

2 Geoffrey L. Robinson, State Bar No. 112997
3 GRobinson@perkinscoie.com
4 Christopher A. Chou, Bar No. 293068
5 CChou@perkinscoie.com
6 PERKINS COIE LLP
7 505 Howard Street, 10th Floor
8 San Francisco, CA 94105
9 Telephone: 415.344.7000
10 Facsimile: 415.344.7050

11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 HELICOPTERS FOR AGRICULTURE;
15 JAMES BARRETT; HEIDI BARRETT;
16 BARRETT AND BARRETT VINEYARDS,
17 LP;

18 Plaintiffs,

19 v.

20 COUNTY OF NAPA and NAPA COUNTY
21 BOARD OF SUPERVISORS;

22 Defendants.

No.

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

Nature of Action

1
2 1. Plaintiffs bring this action for declaratory and injunctive relief against the County
3 of Napa and its Board of Supervisors challenging Ordinance No. 2018-002 (“Ordinance”), an
4 initiative measure passed by Napa County voters and adopted as a County ordinance, which seeks
5 to restrict or prohibit the use of helicopters for agricultural operations, including management and
6 operation of commercial vineyards. The Ordinance’s attempt to regulate helicopter operations
7 (including limitations on the personnel who may occupy an aircraft and its manner of operation)
8 are preempted by federal law. The provisions of the Ordinance (the violation of which carries
9 criminal penalties) are also insufficiently precise to give fair notice of what is proscribed, in
10 violation of the due process clauses of the Fourteenth Amendment of the United States
11 Constitution and of Article 1, section 7(a) of the California Constitution. The Ordinance, if
12 applied to plaintiffs James Barrett and Heidi Barrett, would also interfere with their vested rights
13 established by virtue of longstanding use of a helicopter in the management and operation of
14 commercial vineyards in good faith reliance on County laws and regulations.

Jurisdiction and Venue

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16 2. This Court has subject matter jurisdiction over plaintiffs’ federal claims under 28
17 U.S.C. § 1331. Plaintiffs’ federal claims are authorized by 28 U.S.C. § 1343(a), the Declaratory
18 Judgment Act, 28 U.S.C. § 2201(a), and Federal Rules of Civil Procedure 57 and 65. Plaintiffs’
19 state law claims form part of the same case or controversy under Article III of the United States
20 Constitution as plaintiffs’ federal claims.

21 3. Venue is proper in the Northern District of California under 28 U.S.C. § 1391
22 because the events or omissions giving rise to this action occurred in this judicial district and
23 because the County and the properties at issue in this action are located there.

Parties

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25 4. Plaintiff Helicopters for Agriculture (“HFA”) is an unincorporated nonprofit
26 association organized and existing under the laws of the State of California. HFA is committed to
27 the removal of state and local regulatory barriers to the use of helicopters for agricultural
28 operations, including vineyard and farm management. Its members include vineyard owners and

1 managers; viticulture consultants; pilots (including pilots of helicopters used for agricultural
2 operations); and individuals opposed to unnecessary or unlawful regulatory constraints on the use
3 of helicopters or other aircraft for agricultural purposes. Plaintiffs James Barrett and Heidi Barrett
4 are members of HFA and share the interests and concerns described in this paragraph.

5 5. Plaintiffs James Barrett and Heidi Barrett (“Barretts”) are residents of the County
6 of Napa and owners and managers of Barrett and Barrett Vineyards, LP, Chateau Montelena, La
7 Sirena and other vineyards in Napa County. Plaintiff Barrett and Barrett Vineyards, LP, is a
8 California limited partnership that owns and operates a vineyard in northern Napa County. Since
9 2010, the Barretts have used a helicopter in support of direct agricultural management of their
10 vineyards and in performance of agricultural management services to clients at other vineyards in
11 Napa, Sonoma, Mendocino, El Dorado, Amador, San Joaquin and Lake Counties. The Barretts
12 wish to continue to use a helicopter for agricultural management activities in the same manner
13 and at the least to the same extent as they have done so historically. The Barretts are informed and
14 believe and thereon allege that as a result of enactment of the Ordinance, continued operation of
15 the helicopter may subject them to civil and criminal liability, including fines, penalties and
16 incarceration. Cessation or any substantial limitation of the use of a helicopter in their
17 management and operation of vineyards would result in significant economic injury to their
18 businesses, including their ability effectively to manage their own vineyards and to provide
19 consulting services to other vineyards. It would be extremely difficult to ascertain the amount of
20 compensation that would afford adequate relief under such circumstances, and the Barretts have
21 no plain, speedy or adequate remedy available at law to obtain such relief. Granting the relief
22 sought in this complaint would redress their injuries by enabling them to continue their
23 longstanding operations without threat of arrest, prosecution or other enforcement actions under
24 the Ordinance.

25 6. Through this action, plaintiffs seek to protect their own interests and those of other
26 owners and operators of farms and vineyards in Napa County. Each of the plaintiffs is
27 beneficially interested in and affected by the Ordinance and seeks to promote the public interest
28 by ensuring that the Ordinance and other County enactments comply with the Constitution and

1 laws of the United States and of California, including Article VI, clause 2 and the due process
2 clauses of the Fifth and Fourteenth Amendment to the United States Constitutions and sections
3 7(a) and 19 of Article 1 of the California Constitution.

4 7. Defendant County of Napa is a unit of government organized under the laws of the
5 State of California.

6 8. Defendant Napa County Board of Supervisors is the governing body of the
7 County.

8 **Factual Allegations**

9 9. On August 10, 2017, a “Notice of Intent to Circulate Initiative Petition” was filed
10 with the Election Division of the Napa County Assessor-Recorder-County Clerk with an initiative
11 measure that consisted of a proposed “Ordinance amending the Napa County Code to prohibit
12 personal use airports and heliports and to limit sites for helicopter landings in support of direct
13 agricultural production activities such as aerial spraying and frost protection” (“Initiative”).

14 10. On January 30, 2018, Defendant Napa County Board of Supervisors (“Board”)
15 accepted the certification of the Initiative by the County Registrar of Voters.

16 11. Pursuant to Elections Code § 9111, the Board requested a report concerning the
17 proposed Initiative (“Section 9111 Report”). On February 20, 2018, as part of the Section 9111
18 Report, the Board received a Memorandum from Special Counsel to the County entitled “Legal
19 Analysis of Initiative Amending Section 18,120.010 of the Napa County Code (1) to Disallow the
20 Use of Personal Airports and Heliports and (2) to Limit the Circumstances Under Which
21 Helicopter Takeoffs and Landings in Support of Direct Agricultural Activities May Take Place.”
22 (“Memorandum”).

23 12. The Memorandum identified a “number of potential legal flaws which might
24 engender litigation challenges if [the Initiative] were enacted.” The Memorandum, among other
25 things, identified legal problems with the Initiative based on vagueness, preemption, and due
26 process/vested rights.

27 13. On February 27, 2018, the Board adopted a resolution to place the Initiative on the
28 June 5, 2018 ballot.

1 14. County Counsel issued an impartial analysis on March 8, 2018 and the Initiative
2 was placed on the June 5, 2018 ballot as “Measure D.”

3 15. On June 5, 2018, the Initiative was passed by the voters of Napa County.

4 16. On July 10, 2018, pursuant to the request of the Registrar of Voters, the Board
5 declared the results of the June 5, 2018, election. By its terms, the Ordinance went into effect ten
6 days thereafter.

7 17. The Initiative described the purpose of the Ordinance as follows:

8 The people find that any proliferation of personal use airports or
9 heliports would be inconsistent with and detrimental to the rural,
10 agricultural and peaceful character of Napa County. This Ordinance
11 is intended to prohibit any new personal use airports or heliports.
12 Also, the Ordinance makes no changes to existing law that permits
13 the landing of aircraft and helicopters for emergency uses. Finally,
14 the Ordinance clarifies the limited circumstances under which
15 helicopters may take-off and land in the County for agricultural
16 purposes.

17 18. The Ordinance significantly restricts the circumstances under which helicopters
18 may be used on off-field sites for agricultural purposes. Prior to the enactment of the Ordinance,
19 “helicopter takeoffs and landings solely in support of direct agricultural production activities such
20 as aerial spraying and frost protection” were permitted by right in all zoning districts of Napa
21 County. Under the Ordinance, such takeoffs and landings are now restricted to situations where
22 (a) they are used “solely in support of direct aerial agricultural activities; (b) they do not transport
23 persons “other than those that are essential to the conduct of such aerial activities” and (c) they
24 are “unavoidable.” Napa County Code of Ordinances (NCCO) § 18.120.010(A)(10).

25 19. The Ordinance also requires that the helicopter operator submit written reports
26 within forty-eight hours of any takeoff or landing in support of direct agricultural activities. Such
27 reports must contain each of the following: the helicopter’s registration number; the date, time,
28 duration and aerial activity of the operation; the persons engaged in the conduct of such activity;
and the reason why the takeoff or landing was unavoidable. NCCO § 18.120.010(A)(10).

1 have sufficient definiteness that ordinary people can understand what conduct is prohibited and
2 must be drafted in a manner that does not encourage arbitrary and discriminatory enforcement.

3 30. Ordinance No. 2018-002 is void for vagueness because its enforcement requires
4 wholly subjective judgments without code definitions, narrowing context, or settled legal
5 meanings. As drafted, the Ordinance requires an operator to speculate as to the permissibility of
6 takeoffs and landings and about who may and may not accompany the pilot in each circumstance.
7 Violation of the Ordinance risks criminal as well as civil sanctions, including imprisonment.
8 There is no *mens rea* requirement either in the Ordinance itself or in the code provisions
9 prescribing penalties. *See* NCCO § 18.120.010(A); *see, e.g.*, § 1.20.150(B). Thus, a violation can
10 occur even when an operator acts in a good-faith attempt to comply with the terms of the
11 Ordinance. Because key provisions in the Ordinance are undefined and contextless, ordinary
12 people are left to speculate as to what conduct is proscribed and County officials are left without
13 adequate standards for enforcement of the law.

14 31. The Ordinance states that takeoffs and landings at locations other than public
15 airports must be “unavoidable.” NCCO § 18.120.010(A)(10). However, this cannot mean
16 absolutely unavoidable, as such a construction would amount to a ban on off-field use of
17 helicopters for agricultural purposes. The Ordinance cannot reasonably be construed as an
18 outright ban because (a) it is drafted as an exception to requirements for a use permit, which
19 would be unnecessary had the intent been to ban such uses without a permit; and (b) the
20 Ordinance plainly contemplates that permissible takeoffs and landings will occur. *See* NCCO
21 § 8.120.010(A)(10).

22 32. Given that the term “unavoidable” cannot reasonably be interpreted literally, and
23 neither the Ordinance itself nor the County code provides any definition or illustrative examples
24 of unavoidable takeoffs and landings, an operator is left to guess as to the meaning of the term. It
25 is similarly unclear whose viewpoint governs what activities may be considered so important that
26 a takeoff or landing in furtherance thereof can be considered “unavoidable.” The Ordinance is
27 thus impermissibly vague and ambiguous with respect to what exactly must be unavoidable, the
28 degree to which it must be so, and whose perspective is relevant to such decisions. Such

1 indeterminacy in a measure whose violation carries the threat of fines or imprisonment renders
2 this provision unconstitutional.

3 33. For similar reasons, the requirement in the Ordinance that any personnel on the
4 aircraft must be “essential” is also unconstitutionally vague. The meaning of the word essential
5 varies considerably from one context to another. As with the term “unavoidable,” neither the
6 Ordinance nor the County Code defines the term “essential,” provides illustrative examples, or
7 otherwise provides any context for choosing between plausible alternative interpretations. *See*
8 NCCO § 18.120.010(A)(10). Reasonable minds can differ as to the degree to which an individual
9 must contribute to the performance of aerial agricultural activities or the operation of the
10 helicopter to be considered essential personnel. Moreover, it is unclear in what manner personnel
11 must contribute to the activity, and whose perspective governs. Thus, the provision is
12 impermissibly vague and therefore unconstitutional.

13 **THIRD CLAIM FOR RELIEF**
14 **(Vested Rights)**
15 **(Against All Defendants)**

16 34. Plaintiffs reallege and incorporate the allegations in the foregoing paragraphs.

17 35. The right to continue an established business in which substantial investment has
18 been made in good faith reliance upon existing laws permitting the business operations constitutes
19 a vested property right. An ordinance that eliminates or substantially impairs the existing business
20 use cannot be applied to that business unless the use amounts to a public nuisance. Such an
21 application in this case would deprive plaintiffs of a vested right in violation of the due process
22 clauses of the Fifth and Fourteenth Amendment and Article 1, §§ 7(a) and 19 of the California
23 Constitution.

24 36. In the Napa County General Plan, the “County affirms and shall protect the right
25 of agricultural operators in designated agricultural areas to commence and continue their
26 agricultural practices (a “right to farm”), even though established urban uses in the general area
27 may foster complaints against those agricultural practices. The ‘right to farm’ shall encompass
28

1 the processing of agricultural products and other activities inherent in the definition of agriculture
2 provided in Policy AG/LU-2, above.” Napa General Plan, Policy AG/LU-15.

3 37. Consistent with the right-to-farm provisions of the General Plan, NCCO § 2.94.020
4 provides that “[n]o existing or future agricultural activity, operation or facility . . . conducted or
5 maintained for commercial purposes in a manner consistent with proper and accepted customs and
6 standards, as established and followed by similar agricultural operations in the same locality, shall
7 be or become a nuisance, public or private, due to any changed condition in or about the county,
8 after the same has been in operation for more than three years if it was not a nuisance at the time
9 it began.” “Agricultural operations” are defined to include “all operations necessary to conduct
10 agriculture as defined in Section 18.08.040 of the Napa County Code, as such may be amended
11 from time to time and shall include, but not be limited to . . . the production, irrigation, frost
12 protection, cultivation, growing . . . or processing of any living organism having value as an
13 agricultural commodity or product, and any commercial practices performed incident to or in
14 conjunction with such operations on the site where the agricultural product is being produced
15”

16 38. NCCO § 2.94.030 states that “Napa County has determined that the highest and
17 best use for agricultural land as defined below is to develop or preserve said lands for the
18 purposes of agricultural operations and it will not consider the inconveniences or discomforts
19 arising from agricultural operations to be a nuisance if such operations are legal, consistent with
20 accepted customs and standards and operated in a non-negligent manner Such discomfort or
21 inconveniences may include, but are not limited to: . . . aircraft operation”

22 39. Prior to the Ordinance, “[h]elicopter takeoffs and landings solely in support of
23 direct agricultural production activities” were expressly permitted under the Napa County Code in
24 all zoning districts without a use permit. In reliance upon this law and the County Code provisions
25 referenced above, since 2010 the Barretts have continuously used a helicopter as a core component
26 of their agricultural operations, including, without limitation, the production, irrigation, frost
27 protection, cultivation, growing and processing of wine grapes.

28

1 40. The agricultural operations for which the Barretts have used a helicopter include
2 time-critical visits to vineyards in Napa, Sonoma, Mendocino, El Dorado, Amador, San Joaquin
3 and Lake Counties. Such visits (and related aerial operations) are required for multiple reasons
4 relating to effective management and operation of vineyards, including:

- 5
- 6 a. Insect and pathogen inspections (e.g, sudden appearance of vine mealybug,
7 mildew, mold other fungal pathogen eruptions).
 - 8 b. Erosion control cover crop inspections where vehicle, ATV or foot traffic may
9 damage seeding and cover plantings.
 - 10 c. Hillside erosion control inspection in areas of steep terrain where vehicle traffic
11 could damage erosion control emplacements.
 - 12 d. Canopy health and coverage in all vineyards. Canopy management requires
13 frequent visits as vines change shape and canopy from interval from last work and
14 put out more or fewer leaves. For leaf canopy health in varied soil terrain the
15 overhead view is also critical to assess where vines may be water-deficient or
16 exhibit other indications of vine stress. Shade and direct sunlight both must be
17 observed for effective crop maturity.
 - 18 e. Crop maturity and flavor development during the ripening period must be checked
19 every other day in the weeks leading up to harvest. Daily inspections may be
20 required during periods of high heat or rain.

21 41. All such helicopter operations have been conducted consistent with applicable
22 provisions of the Napa County Code, including §18.120.010.A (allowable uses without use
23 permit in any zoning district) and have been in full compliance with FAA regulations governing
24 General Aviation. These flight operations have included (in addition to the pilot/vineyard
25 managers) viticulture consultants, pesticide and organic practices consultants, safety observers as
26 necessary for safety of flight in confined off-field landing sites and when operating in busy air
27 traffic environments to relieve pilot workload, and any other personnel essential to safe aircraft
28 operations under FAA regulations.

 42. The Barretts have conducted these activities in their own vineyards and as part of
the provision of agricultural management services to clients at other vineyards. Any cessation or

1 substantial limitation of the use of a helicopter in their management and operation of vineyards
2 would result in significant economic injury to their businesses, including their ability effectively to
3 manage their own vineyards and to provide consulting services to other vineyards.

4 43. There is no policy underlying the Ordinance that would justify depriving the
5 Barretts of their vested right to continue their existing agricultural operations. On the contrary, the
6 policy of the County, as expressed in NCCO § 2.94.020, is that no agricultural activity, operation
7 or facility conducted in a manner consistent with proper and accepted customs and standards shall
8 be or become a nuisance if it has been in operation for more than three years and was not a
9 nuisance at the time it began. The stated justification of the ordinance is that “any proliferation of
10 *personal use airports or heliports* would be inconsistent with and detrimental to the rural,
11 agricultural and peaceful character of Napa County” and that “[t]his Ordinance is intended to
12 prohibit any new personal use airports or heliports.”). (Emphasis added.) The Barretts do not have
13 a personal use airport or heliport.

14 44. The application of the Ordinance to the Barretts’ operations to require cessation or
15 substantial limitations on their use of a helicopter would make it impossible or extremely difficult
16 to perform essential agricultural operations and would result in significant economic injury to
17 their businesses and thereby impair their vested rights.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, plaintiffs request the Court to grant the following relief:

21 a. Declare that the provisions of the Ordinance concerning the manner of
22 operation of aircraft and the personnel who may lawfully occupy an aircraft are preempted
23 by federal law;

24 b. Declare that, under the due process clause of the Fourteenth Amendment
25 and Article 1, section 7(a) of the California Constitution, the provisions of the Ordinance
26 concerning the unavailability of aircraft operations and the personnel who may occupy
27 the aircraft are void for vagueness;
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c. Declare that application of the Ordinance to use of a helicopter by the Barretts would conflict with their vested rights in violation of the due process clauses of the Fifth and Fourteenth Amendment and Article 1, section 19 of the California Constitution;

d. Enjoin the defendants, their agents, employees, and all other persons in active concert or participation with them from enforcing provisions of the Ordinance declared to be unlawful;

e. Award the plaintiffs their reasonable attorneys' fees and costs incurred in this action pursuant to 42 U.S.C. §§ 1988, California Code of Civil Procedure § 1021.5 and other applicable law.


f. Order such other relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a jury trial on all claims so triable.

DATED: October 5, 2018

PERKINS COIE LLP

By: 
Geoffrey L. Robinson
Attorneys for Plaintiffs