/Plaintiffs  
2 Corinne Woods, Michael Theriault, and Tim Colen ("Petitioners") were represented by Robin B.  
3 Johansen and Thomas A. Willis of Remcho, Johansen & Purcell. Respondents/Defendants John  
4 Arntz, in his official capacity as Director of Elections of the City of County of San Francisco,  
5 and the City and County of San Francisco were represented by Deputy City Attorney Andrew  
6 Shen. Real Party in Interest Rebecca Evans ("Real Party") was represented by Douglas P.  
7 Carstens of Chatten-Brown & Carstens LLP and James R. Sutton of the Sutton Law Firm.

8 The Court has considered the oral arguments of Petitioners and Real Party, the Verified  
9 Petition for Writ of Mandate, the Memorandum of Points and Authorities in Support of Verified  
10 Petition for Writ of Mandate and declaration of Brian Metzker, Real Party's Memorandum of  
11 Points and Authorities in Opposition to Petition for Writ of Mandate and declarations of  
12 Michelle Black and Jonathan Golinger, and Petitioners' Reply in Support of Verified Petition for  
13 Writ of Mandate and declaration of Brian Metzker. The Court grants Petitioners' unopposed  
14 Request for Judicial Notice and Supplemental Request for Judicial Notice, including Exhibit E to  
15 the Supplemental Request for Judicial Notice which was raised for the first time at the hearing on  
16 March 17, 2014. The Court grants Real Party's unopposed Request for Judicial Notice.  
17 Respondents/Defendants did not file any briefs or take a position in this matter. Because of the  
18 expedited nature of this proceeding, as of the time of the oral argument, Real Party had not yet  
19 filed a return/answer to the Petition.

20 Petitioners have petitioned the Court pursuant to Elections Code section 13314 and Code  
21 of Civil Procedure sections 526a, 1085 and 1086 for a writ of mandate and for injunctive relief  
22 restraining respondent John Arntz, acting in his official capacity as the Director of Elections for  
23 the City and County of San Francisco, and respondent City and County of San Francisco, from  
24 placing an initiative on the City's June 3, 2014 election ballot or from spending any public funds



1 to place the initiative on the ballot. The initiative, entitled "Waterfront Height Limit Right to  
2 Vote Act," has qualified for the ballot. Summarized briefly, the proposed measure requires voter  
3 approval of changes in height limits currently in place for public trust lands along the San  
4 Francisco waterfront that are owned by or under the control of the Port Commission of San  
5 Francisco.<sup>1</sup> Petitioners seek expedited review because the deadline for submitting ballot  
6 materials to the printer for the upcoming election is April 2, 2014.

7 Petitioners raise substantive challenges to the validity of the initiative. First, Petitioners  
8 contend that Public Resources Code section 6009 bars the use of local initiatives with respect to  
9 lands held in public trust, and that the initiative is thus invalid. Petitioners also contend that the  
10 initiative is invalid under the exclusive delegation doctrine, because the Burton Act delegated  
11 authority over the waterfront to the Harbor Commission of the City and County of San  
12 Francisco. (See Stats. 1968, ch. 1333 (Petitioners' Request for Judicial Notice, Ex. B).) Finally,  
13 Petitioners contend that the proposed initiative, although framed as an amendment to the City's  
14 Administrative Code, has the effect of circumscribing the powers and authority of the Port  
15 Commission as set forth in the City Charter. Petitioners argue that because a charter can be  
16 altered only by amendments to the charter, the initiative is invalid.

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19 <sup>1</sup> A copy of the initiative is Exhibit A to the Verified Petition for Writ of Mandate and Complaint  
20 for Injunctive Relief, filed February 14, 2014. The initiative would add section 61.5.1 to the San  
21 Francisco Administrative Code as follows: "(a) No city agency or officer may take, or permit to  
22 be taken, any action to permit development located in whole or in part on the waterfront to  
23 exceed at any point the building and structure height limits in effect as of January 1, 2014, which  
24 are set forth in San Francisco Planning Code Article 2.5, unless a height limit increase for the  
25 development has been approved by a vote of the electors of the City and County of San  
Francisco. (b) Any ballot measure placed before the electors to approve increased height limits  
for development on the waterfront must specify both the existing and proposed height limits in  
the ballot question. The failure to specify both the existing and proposed height limits in the  
ballot question shall render such an increase in height limits void. (c) For the purposes of the  
Section, the term 'waterfront' means land transferred to the City and County of San Francisco  
pursuant to Chapter 1333 of the Statutes of 1968, as well as any other property which is owned

1 Respondents refute all of these arguments, contend that the initiative is valid, and, in any  
2 event, that it should not be taken off the ballot before the electorate has the chance to vote on it.

3 The threshold issue for this court is whether the validity of the proposed initiative should  
4 be reviewed before the election, rather than allowing the electorate to vote on the initiative,  
5 which has already qualified for the ballot.

6 In *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1030, our  
7 Supreme Court provides explicit guidance as to what courts should “keep in mind” in addressing  
8 preelection challenges. The Supreme Court distinguished between procedural challenges  
9 relating to the petition-circulating process, which “generally can be remedied only prior to an  
10 election and that usually will become moot after an election,” and challenges based on the  
11 contention “that an initiative measure is invalid because the measure cannot lawfully be enacted  
12 through the initiative process.” (*Id.* at 1030.) The latter challenge “is a type of claim that  
13 generally will *not* become moot if the initiative is approved by the voters at the election.” (*Id.*)  
14 (emphasis in original). The Court instructed that “[b]ecause this [latter] type of claim is  
15 potentially susceptible to resolution either before or after an election, there is good reason for a  
16 court to be even more cautious than when it is presented with the type of procedural claim at  
17 issue in *Costa* before deciding that it is appropriate to resolve such a claim prior to an election  
18 rather than wait until after the election.” (*Id.*)<sup>2</sup> The Supreme Court noted that lower courts

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20 by or under the control of the Port Commission of San Francisco as of January 1, 2014 or  
acquired thereafter.”

21 <sup>2</sup> In *Costa v. Superior Court* (2006) 37 Cal.4th 986, our Supreme Court considered whether a  
22 claim that there was a discrepancy between the version of the initiative measure that was  
submitted to the Attorney General and the version that was circulated with the petition for  
23 signature was an issue appropriate for preelection resolution. The Court held that “[t]he legal  
challenge in the present case does not relate to the substantive validity of the initiative measure  
24 but rather involves a procedural claim pertaining to the preelection petition-circulation process,”  
and therefore, preelection resolution was appropriate. (*Id.* at 1006.)



1 may consider the “potential costs...incurred in postponing the judicial resolution of a challenge  
2 to an initiative measure until after the measure has been submitted to and approved by the  
3 voters,” but cautioned: “Nonetheless, because this type of challenge is one that can be raised and  
4 resolved after an election, deferring judicial resolution until after the election—when there will  
5 be more time for full briefing and deliberation—often will be the wiser course.” (*Id.*)

6 In this case, the issue presented is whether the initiative measure is invalid because the  
7 measure cannot lawfully be enacted through the initiative process. This is a substantive challenge  
8 to the validity of the measure. The claims will not become moot if the initiative is approved by  
9 the voters at the election. Following the guidance of *Independent Energy Producers Assn.*, this  
10 court should be “even more cautious” in making a preelection decision than it would be if the  
11 issue were merely a procedural claim. (*Id.*)

12 Further, where, as here, “a preelection challenge is brought against an initiative measure  
13 that has been signed by the requisite number of voters to qualify it for the ballot, the important  
14 state interest in protecting the fundamental right of the people to propose statutory or  
15 constitutional changes through the initiative process requires that a court exercise considerable  
16 caution before intervening to remove or withhold the measure from an imminent election.”  
17 (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1007.) “Only when a court is confident that the  
18 challenge is meritorious and justifies withholding the measure from the ballot, should a court  
19 take the dramatic step of ordering the removal of a measure that ostensibly has obtained a  
20 sufficient number of qualified signatures.” (*Id.* at 1007-08.)

21 On the truncated record in this expedited proceeding, Petitioners have not clearly  
22 established that the challenge is meritorious such that it justifies the “dramatic step” of  
23 withholding the measure from the voters. This writ petition involves the complex interplay  
24 between the state legislature, the residents of the City and County of San Francisco, and the City

1 and County's legislative and administrative entities. The challenge to this initiative is set against  
2 the background of numerous other initiatives and referenda that have been proposed in prior  
3 elections to control uses of San Francisco waterfront lands since the Burton Act was adopted.  
4 (See Opposition to Petition for Writ of Mandate at 3.) Petitioners emphasized in written and  
5 oral argument that the resolution of this matter could potentially have an enormous impact on  
6 how the waterfront lands owned or controlled by the Port of San Francisco in trust for all  
7 Californians are managed and developed in the future. A court should have the benefit of a  
8 complete record before making this determination.

9 Further, the Court has taken into account the potential costs of postponing the resolution  
10 of this issue until after the election. Petitioners have not persuaded the Court that the presence of  
11 this measure on the ballot will denigrate the use of the initiative process or take time or attention  
12 from other matters on the ballot such that the issue must be resolved preelection. (*Independent*  
13 *Energy Producers Assn. v. McPherson, supra*, 38 Cal.4th at 1030, n. 3.) Petitioners also contend  
14 that the mere appearance of the measure on the ballot will cause active development projects to  
15 be delayed. In light of the facts and circumstances of this case, this is not sufficient to mandate  
16 an immediate preelection decision. As noted above, the validity of the initiative will not become  
17 moot if it passes.

18 In sum, the Court is not determining the merits of the ultimate issue of the validity of the  
19 initiative. Instead, the Court finds that it is appropriate to "leave the challenge for resolution  
20 with the benefit of the full, unhurried briefing, oral argument, and deliberation that generally will  
21 be available after the election." (*Independent Energy Producers Assn. v. McPherson, supra*, 38  
22 Cal.4th at 1025.)

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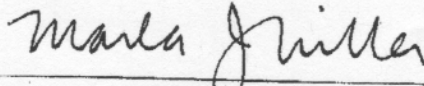
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1 **Conclusion**

2 Upon the foregoing, Petitioners' petition for writ of mandate and for injunctive relief is  
3 denied. This order is without prejudice to a post-election challenge if the initiative is enacted by  
4 the voters.

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6 Dated: March 18, 2014

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8 Marla J. Miller  
9 Judge of the Superior Court  
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