

Fletcher
Box #69

FILED

FEB 14 2020 *all*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

HUMMAP, HUMBOLDT CANNABIS
TAXPAYERS' ASSOCIATION, HUMBOLDT
VOTERS' ASSOCIATION, KAREN RUTH,
JOHN LANDRY, KAREN SILVA, JOHN
ROE AND JANE ROE,

Petitioners/Plaintiffs,

vs.

HUMBOLDT COUNTY, and DOES 1-10,
INCLUSIVE,

Respondents/Defendants.

CASE NO.: CV180425

RULING ON ISSUANCE OF WRIT OF
MANDATE

Before the Court is Petitioners' request for the Court to issue a Writ of Mandate and Declaratory Relief related to adoption of Humboldt County Code §719-1 through §719-15 based on the voter-passed Measure-S. Petitioner/Plaintiff Karen Silva is the remaining Petitioner, and the request for relief as it related to disgorgement of profits has been stricken. The Court has read and considered the pleadings as well as the accompanying attachments.

1 The issues before the Court are as follows:

- 2 1. Whether the Humboldt County Board of Supervisors broadened the
- 3 scope of the tax by taxing property owners instead of cultivators as was
- 4 the language in Measure S?
- 5 2. Whether the scope of the tax was broadened by using language of
- 6 permitted area in place of areas where there was cultivation?
- 7 3. Whether the temporal scope of the tax was extended?
- 8 4. Whether the collection of said taxes changed from the voter-approved
- 9 Measure S?
- 10 5. Whether the implementation expands the scope of the tax by taxing
- 11 persons not complying with federal law?

12 Measure S provides for the taxing of those engaged in cultivation of marijuana.

13 The County maintains that even if the property owner is not directly engaged in
14 cultivation, they nonetheless have to be a part of the permitting process, so there is no
15 broadening of the scope of individuals taxed. While well-intended, the County's position
16 is inconsistent with the wording of Measure S. It cannot be said that a property owner
17 leasing a building to an automobile dealership is a car salesperson. A land owner
18 leasing their property to another for the purpose of cultivation cannot be said to be
19 actively engaged in cultivation absent further involvement. The voters approved a
20 measure whereby an individual involved in cultivation is the person responsible for the
21 tax. While it may often be true that the property owner and cultivator are the same
22 individual, such is not always the case.

23 The County adopted changes to the area subject to taxation. The County
24 expands the taxable area to the permitted area which is inconsistent with the language
25 of the Measure. Measure S, Humboldt County Code §719-3(b) tells us that the area
"shall mean the sum of the permitted area of marijuana cultivation *as measured around*
the perimeter of each discrete area of marijuana cultivation..." (emphasis added). The
adopted amendment leaves out the specific approved language as to how the area

1 within the permitted area is to be measured. It cannot be the full permitted area in and
2 of itself, because the very language of the Measure passed by voters limits it to the sum
3 of the areas around the perimeter of the physical spaces where marijuana is actually
4 being cultivated.

5 In review of the language of Measure S, as it relates to what is to be taxed, the
6 County did expand the clear language of the Measure. A person obtaining a permit is
7 reserving the right to cultivate and abide by certain rules and regulations; it does not
8 obligate them to actually engage in cultivation. To then assess a tax regardless of
9 whether someone is cultivating, is contrary to the language of Measure S that spells out
10 what it means to cultivate. "Commercial marijuana cultivation" shall mean any activity
11 involving the planting, growing, harvesting, drying, curing, grading or trimming of
12 marijuana or cannabis..." *Measure S §719-3*. The tax was supposed to begin accruing
13 when cultivation starts, rather than when a permit is issued.

14 The timing of collection of the tax is also at issue. The voters approved collection
15 of the tax "biennially" in the same manner as other taxes are collected. The change
16 results in depriving the taxed individual of their monies every six months as opposed to
17 every other year. While the Court agrees that the terms "biennially" and "biannually" are
18 often confusing, there is a significant difference in definition. However, it does appear
19 that the tax amount to be collected does not differ, only the timing of collection. It does
20 appear to be consistent that this is more closely related to a scrivener's error than a
21 mischaracterization of what was passed by the voters.

22 The final issue is whether the language of the Measure S itself invalidates the tax
23 being collectable at all given the state of Federal law related to marijuana. The Court
24 cannot find any reasonable reading of the voter-approved Measure S that would reflect
25 that the voters intended that a tax could never be levied unless and until the Federal

1 government decriminalized cannabis possession or cultivation. What is clear is that the
2 drafters of Measure S, as well-meaning as they were, created issues that the Board of
3 Supervisors tried to resolve by molding the language to be consistent with the permitting
4 process as a whole.

5 As to the changes outlined in the briefing and delineated in items 1-3 above, the
6 County did broaden and extend the tax measure in ways that are inconsistent with the
7 language passed by the voters, and this cannot be done absent voter approval. As to
8 items 4 and 5, the same cannot be said. Petition is granted as to 1-3 and denied as to
9 4 and 5.

10 Dated: February 14, 2020

11 **KELLY L. NEEL**

12

Kelly L. Neel, Judge
Superior Court of California, County of Humboldt