

1 The plaintiffs in this action are committed stakeholders dedicated to preserving and
2 enhancing the quality of life in San Francisco neighborhoods. They believe in the principles of
3 representative government, recognizing that political power resides with the people through their
4 elected officials. Their trust in these leaders is founded on the expectation that those elected will
5 faithfully and transparently represent their constituents. Equally, the plaintiffs insist that all
6 government actions strictly adhere to the rule of law.

7 The effects of Proposition K will be to displace longtime residents, merchants, visitors, and
8 daily commuters. Proposition K advances exclusionary public policies of limited benefit, and
9 compromises the safety, accessibility, and overall well-being of the entire Bay Area. It effectively
10 denies people equitable access to public roads, safe transportation, and a livable environment.

11 Petitioners bring this matter before the court because they believe in the rule of law. They
12 cannot stand by while harmful, unlawful public policies are enacted.

13 **INTRODUCTION**

14 1. Petitioner and Plaintiffs Matthew Boschetto, Albert Chow, Lisa Arjes, and Livable
15 SF (“Petitioners”) bring this action to challenge the legality of the “Permanently Closing the
16 Upper Great Highway to Private Vehicles to Establish a Public Open Recreation Space” measure
17 (“Proposition K”). Proposition K was placed on the November 5, 2024 City and County of San
18 Francisco (the “City” or “San Francisco”) ballot by five members of the Respondent and
19 Defendant San Francisco Board of Supervisors (the “Board”).

20 2. Petitioners assert that Proposition K is legally invalid because: (1) the State of
21 California has preempted the field of traffic control and roads, and state law precludes local voters
22 from acting to close a public street (Cal. Veh. Code section 21(a)); (2) Proposition K effects a
23 “partial” closure of the Upper Great Highway in violation of Vehicle Code section 21101(a)(1);
24 and (3) Proposition K violates mandatory provisions of the California Environmental Quality Act
25 (“CEQA”) requiring the City to consider and mitigate the potential environmental impacts of
26 closing the Upper Great Highway to most traffic (Cal. Pub. Res. (“PRC”) Code sections 2100 et
27 seq.).

28 3. In their haste to place Proposition K on the ballot in time to qualify for the

1 November 5, 2024 election, Supervisors and Real Parties in Interest Joel Engardio, Myrna Melgar,
2 Dean Preston, Rafael Mandelman and Matt Dorsey (collectively, the “Proponents”) ignored the
3 state’s plenary authority over traffic control and roads and unlawfully placed a measure before San
4 Francisco voters that was not in the voters’ power to decide. To make matters worse, this measure
5 exceeds the limited authority given to cities and counties to legislate in the field of traffic control
6 and roads by closing the Upper Great Highway to most vehicles while allowing other vehicular
7 traffic on this road and by incorrectly determining that the closure of a major county highway is
8 not subject to CEQA.

9 4. Prior to the COVID-19 pandemic, the Upper Great Highway carried 18,000 to
10 20,000 vehicles per day. During the COVID-19 pandemic, the Upper Great Highway was fully
11 closed to vehicular traffic from April 2020 to August 2021. During this closure, traffic levels
12 increased on Sunset Boulevard and 19th Avenue as drivers were forced to find alternative routes.
13 After the Upper Great Highway’s reopening in the beginning of 2022, it has seen a steady increase
14 in vehicular traffic slowly approaching its pre-COVID-19 levels.

15 5. Respondent and Defendant Department of Recreation and Parks (“Rec. & Park”) announced that the Upper Great Highway will be officially closed to vehicular traffic beginning on
16 March 14, 2025. (The City, Board, and Rec. & Park are referred to collectively as
17 “Respondents.”)

18
19 **POST-ELECTION SUBSTANTIVE CHALLENGES TO**
20 **BALLOT MEASURES ARE APPROPRIATE AND NECESSARY**

21 6. Post-election substantive challenges to ballot measures are appropriate and
22 necessary where a measure’s validity is in question, notwithstanding the fact that the measure
23 appeared on the ballot and received a majority of the votes cast. (See, e.g., Brosnahan v. Eu (1982)
24 31 Cal.3d 1, 4 [“It is usually more appropriate to review constitutional and other challenges to
25 ballot propositions or initiative measures after an election.”].)

26 7. There is no constitutional right for an invalid ballot measure to take effect, and
27 when a legal challenge to a ballot measure is presented to the Court, the Court has the power and
28 duty to invalidate an illegal measure, even after an election. (See, e.g., Citizens for Jobs and the

1 Economy v. County of Orange (2002) 94 Cal.App.4th 1311 [trial court invalidated ballot measure
2 after election and court of appeal affirmed].)

3 **PARTIES**

4 8. Petitioner/Plaintiff Matthew Boschetto is a resident, taxpayer and vehicle owner in
5 the Miraloma Park neighborhood.

6 9. Petitioner/Plaintiff Albert Chow is a resident, taxpayer and vehicle owner in San
7 Francisco's Sunset District, the location of the Upper Great Highway.

8 10. Petitioner/Plaintiff Lisa Arjes is a resident, taxpayer and vehicle owner in San
9 Francisco's Sunset District, the location of the Upper Great Highway.

10 11. Petitioner/Plaintiff Livable SF, Inc. is a nonprofit corporation registered with the
11 California Secretary of State and set up to promote sustainable transportation solutions in San
12 Francisco.

13 12. Respondent/Defendant City is a municipal government governed by the laws of the
14 State of California, the San Francisco Charter ("Charter"), and the laws of San Francisco.

15 13. Respondent/Defendant Board is the elected decision-making body of the City, five
16 members of which independently placed Proposition K on the ballot.

17 14. Respondent and Defendant Rec. & Park is the City department taking the lead on
18 the closure of the Upper Great highway.

19 15. Real Parties in Interest Supervisors Joel Engardio, Supervisor Myrna Melgar,
20 (former) Supervisor Dean Preston, Supervisor Rafael Mandelman, and Supervisor Matt Dorsey
21 were or are members of the Board and were the proponents of Proposition K.

22 16. The true identities and capacities of Respondent Does 1 through 10 are unknown to
23 Petitioners at this time. Petitioners are informed and believe, and based upon such information
24 and belief allege, that each of the fictitiously named respondents is in some manner responsible for
25 the actions described in this Petition. When the true identities and capacities of these respondents
26 have been determined, Petitioners will seek leave to amend this Petition/Complaint to insert such
27 identities and capacities.
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1 24. On August 1, 2024 the measure was submitted to the Department of Elections for
2 inclusion on the November 5, 2024 ballot.

3 25. On December 3, 2024, the Department of Elections certified the results of the
4 election, with Proposition K receiving approximately 54 percent of the vote. However, in
5 Supervisor Districts 4 and 7, where the Great Highway is located, Proposition K received a
6 minority of support.

7 26. On or about March 1, 2025, Rec. & Park announced that the Upper Great Highway
8 will officially be closed to private vehicles beginning on March 14, 2025.

9 **APPLICABLE PROCEDURAL LAW**

10 **Writ of Mandate**

11 27. This Petition is brought pursuant to Code of Civil Procedure (“CCP”) sections 1085
12 and 1094.5, which provide, in relevant part, that “[a] writ of mandate may be issued by any court
13 to any... person, to compel the performance of an act which the law specially enjoins, as a duty
14 resulting from an office....”

15 28. CCP section 1086 provides, in relevant part, that “[t]he writ must be issued in all
16 cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It
17 must be issued upon the verified petition of the party beneficially interested.”

18 29. Petitioners, who as San Francisco residents, taxpayers and vehicle owners are
19 beneficially interested in this matter, do not have a plain, speedy, or adequate remedy in the
20 ordinary course of law insofar as the legally invalid Proposition K, if given legal effect, will cause
21 irreparable harm to Petitioners, the residents of the Sunset District, residents elsewhere in the City,
22 Bay Area residents travelling through San Francisco, and visitors to the City which cannot be
23 compensated via monetary damages. Accordingly, Petitioners are entitled to a writ of mandate as
24 requested herein.

25 **Injunctive Relief**

26 30. CCP section 525 provides that “an injunction is a writ or order requiring a person to
27 refrain from a particular act. It may be granted by the court in which the action is brought, or by a
28 judge thereof; and when granted by a judge, it may be enforced as an order of the court.”

31. CCP section 526 provides that an injunction may be granted “[w]hen it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;” “[w]hen it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action;” or “[w]hen it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.”

32. In the absence of this Court's injunction, Respondents will give legal effect to Proposition K, thereby causing Petitioners, residents of the Sunset District, residents elsewhere in the City, Bay Area residents travelling through San Francisco, and visitors to the City to suffer irreparable harm for which there is no adequate remedy at law.

33. Because Proposition K is legally invalid, Petitioners are entitled to temporary, preliminary, and permanent injunctive relief compelling Respondents not to take any action that would give legal effect to Proposition K.

34. Petitioners do not have a plain, speedy, or adequate remedy in the ordinary course of law in that no damages or other legal remedy can adequately compensate Petitioners, the residents of the Sunset District, residents elsewhere in the City, Bay Area residents travelling through San Francisco, and visitors for the irreparable harm they will suffer as a result of Proposition K being given legal effect. Accordingly, Petitioners are entitled to injunctive relief as requested herein.

Declaratory Relief

35. Pursuant to CCP section 1060, “[a]ny person...who desires a declaration of his or her rights or duties with respect to another... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action ... in the superior court for a declaration of his or her rights and duties.... He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these

1 rights or duties, whether or not further relief is or could be claimed at the time. The declaration
2 may be either affirmative or negative in form and effect, and the declaration shall have the force of
3 a final judgment. The declaration may be had before there has been any breach of the obligation
4 in respect to which said declaration is sought.”

5 36. In the absence of this Court’s declaration regarding Proposition K’s legal
6 invalidity, Respondents will give legal effect to Proposition K, thereby causing Petitioners, the
7 residents of the Sunset District, residents elsewhere in the City, Bay Area residents travelling
8 through San Francisco, and visitors to the City to suffer irreparable harm for which there is no
9 adequate remedy at law.

10 37. Because Proposition K is legally invalid, Petitioners are entitled to a declaration
11 stating this, so that Respondents will not take any action that would give legal effect to Proposition
12 K.

13 38. Petitioners do not have a plain, speedy, or adequate remedy in the ordinary course
14 of law in that no damages or other legal remedy can adequately compensate Petitioners, the
15 residents of the Sunset District, residents elsewhere in the City, Bay Area residents travelling
16 through San Francisco, and visitors to the City for the irreparable harm they will suffer as a result
17 of Respondents giving legal effect to Proposition K. Accordingly, Petitioners are entitled to
18 declaratory relief as requested herein.

19 **APPLICABLE SUBSTANTIVE LAW**

20 **San Francisco Law**

21 39. Charter section 2.113 permits four or more members of the Board to submit a
22 measure to the voters. This provision is unique because it refers to such a measure as an
23 “initiative measure” even though it does not require any signatures from registered voters in order
24 to be placed on the ballot. Further, this provision is distinct from measures sponsored by the full
25 Board because four Supervisors acting alone may place such a measure on the ballot without a
26 majority vote (or any vote) of the Board. Upon information and belief, San Francisco is the only
27 county in the state which allows a measure to be placed on the ballot by the independent action of
28 less than a majority of its board of supervisors.

The State Has Preempted the Field of Traffic Control and Roads

40. Where the state has granted itself plenary authority over a certain field, local voters are precluded from exercising their initiative power with respect to that field. As relevant here, the text of Vehicle Code section 21(a) explicitly provides that the state has preempted the entire field of traffic control and roads:

“Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the state and in all counties and municipalities therein, and a local authority shall not enact or enforce any ordinance or resolution on the matters covered by this code, including ordinances or resolutions that establish regulations or procedures for, or assess a fine, penalty, assessment, or fee for a violation of, matters covered by this code, unless expressly authorized by this code.”

Thus, the voters have no authority to close a public highway to vehicular traffic.

41. While the local electorate’s right to legislate by initiative is guaranteed by Article II, section 11 of the California Constitution, this right is not absolute. Absent an express delegation of authority to a local legislative body, a city or county may not regulate or enact any ordinances which infringe on the state’s plenary power over traffic control and roads.

42. Further, while the Legislature has expressly delegated some limited authority to enact ordinances related to traffic control and roads to local legislative bodies, that does not mean the voters are permitted to exercise such authority. While a generic reference to “legislative body” in a state statute may support the conclusion that the Legislature did not intend to preclude action by local initiative, such a reference in a statute that addresses a matter of statewide concern indicates that the Legislature intended to preclude action by local initiative. (See, e.g., Committee of Seven Thousand v. Superior Court (1988) 45 Cal.3d 491, 501 [“[A]n intent to exclude ballot measures is more readily inferred if the statute addresses a matter of statewide concern rather than a purely municipal affair.”]; Wiltshire v. Superior Court (1985) 172 Cal. App. 3d 296 [local initiative regarding solid waste management is prohibited because topic is matter of statewide concern].)

43. Notably, traffic control and roads are matters of statewide concern pursuant to Vehicle Code section 21(a). California law permits a local legislative body to close a highway to vehicular traffic only when the legislative body enacts an ordinance or resolution and makes a

1 finding that “in the opinion of the legislative body,” the highway is “no longer needed for
2 vehicular traffic.” (Cal. Veh. Code section 21101(a)(1).)

3 44. The State clearly has an interest in ensuring uniform rules for drivers across the
4 state and highways and roads are clearly of a regional nature. Upon information and belief, the
5 Upper Great Highway is regularly used by not only residents of the Sunset District, but also
6 residents from elsewhere in the City, residents of other Bay Area counties travelling through the
7 City, and visitors. Thus, Proposition K was unlawfully put before the City’s voters because it
8 pertains to a matter of statewide concern.

9 **The State Vehicle Code Does Not Permit “Partial” Closures**

10 45. In interpreting the provisions of the Vehicle Code, “delegations of power to cities
11 regarding vehicular traffic will be strictly construed.” (Rumford v. City of Berkeley (1982) 31
12 Cal.3d 545 [emphasis added; see also City of Poway v. City of San Diego (1991) 229 Cal.App.3d
13 847; City of Lafayette v. County of Contra Costa (1979) 91 Cal.App.3d 749.)

14 46. Vehicle Code section 21101(a)(1) permits a locality to close a highway to vehicles
15 only when the local legislative body enacts an ordinance and makes a finding that the highway is
16 “[n]o longer needed for vehicular traffic.”

17 47. Although Proposition K purports to rely on Vehicle Code section 21101(a)(1), that
18 statute does not authorize streets to be “partially closed or, more precisely, closed to some
19 vehicular traffic.” (Rumford v. City of Berkeley (1982) 31 Cal.3d 545, 554.) On its face,
20 Proposition K is an improper partial closure because it explicitly allows transit vehicles,
21 emergency vehicles, official government vehicles, and other authorized vehicles to continue
22 driving on the Upper Great Highway. These exemptions directly contradict the finding pursuant
23 to Vehicle Code section 21101(a)(1) that the Upper Great Highway is “[n]o longer needed for
24 vehicular traffic.” In other words, by allowing other vehicular traffic to continue to travel on the
25 Upper Great Highway, Proposition K inherently acknowledges that the road is still needed for
26 vehicular traffic.

27 48. Thus, Vehicle Code section 21101(a)(1) does not allow a city to close a road “to
28 some vehicular traffic even though it be needed for other such traffic.” (Lafayette, supra at 756.)

Proposition K is a Project Subject to CEQA

49. State law mandates that the government must study the environmental impacts of all “projects.” (PRC section 21080(d).) A proposed activity is a project if it “is the sort that is capable of causing direct or reasonably foreseeable indirect effects on the environment.” (Union of Medical Marijuana Patients, Inc. v. City of San Diego (2019) 7 Cal.5th 1171, 1198.)

50. The closure of a busy public street to vehicular traffic is clearly a project with the potential to have significant environmental impacts. (See, e.g., Citizens for Improved Sorrento Access, Inc. v. City of San Diego (2004) 118 Cal.App.4th 808, 812-813 [discussing city’s preparation of EIR to consider impact of closing street pursuant to Vehicle Code section 21101(a)(1)].)

51. Nonetheless, rather than comply with CEQA, the City erroneously asserted that “CEQA does not apply to a measure submitted to the voters by the Mayor or 5 Supervisors,” without further explanation or citation to any legal authority. Per binding California Supreme Court authority, “the discretionary submission of a ballot measure to the voters . . . is not exempt from CEQA.” (Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal.4th 165, 171.)

52. While measures which go on the ballot via an initiative petition signed by registered voters do not trigger CEQA (Devita v. County of Napa (1995) 9 Cal. 4th 763, 793-795), measures put on the ballot by four or more Supervisors are akin to a discretionary governmental action that is subject to CEQA. (Friends of Sierra Madre supra at 187.)

53. Pursuant to CEQA, a project’s potential environmental effects must first be identified, assessed and publicly disclosed before it may be approved by an agency. A project with the potential to have significant environmental impacts may not be approved if there are feasible alternatives or mitigation measures that would avoid or substantially lessen the adverse environmental impacts.

54. Neither Respondents nor the Proponents considered feasible alternatives to the closure of the Upper Great Highway to most vehicles, or considered feasible mitigation measures for the closure’s environmental impacts.

55. The closure of the Upper Great Highway to most vehicles was not in compliance

1 with procedures required by law, was not supported by substantial evidence in the public record,
2 was not reflected in legally adequate findings, and was arbitrary, capricious and reflected a
3 prejudicial abuse of discretion.

4 56. Pursuant to PRC section 21167.5, Petitioners have provided written notice of the
5 commencement of this action to Respondents.

6 57. Pursuant to PRC section 21167.7 and CCP section 388, Petitioners have or will
7 provide written notice of this action, including a copy of this Petition, to the State Attorney
8 General.

9 58. Petitioners bring this action pursuant to PRC section 21168.5 and CCP
10 section 1085 (or, alternatively, under PRC section 21168 and CCP section 1094.5), which require
11 that the approval of a project be set aside if there was an abuse of discretion.

12 59. In wrongly asserting that the closure of the Upper Great Highway to most vehicles
13 was exempt from CEQA, and failing to prepare an EIR for the project, Respondents and the
14 Proponents failed to comply with mandatory duties under CEQA.

15 **FIRST CAUSE OF ACTION**

16 **(Petition for Writ of Mandate for Closing the**

17 **Upper Great Highway by an Act of the Voters)**

18 60. Petitioners incorporate by reference all of the allegations contained in paragraphs 1
19 - 59 as though fully set forth herein.

20 61. Based on the foregoing allegations, Petitioners are entitled to a writ of mandate
21 prohibiting Respondents, and their officers, agents, and all persons acting by, through, or in
22 concert with them, from taking any action that would give legal effect to Proposition K.

23 62. Petitioners have performed any and all conditions precedent to filing this action and
24 have exhausted any and all administrative remedies to the extent required by law.

25 **SECOND CAUSE OF ACTION**

26 **(Petition for Writ of Mandate for Partially**

27 **Closing the Upper Great Highway)**

28 63. Petitioners incorporate by reference all of the allegations contained in paragraphs 1

1 - 59 as though fully set forth herein.

2 64. Based on the foregoing allegations, Petitioners are entitled to a writ of mandate
3 prohibiting Respondents, and their officers, agents, and all persons acting by, through, or in
4 concert with them, from taking any action that would give legal effect to Proposition K.

5 65. Petitioners have performed any and all conditions precedent to filing this action and
6 have exhausted any and all administrative remedies to the extent required by law.

7 **THIRD CAUSE OF ACTION**

8 **(Petition for Writ of Mandate for Violations of CEQA)**

9 66. Petitioners incorporate by reference all of the allegations contained in paragraphs 1-
10 59 as though fully set forth herein.

11 67. Based on the foregoing allegations, Petitioners are entitled to a writ of mandate
12 prohibiting Respondents, and their officers, agents, and all persons acting by, through or in concert
13 with them, from taking any action that would give legal effect to Proposition K unless and until
14 Respondents have complied with CEQA.

15 68. Petitioners have performed any and all conditions precedent to filing this action and
16 have exhausted any and all administrative remedies to the extent required by law.

17 **FOURTH CAUSE OF ACTION**

18 **(Injunctive Relief Enjoining the City**

19 **From Giving Legal Effect to Proposition K)**

20 69. Petitioners incorporate by reference all of the allegations contained in paragraphs 1
21 - 59 as though fully set forth herein.

22 70. Based on the foregoing allegations, Petitioners are entitled to a temporary
23 restraining order, preliminary injunction, and permanent injunction prohibiting Respondents and
24 their officers, agents, and all persons acting by, through, or in concert with them, from taking an
25 action that would give legal effect to Proposition K.

26 **FIFTH CAUSE OF ACTION**

27 **(Declaratory Relief That Proposition K Violates**

28 **The Law and Must Not Be Given Legal Effect)**

71. Petitioners incorporate by reference all of the allegations contained in paragraphs 1 - 59 as though fully set forth herein.

72. An actual controversy has arisen between the Petitioners and Respondents in that Petitioners believe and contend, for the reasons set forth above, that Proposition K violates the law and must not be given legal effect. Further, upon information and belief, Respondents believe and contend that Proposition K does not violate the law and must be given legal effect.

73. A judicial determination and declaration as to the legality of Proposition K, as set forth above, is therefore necessary and appropriate to determine the respective rights and duties of the parties.

74. Based on the foregoing allegations, Petitioners are entitled to a judicial declaration that Proposition K is legally invalid and shall not be given any legal effect.

PRAYER

WHEREFORE, Petitioners pray for judgment as follows:

1. On the First Cause of Action, that this Court issue alternative and peremptory writs of mandate prohibiting Respondents, and their officers, agents, and all persons acting by, through, or in concert with them, from taking any action that would give legal effect to Proposition K;

2. On the Second Cause of Action, that this Court issue alternative and peremptory writs of mandate prohibiting Respondents, and their officers, agents, and all persons acting by, through, or in concert with them, from taking any action that would give legal effect to Proposition K;

3. On the Third Cause of Action, that this Court issue alternative and peremptory writs of mandate prohibiting Respondents, and their officers, agents, and all persons acting by, through, or in concert with them, from taking any action that would give legal effect to Proposition K;

4. On the Fourth Cause of Action, that this Court issue a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Respondents, and their officers, agents, and all persons acting by, through, or in concert with them, from taking any action that would give legal effect to Proposition K;

1 5. On the Fifth Cause of Action, that this court issue its judgment declaring that
2 Proposition K is legally invalid and must not be given legal effect;

3 6. For an award of attorneys' fees, litigation expenses, and costs as permitted or
4 required by law, including but not limited to CCP section 1021.5, California Government Code
5 section 800, and other statutory and common law; and

6 7. That this Court grant Petitioners such other, different, or further relief as the Court
7 may deem just and proper.

12 RUTAN & TUCKER, LLP
13 James R. Sutton
14 Eli B. Love

15 Dated: March 10, 2025

16 By: _____
17 James R. Sutton
18 Attorneys for Petitioners/Plaintiffs