

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael A. Grob (SBN 59439) THE GROB LAW FIRM 980 9th Street, Ste 1900, Sacramento, CA 95814 TELEPHONE NO.: (916) 487-2470 FAX NO.: ATTORNEY FOR (Name): Plaintiff/Petitioner Defend Bayview Hunters Point Cmte.	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400McAlister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:	
CASE NAME: Defend Bayview Hunters Point Committee v. Gloria Young, et al.	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less) <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	CASE NUMBER:  JUDGE:  DEPT:

Items 1-5 below must be completed (see instructions on page 2).

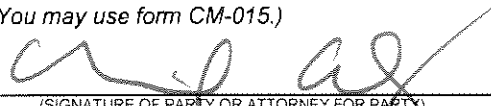
1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Type of remedies sought (check all that apply):  
 a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify):
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 12/15/2006  
 Michael A. Grob

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

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6  
7  
8 Attorneys for Petitioner and Plaintiff

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF SAN FRANCISCO

11 DEFEND BAYVIEW HUNTERS POINT  
12 COMMITTEE, an unincorporated  
13 association,  
14  
15                                   Petitioner and Plaintiff,  
16  
17                                   v.  
18  
19 THE CITY and COUNTY of SAN  
20 FRANCISCO, a municipality; GLORIA  
21 YOUNG, in her official capacity as Clerk  
22 of the Board of supervisors of San  
23 Francisco and DOES 1 –20 inclusive,  
24  
25                                   Respondents and Defendants.

CASE NO. \_\_\_\_\_  
  
PETITION FOR WRIT OF MANDATE OR  
ADMINISTRATIVE MANDAMUS;  
COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF

1 Plaintiff and Petitioner DEFEND BAYVIEW HUNTERS POINT COMMITTEE  
2 ("Plaintiff" or "Petitioner" or "Plaintiff/Petitioner") brings this civil action, on its own behalf and  
3 on behalf of its members, against the above named respondent and defendant and hereby alleges  
4 and complains as follows:

### 5 INTRODUCTION

6 1. This action challenges the decision by the Clerk of the Board of Supervisors for  
7 San Francisco County to reject the referendum petition of Plaintiff/Petitioner. This petition and  
8 complaint seeks an order directing the Clerk of the Board of Supervisors for San Francisco  
9 County to place Ordinance 113-06 on the ballot. This action also seeks an injunction ordering the  
10 County of San Francisco to refrain from developing or implementing any redevelopment plans in  
11 the Bayview/Hunters Point area until after a vote on the Ordinance.

### 12 PARTIES

13 2. Petitioner DEFEND BAYVIEW HUNTERS POINT COMMITTEE is and at all  
14 times mentioned in this petition an unincorporated Association whose members are residents,  
15 taxpayers, and property owners of the City and County of San Francisco.

16 3. Respondent GLORIA YOUNG is now, and was at all times mentioned in this  
17 petition, the Clerk of the Board of Supervisors of the city of San Francisco.

18 4. Respondent CITY AND COUNTY OF SAN FRANCISCO is now and was at all  
19 times mentioned in this petition the municipality responsible for placing its ordinances on ballots  
20 when a lawful referendum requires them to do so.

### 21 FACTUAL ALLEGATIONS

22 5. In May 2006, the San Francisco Board of Supervisors approved ordinance 113- 06,  
23 adding nearly 1400 acres to the previously existing 137-acre Hunters Point redevelopment project  
24 area. At the same, time the board authorized the San Francisco Redevelopment agency to  
25 undertake a variety of projects and activities to alleviate "blighted" conditions.

26 6. Just after the May 2006 adoption of the plan, residents, taxpayers and property  
27 owners organized to try to present the issue to local voters. The residents knew they needed to  
28 present a referendum petition to the Clerk of the San Francisco Board of Supervisors. The

1 referendum's petition supporters timely filed such a petition. The Department of Elections  
2 certified the 33,056 signatures sufficient to satisfy the statutory requirements for referendum  
3 petitions.

4 7. Once the Plaintiff/Petitioner filed a valid referendum petition with the Clerk, the  
5 San Francisco City Charter required that the effective date of the challenged ordinance be  
6 suspended while the Board of Supervisors reconsiders the ordinance. Based on this requirement  
7 in the City Charter, Respondents/Defendants should have either repealed the redevelopment  
8 ordinance or put the issue on the ballot for the next election.

9 8. On September 19, 2006, the San Francisco City Attorney issued an opinion  
10 advising the Clerk of the Board of Supervisors to reject the referendum petition. Although the  
11 petition had included a complete copy of the text of the ordinance passed by the Board of  
12 Supervisors, it did not include at least 10 separate, lengthy documents which had been  
13 incorporated by reference into, *but not attached to*, the ordinance. Even though the incorporated  
14 documents were clearly identified and readily obtainable from the Clerk's office, the Clerk was  
15 directed to reject the petition because it did not set forth the complete text of these referenced  
16 documents. The Clerk rejected the petition on or about September 19, 2006.

17 9. In effect, the Clerk's decision based on the City Attorney's opinion allows  
18 complete insulation for any municipality seeking to protect its legislation from the referendum  
19 process. The municipality merely has to incorporate into its legislation enough documents to  
20 make the inclusion of them impossible for those seeking signatures for a referendum petition.

21 10. Petitioners complied with California Elections Code Section 9238 (b) requiring  
22 that a referendum petition contain that "...text of the ordinance or the portion of the ordinance  
23 that is the subject of the referendum." This is particularly so as petitioners put forth a petition for  
24 signature that included an exact copy of ordinance 113-06 as passed by the San Francisco Board  
25 of Supervisors in May 2006. Incorporated documents were clearly identified and readily  
26 obtainable from the office of the Clerk of the Board of Supervisors. The Board of Supervisors  
27 made available to the public the documents incorporated into ordinance 113-06 in the same way  
28 and in the same place when that legislative body considered this ordinance. The petition meets

1 the requirements of the San Francisco City Charter and the California Election Code in all other  
2 respects.

3 11. The Bayview-Hunters Point area has the highest percentage of home ownership in  
4 any San Francisco neighborhood. Property values have risen consistently over the past five years,  
5 private development permits are being issued, projects are being constructed and people are  
6 buying property and moving in to the neighborhood. Projects include light industrial and service  
7 industries as well as residential. Despite these facts, the San Francisco Board of Supervisors  
8 considers the area to be “blighted.” Residents are frustrated by their lack of input in the process  
9 leading to the approval of the redevelopment ordinance. They were given no opportunity to vote,  
10 or to give their informal consent to the redevelopment plan, which they believe will destroy their  
11 neighborhood. Members of DEFEND BAYVIEW HUNTERS POINT COMMITTEE have  
12 suffered these and other injuries.

13 12. The redevelopment plan as proposed will increase rents and taxes in the  
14 neighborhood.

15 13. The redevelopment plan includes a requirement that 25% of new residences to be  
16 constructed to be “affordable housing.” Even “affordable” housing will be out of reach for many  
17 of the area’s residents, and will result in the displacement and relocation of a large segment of the  
18 Bayview-Hunters Point population.

19 14. The Constitution of the State of California, Article 2, Section 1, provides that all  
20 political power is inherent in the people. Article 2, Section 9 of the California Constitution  
21 reserves the referendum power to the people of the State of California. Article 2, Section 11 of  
22 the California Constitution guarantees the initiative and referendum powers may be exercised by  
23 the electors of each city or county of the State of California.

24 15. Section 9237 of the California Elections Code protects the people’s right to refer  
25 laws passed by an elected body to the electorate for its approval. This section of the California  
26 Elections Code requires 10 percent of the voters sign a referendum petition in order that an  
27 ordinance is referred to the voters for their approval. The Defend Bayview Hunters Point  
28 Committee timely filed 33,056 signatures with the San Francisco County Clerk. This number of

1 signatures exceeds the 10% requirement.

2 16. California Elections Code Section 9238 (b) requires a referendum petition contain  
3 the "...text of the ordinance or the portion of the ordinance that is the subject of the referendum."  
4 The petition circulated by the Defend Bayview Hunters Point Committee for signatures was an  
5 exact copy of Ordinance 113-06 as passed by the San Francisco Board of Supervisors in May  
6 2006.

7 17. Ordinance 113-06 referenced incorporated documents that were clearly identified  
8 and readily obtainable from the office of the Clerk of the Board of Supervisors. The documents  
9 incorporated into Ordinance 113-06 by the Board of Supervisors were not attached or appended  
10 to Ordinance 113-06 at any time during the Board of Supervisors consideration of Ordinance 113-  
11 06. During the public hearings and deliberation on Ordinance 113-06, the Board of Supervisors  
12 made available to the public documents incorporated in Ordinance 113-06 in the exact same way  
13 and in the same place when that legislative body considered this ordinance.

14  
15 **FIRST CAUSE OF ACTION**

16 Administrative Mandamus

17 (Code of Civil Procedure section 1094.5)

18 18. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through  
19 17.

20 19. Code of Civil Procedure Section 1094.5 provides that any aggrieved party may file  
21 a petition for writ of mandate to review the decision or order of any legislative body. Petitioner  
22 and its members are aggrieved parties because the referendum petition met each and every  
23 requirement of the California Elections Code and the San Francisco City Charter and yet it's  
24 petition was not placed on the ballot by the San Francisco Board of Supervisors as required by  
25 law.

26 20. The Clerk of the San Francisco Board of Supervisors is under a clear and present  
27 duty to place petitioners referendum petition on the ballot for election but has refused to perform  
28 that duty.

29 21. The failure by the Clerk to place petitioners referendum petition on the ballot is a

1 quasi-judicial act because the Clerk applied a general rule to a specific set of existing facts. The  
2 Clerk, as required by law, reviewed the petition and made its decision not to place the referendum  
3 on the ballot based solely on the contents of the petition.

4 22. The Clerk's adjudicatory action affects petitioner's and its members's fundamental  
5 vested rights and, therefore, this Court must review this action using its independent judgment.

6 23. The Clerk's decision not to place petitioners referendum on the ballot is a final  
7 decision.

8 24. The Clerk's decision not to place petitioners referendum on the ballot must be set  
9 aside because the Clerk acted contrary of its ministerial duty under the law, and its decision was  
10 not supported by the evidence before it.

11 25. Petitioner has participated to the extent allowed by law in this process and has  
12 exhausted its administrative remedies. There are no further administrative avenues of relief open  
13 to petitioner.

14 26. All other forms of relief are unavailable or inadequate.

15 27. This petition is timely filed.

16 28. Petitioner and its members will suffer irreparable harm if the relief is not granted  
17 because their ability to engage in core political speech through California's referendum process  
18 will be virtually eliminated.

19 29. WHEREFORE, petitioner prays her judgment against the Clerk as hereinafter set  
20 forth.

21  
22 **SECOND CAUSE OF ACTION**

Mandate

(Code of Civil Procedure section 1085)

23  
24 30. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through  
25 29.

26 31. California Code of Civil Procedure section 1085 permits this Court to issue a writ  
27 of mandate to compel actions required of state officers.

28 32. The Clerk of the San Francisco Board of Supervisors is under a clear and present

1 duty to place petitioners referendum on the ballot. Further the Clerk is presently able to perform  
2 that duty but refuses.

3 33. Petitioner and its members have a clear, present, legal right to the Clerk's  
4 performance of its duty under the law.

5 34. The Clerk of the board has refused to perform its legal duty and abused its  
6 discretion in failing to place petitioners referendum on the ballot.

7 35. The Clerk's decision not to place petitioners referendum on the ballot is invalid as  
8 an abuse of discretion because the Clerk failed to put the ordinance on the ballot despite the  
9 petition containing the full and exact text of the ordinance as adopted by the San Francisco Board  
10 of Supervisors.

11 36. Petitioner and its members have exhausted all administrative remedies.

12 37. All other forms of relief are unavailable or inadequate and this petition is timely  
13 filed.

14 38. Unless compelled by this Court to perform its clear and present legal duties,  
15 respondent will fail and refuse to do so, and petitioner and its members will suffer irreparable  
16 harm if this relief is not granted because petitioner's ability to engage in core political speech  
17 through the California referendum process will be virtually eliminated.

18 39. The mandate and mandamus sought in this petition and complaint are the only  
19 methods available to obtain review of respondents actions

20 40. WHEREFORE, petitioner prays for judgment against the Clerk of the board as  
21 hereinafter set forth.

22  
23 **THIRD CAUSE OF ACTION**

24 Declaratory Relief

25 (Code of Civil Procedure Section 1060)

26 41. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through  
27 40.

28 42. Plaintiff seeks a declaration that the Clerk's refusal to place the referendum on the  
next election ballot violates the California Constitution's constitutional guarantee to engage and



1 participate in the referendum process.

2 43. An actual and justiciable controversy has arisen and now exists between the parties  
3 regarding whether the Clerk must place plaintiff's referendum on the ballot. Plaintiff contends  
4 that it has substantially complied with California Elections Code Section 9238 (b) in that it has  
5 included the full text of the ordinance to be placed on the ballot.

6 44. Plaintiff/Petitioner is informed, and believes, and therefore alleges that the Clerk  
7 disputes that Plaintiff has incorporated the full text of the ordinance for the purposes of its  
8 petition gathering process.

9 45. A judicial determination of rights and duties arising from this actual controversy is  
10 necessary and appropriate at this time. Petitioner therefore prays for a judicial determination of  
11 its rights in connection with the text of the ordinance petitioners put forth to gather signatures. In  
12 particular, petitioner prays that this Court enter its declaratory judgment that the Clerk of the  
13 board must place petitioners referendum on the ballot of the next election. Unless and until  
14 petitioners and respondent's rights, duties, and obligations are declared, petitioner will suffer  
15 injury in that its referendum will not timely be placed on the ballot and that the voice of the  
16 Bayview-Hunters Point population will not be heard with regard to redevelopment.

#### 17 **FOURTH CAUSE OF ACTION**

18 (Freedom of Speech and Right of Referendum under the State and Federal Constitutions)

19 46. Petitioner hereby incorporates by reference the allegations of paragraphs 1 through  
20 45 as though fully set forth herein.

21 47. The Clerk's refusal to place the referendum on the ballot in the next election  
22 substantially burdens constitutionally protected core political speech of Plaintiff and its members,  
23 as well as the constitutionally protected core political speech of any citizen of the County of San  
24 Francisco who, in the future, desires to refer an ordinance by making the cost and practicality of  
25 circulating a referendum petition prohibitively high.

26 48. The Clerk's interpretation and enforcement of Section 9238 of the California  
27 Elections Code substantially burdens the rights of both DEFEND BAYVIEW HUNTERS POINT  
28 COMMITTEE and its members to free speech as recognized and guaranteed by the First

1 Amendment to the United States Constitution; no compelling State interest has been established  
2 for this burden on free speech; and the interpretation and enforcement of Section 9238 of the  
3 California Elections Code is not narrowly tailored to achieve any compelling state reason for such  
4 a burden on core political speech.

5 49. Plaintiff is entitled to a declaration that Section 9238 of the California Elections  
6 Code, as applied to Plaintiff and its members by the City and County of San Francisco Board of  
7 Supervisors and the Clerk of the Board, violates both the First Amendment of the United States  
8 Constitution, and the California Constitution.

9 50. WHEREFORE, Petitioner prays for judgment against the Clerk of the board as  
10 hereinafter set forth.

11 **PRAYER**

12 1. WHEREFORE, Petitioner DEFEND BAYVIEW-HUNTERS POINT  
13 COMMITTEE prays for judgment against respondent Clerk of the Board of supervisor's of San  
14 Francisco as follows:

15 2. For writ of administrative mandamus (Code of Civil Procedure section 1094.5)  
16 directing the Clerk of the board to treat the petition as valid and suspend the operation of  
17 Ordinance 113-06; or, in the alternative, for

18 3. A writ of mandate (Code of Civil Procedure section 1085) directing the Clerk to  
19 treat the petition as valid and suspend the operation of Ordinance 113-06; and

20 4. That the court adjudge and decree that the Clerk is without legal authority to treat  
21 the petition as invalid; and

22 5. An order enjoining the Clerk from refusing to treat the petition as valid; and

23 6. For cost of suit including reasonable attorneys fees; and

24 7. For such other and further relief as the court may deem just and proper.

25 Dated: December 15, 2006.

26 THE GROB LAW FIRM

27 By: 

28 Michael A. Grob

Attorneys for Petitioner and Plaintiff

## VERIFICATION

I Brian M. O'Flynn am the coordinator of the Defend Bayview Hunters Point Committee (DBHPC), petitioner/plaintiff in the attached proceeding. I have the authority to sign this document on behalf of DBHPC. I have read the forgoing petition and complaint and know the contents thereof. The same is true of my own knowledge except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: DECEMBER 14, 2006

By: 

BRIAN M. O'FLYNN  
Defend Bayview Hunters  
Point Coordinator