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11 LEAGUE OF WOMEN VOTERS OF CUPERTINO-SUNNYVALE

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

16 LEAGUE OF WOMEN VOTERS OF
17 CUPERTINO-SUNNYVALE,

18 Plaintiffs,

19 v.

20 CITY OF CUPERTINO, DARCY
PAUL; DIANE THOMPSON,
21 KIRSTEN SQUARCIA, CHRIS
JENSEN, LIANG CHAO, KITTY
22 MOORE, HUNG WEI, JON WILLEY,
and DOES 1-100, inclusive,

23 Defendants.
24

Case No.:

**VERIFIED COMPLAINT FOR
DECLARATORY RELIEF
AND INJUNCTIVE RELIEF**

1 Plaintiff the League of Women Voters of Cupertino-Sunnyvale (“LWVCS”),
2 for their Verified Complaint for Declaratory Relief and Injunctive Relief
3 (“Complaint”) against the City of Cupertino, California (“Cupertino”), its Mayor
4 Darcy Paul, its City Manager (Acting) Diane Thompson, its City Clerk Kirsten
5 Squarcia, the Members of the City Council and the City officials responsible for
6 enforcement of an unlawful municipal ordinance in violation of the First Amendment
7 to the United States and Article 1 of the California Constitutions (the individuals
8 collectively referred to as the “Individual Defendants,” and all defendants
9 collectively referred to as the “Defendants”), hereby allege as follows, upon personal
10 knowledge as to their own conduct and upon information and belief as to all other
11 matters:
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16 **INTRODUCTION**

17 1. Transparency is essential to accountable government. While the City of
18 Cupertino and its leaders wave the banner of “transparency” they have, in reality,
19 enacted an ordinance to silence free speech and chill the ability of citizens to petition
20 the government by making basic civic participation conditional on paying a fee.
21 Talking the talk in a way that obscures how they have walked the walk, the offending
22 ordinance mandates extensive scrutiny of citizens who wish to speak up, and under
23 the ordinance citizen advocacy carries the risk of fines, jail time, and even a ban on
24 speaking to elected officials. The ordinance, on its face, violates the fundamental
25 principles of free speech, freedom of association, and the ability to petition the
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1 government guaranteed by the United States Constitution and the Constitution of the
2 State of California.

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4 2. The threat to these fundamental rights is open and obvious. Under the
5 guise of a “lobbying disclosure ordinance,” the City now requires a wide swath of
6 resident who want to speak to their councilmember or to any other city official to pay
7 an annual fee and complete extensive disclosure forms if they want to try to influence
8 city legislation or administrative action. If they do not, they face jail time, criminal or
9 civil fines, injunctions, and a one-year ban on petitioning their elected officials for
10 redress of grievances. To add insult to injury, an assortment of favored speakers, such
11 as the Chamber of Commerce and certain established media sources, are exempted
12 from these restrictions. Those not exempted are independent bloggers or newsletter
13 writers, of course.

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17 3. The ordinance is hopelessly overbroad. Its definition of “organization” is
18 not limited to for-profit businesses or political committees; among other things, it
19 includes 501(c)(3) organizations, such as religious organizations, charitable
20 organizations, and educational organizations, like LWVCS. For example, it would
21 expressly require each of the following to register as lobbyists and pay a fee or face
22 serious penalties, including criminal charges:
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25 i. A church or synagogue sending its minister or other employee to
26 speak to a councilmember to encourage the councilmember to
27 support an affordable housing project;
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- 1 ii. A neighborhood group that encouraged all of its members to write
2 to the Community Development Department to oppose putting a
3 large, eyesore self-storage facility in a residential area;
4
5 iii. LWVCS from sending a representative to the City Clerk to
6 encourage her to ensure that voting places for elections are
7 properly advertised, in ADA accessible locations, and close to
8 transit routes for voters who do not drive; and
9
10 iv. A school PTA from asking its members to meet with their
11 councilmember about road construction causing congestion near
12 the school.

14 4. The ordinance appears to cover members of “organizations” even if they
15 are speaking in their individual capacity and not on behalf of the “organization.”
16

17 5. As the ordinance was under debate, certain Defendants expressly called
18 out a member of LWVCS, whose newsletter updates her neighbors on municipal
19 affairs, expresses her opinions, and sometimes calls on her neighbors to take action as
20 the reason for the ordinance’s enactment. Boiled down to its basics, the ordinance
21 seeks to condition public discourse about the workings of government to those who
22 pay a fee and report to the government all of their members and all of the sources of
23 organizational support.
24

26 6. Moreover, by requiring Cupertino citizens who lawfully spend their
27 money on encouraging civic participation in City policy to register as lobbyists, the
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1 ordinance appears to cover—again, based on councilmembers’ statements—
2 independent journalists and opinion-writers not affiliated with exempt established
3 media organizations to cease their coverage on pain of criminal and civil penalties.
4

5 7. As if that were not bad enough, certain members of the City Council,
6 including the Mayor of Cupertino, have said that they are dissatisfied at the City’s
7 failure to pursue violations of the ordinance with vigor and have proposed to amend it
8 to create a private right of action for penalties and attorneys’ fees to anyone who
9 brings an action. That would enable councilmembers themselves or their allies to sue
10 their critics for speaking out against them or encouraging others to do so. It would
11 give powerful people who can afford lawyers the ability to file Strategic Lawsuits
12 Against Public Participation (“SLAPP”) to chill or punish their critics: a developer of
13 a polluting project could sue an environmental group for encouraging its members to
14 oppose it.
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18 8. Under the ordinance, a wealthy mansion-owner could sue a community
19 group for encouraging its members to support affordable housing near his home. For
20 that matter, a member of a hate group could sue the local NAACP chapter for
21 encouraging its members to contact their councilmember to encourage a fair hiring
22 process for city employees. It is a matter of grace and not the text of the ordinance
23 that prevents these abusive uses of the ordinance. Indeed, at least Defendant Chao has
24 specifically called for “any organization that is trying to influence public opinion,”
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1 including beyond “the normal sort of lobbying” and news media, to face government
2 fees, registration, and burdensome disclosure requirements.

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4 9. The ordinance, moreover, forces people who are not, in any sense of the
5 word, lobbyists, to lie. Concerned citizens are not “lobbyists.” Charities are not
6 “lobbyists.” But—like laws in certain authoritarian countries that have forced non-
7 governmental organizations and independent media to falsely label themselves as
8 foreign agents—the City is forcing people to falsely label themselves as lobbyists and
9 risk their listeners giving less weight to what they say for that reason. And of course,
10 that burden falls only on those who are trying to get the City to do something other
11 than what its government wanted to do anyway.

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14 10. To date, the City Attorney has declined to enforce the ordinance, but that
15 does not make the ordinance any more acceptable under the law. Its very existence
16 chills the right of free assembly and offends the rights of free speech and the ability
17 to petition the government. Serendipity is not a reason for an unlawful ordinance to
18 remain on the books, and there is no guarantee that other City officials will not
19 invoke the ordinance or that a new City Attorney would take action against plaintiff
20 and their members.

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24 11. The burden imposed by the City Ordinance goes beyond the power of
25 local government, or for that matter any level of government, to restrict speech on
26 core political matters. By this action, Plaintiff seeks to empower citizens throughout
27 Cupertino to participate in and shape their communities without restrictions that, in
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1 practice, will favor the wealthy and skew the manner in which persons can exercise
2 their constitutionally protected rights.

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4 12. The League of Women Voters was formed in 1920 as an outgrowth of
5 the movement to give women the right to vote following the passage of the 19th
6 Amendment to the United States Constitution. Some of the League's earliest causes
7 included support for child labor laws, minimum wage, compulsory education and
8 equal opportunity for women, and the League's advocacy work affected the creation
9 of laws that are still in force today. Many people talk about how the nation needs
10 greater participation from the public; the League is a model of participation in the
11 democratic process at local, regional, state and federal levels.

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14 13. LWVCS accomplishes this primarily through its educational efforts to
15 research and present unbiased, nonpartisan information about candidates for office,
16 propositions and measures, and voting processes and procedures. The LWVCS does
17 not endorse or oppose candidates or political parties, donate money to campaigns or
18 advertise for or against campaigns, criticize or praise sitting elected officials, or
19 participate in any candidate's election campaign. The LWVCS is committed to
20 working more broadly on community education, member education, and advocacy in
21 the community.

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25 14. Plaintiff and their members wish to continue their work; however, they
26 are deterred from doing so by Cupertino's lobbyist regulation ordinance.
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1 States Constitution. The Court also has supplemental jurisdiction over Plaintiffs’
2 claims under Article I of the California Constitution pursuant to 28 U.S.C. § 1367.
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4 18. This Court has personal jurisdiction over the Defendants because they
5 reside in California and the acts giving rise to the claims occurred in California.
6

7 **VENUE AND INTRADISTRICT ASSIGNMENT**

8 19. Venue is proper in the Northern District of California pursuant to 28
9 U.S.C § 1391(b), in that a substantial part of the events giving rise to the claims
10 occurred in this district, and Defendants reside in this district.
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12 20. Intradistrict assignment is proper in the San Jose Division because a
13 substantial part of the events giving rise to the claims occurred in Santa Clara County
14 and Defendants reside in Santa Clara County.
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16 **PARTIES**

17 21. LWVCS is a nonprofit public benefit corporation. It is located in Santa
18 Clara County, California. LWVCS is a registered 501(c)(4) nonprofit corporation.
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20 22. Cupertino is a general-law municipal corporation organized and existing
21 under the laws of the State of California. It is located in Santa Clara County,
22 California. Cupertino is responsible for amending, approving, and adopting the
23 Ordinance set forth at Chapter 2.1000 of the Cupertino Municipal Code. Through its
24 agents, including the Mayor, City Manager, City Councilmembers, City Clerk, and
25 City Attorney, it enforces the challenged Ordinance and may issue citations and
26 prosecute alleged violations thereunder.
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1 23. Defendant Darcy Paul is the Mayor of Cupertino and is sued in his
2 official capacity. Defendant Paul is responsible for ensuring that laws and policies are
3 enforced and for overseeing city officers and employees.
4

5 24. Defendants Liang Chao, Kitty Moore, Hung Wei, and Jon Willey are
6 City Councilmembers of Cupertino and are responsible for enacting ordinances and
7 supervising their enforcement. They are sued in their official capacity.
8

9 25. Defendant Chris Jensen is the City Attorney of Cupertino and is sued in
10 his official capacity. Defendant Jensen is responsible for enforcing the Cupertino
11 Municipal Code.
12

13 26. Defendant Diane Thompson is the Acting City Manager of Cupertino
14 and is sued in her official capacity. Defendant Thompson is responsible for the
15 administration of the City's government, including implementing municipal policies
16 and ordinances. Defendant Thompson is expected to leave her employment on or
17 about July 22, 2022 and her successor is currently unknown, but will be substituted
18 for her pursuant to Federal Rule of Civil Procedure 25(d).
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21 27. Defendant Kirsten Squarcia is the City Clerk of Cupertino and is sued in
22 her official capacity. Defendant Squarcia is responsible for administering procedures
23 for lobbyist registration and maintaining lobbyist records.
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25 28. Defendants Does 1-100 are officials of the City of Cupertino or other
26 individuals responsible for enforcing municipal policies and ordinances. They are
27 sued in their official capacity.
28

FACTUAL BACKGROUND

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2 29. The LWVCS is a local chapter of the League of Women Voters of the
3 United States (“LWV”, collectively, LWVCS and LWV are sometimes referred to as
4 the “the League”). The LWV was founded in 1920 as an outgrowth of the struggle to
5 win voting rights for women. LWV is organized in more than 850 communities and
6 exists in every state with more than 500,000 members and supporters nationwide.
7 One of the League’s primary goals is to promote government across the nation that is
8 representative, accountable, responsive, and that ensures opportunities for effective
9 and inclusive voter participation in government decision-making. In addition to
10 sponsoring candidate forums and debates, the League hosts hundreds of events and
11 programs every year to educate voters across the country. The League distributes
12 millions of educational materials about state and local elections.
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17 30. LWVCS, like the LWV, is a community-based political organization
18 dedicated to encouraging informed and active participation in government and the
19 political process through advocacy and education. Both the LWVCS and LWV are
20 proud to be nonpartisan, neither supporting nor opposing candidates or political
21 parties at any level of government, but always working on vital issues of concern to
22 members and the public. The League accomplishes its mission through community
23 education initiatives and advocacy.
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26 31. The LWVCS has approximately 51 members in Cupertino. Members in
27 Cupertino and throughout California research and present unbiased, nonpartisan
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1 information about candidates, the voting process, and voting propositions.

2 Additionally, the League works to identify and study local and statewide issues of
3 concern, develop nonpartisan positions on the issues, and advocate for or against
4 particular policies or laws.
5

6 32. Nationally, the LWV operates through two nonprofit entities. One is the
7 League of Women Voters, a 501(c)(4) corporation, which takes positions on certain
8 policy issues and engages in action and advocacy activities. The other is the
9 Education Fund (“the Fund”), a 501(c)(3) corporation, which conducts all of the
10 League’s voter service and community education activities. Importantly, neither the
11 national League of Women Voters nor any of its state or local chapters, including
12 LWVCS, uses the Education Fund to take positions on political issues or candidates.
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16 33. The League’s members in Cupertino engage in voter service and
17 advocacy activities. Voter service activities are primarily educational and have
18 included informing the public about voting procedures; registering voters; urging
19 citizens to vote; giving factual information about candidates and moderating
20 candidate forums; and explaining ballot issues. LWVCS engages in advocacy by
21 providing information; building public opinion; and providing community education
22 about issues it researches and on which it develops nonpartisan positions. A critical
23 component of the League’s activities is to promote access to the actions of
24 government by serving as a watchdog on local government actions, ensuring
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1 transparency in Cupertino government and education of all Cupertino residents on
2 nonpartisan matters of common interest.

3
4 34. In November 2020, Defendant Paul proposed a lobbying registration
5 ordinance to “regulate lobbyists who seek to influence legislative and administration
6 actions taken by City officials and City bodies.” In a City Council Meeting on
7 November 2, 2020, Defendant Chao supported the proposed ordinance in a statement
8 where she said “other things in our community like lobbying” and “news sort of like
9 lobbying” should be subject to disclosure laws, specifically calling out the e-
10 newsletter, *Cupertino Matters*, published by a member of LWVCS.
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13 35. In February 2021, the City Manager’s Office released a Staff Report
14 discussing the proposed ordinance. The report references the Cities of Santa Clara
15 and San Jose and Santa Clara County as municipalities with “broad ordinances that
16 regulate lobbyists seeking to influence decisions of their respective legislative bodies
17 and officials.” Per the report, the proposed ordinance was closely modeled off of
18 these.
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21 36. In March 2021, Defendant Mayor Paul approved Ordinance Number 21-
22 2222, amending the Cupertino Municipal Code with the addition of Chapter 2.1000
23 (“Regulation of Lobbying Activities”). The ordinance was attested to by Defendant
24 Squarcia. The Ordinance regulates “lobbyists,” as defined—although, as explained
25 below, the Ordinance’s definition goes far beyond any normal definition of the term.
26
27 The Ordinance went into effect on July 1, 2021.
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1 39. The preambulatory stated purpose of the Ordinance is to “impose
2 registration and disclosure requirements on those engaged in lobby efforts to
3 influence the decisions of City policy makers for Compensation.” Despite this
4 language, as explained below, the Ordinance’s operative terms expressly do not
5 require Compensation for conduct to be defined as “lobbying” or for a person to be
6 defined as a “lobbyist.”
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9 40. The Ordinance defines “lobbying” as “the Influencing or attempting to
10 influence a Legislative Action or Administrative Action of the City.”
11

12 41. The Ordinance defines “influencing” as any “purposeful
13 communication” that promotes, supports, modifies, opposes, causes the delay or
14 abandonment of conduct, or intentionally affects the behavior of a city official
15 through persuasion, information, incentives, statistics, studies, or analyses.
16

17 42. Under the Ordinance, there are three defined categories of “lobbyists.”
18 As defined in the Ordinance, a “Business or Organization Lobbyist,” the category of
19 lobbyist which includes Plaintiffs, is:
20

21 Any business or organization, whose owner(s), officer(s), or
22 employee(s), carry out lobbying on its behalf in an aggregate amount of
23 ten hours or more within any consecutive twelve (12) month period,
24 whether or not such officers or employees are specifically compensated
25 to engage in Lobbying; provided, that the activities of officers shall be
26 considered Lobbying only if those officers receive Compensation by the
27 business or Organization beyond reimbursement for their reasonable
28 travel, meals or incidental expenses. . . .

1 There are two additional defined “lobbyists” that fall more or less within the
2 traditional definition of lobbying, meaning influencing city action for compensation.

3
4 A “Contract Lobbyist” is:

5 A Person who engages in Lobbying on behalf of one or more Clients
6 (acting individually or through agents, associates, employees or
7 contractors) and who has received or has entered into an agreement for
8 Compensation of one thousand dollars (\$1,000.00) or more, or
9 equivalent nonmonetary Compensation (“threshold Compensation”) for
engaging in Lobbying during any consecutive three-month period;

10 Similarly, an “Expenditure Lobbyist” is:

11 A Person who makes payments or incurs expenditures of five thousand
12 dollars (\$5,000.00) or more during any calendar year in connection with
13 carrying out public relations, advertising or similar activities with the
14 intent of soliciting or urging, directly or indirectly, other Persons to
15 communicate directly with any City Official in order to attempt to
16 influence Legislative Action or Administrative Action. The five
17 thousand dollar (\$5,000.00) threshold shall not include: (A)
18 Compensation paid to Contract Lobbyists or employees for Lobbying; or
19 (B) dues payments, donations, or other economic consideration paid to
20 an Organization, regardless of whether the dues payments, donations or
21 other economic consideration are used in whole or in part to lobby.

22 43. The Ordinance contains certain exemptions, but owners, directors,
23 employees other than officers, volunteers, and others who work with or volunteer for
24 appear not to be exempted. Thus, under this definition, a business is a “lobbyist” if its
25 employee or owner meets with the building department for eleven hours to try to get
26 issuance of a building permit. Similarly, a racial justice nonprofit is a lobbyist if it
27 meets with the Chief of Police once a month for an hour each time about efforts to
28 reduce biased policing.

1 44. “Organization” is defined as “any Person that is not an individual” and
2 “Person” is defined as “any individual, domestic or foreign corporation, for-profit or
3 nonprofit entity, firm, association, syndicate, union, chamber of commerce, joint-
4 stock company, partnership of any kind, limited liability company, common-law
5 trust, society, or any other group of Persons acting in concert.”
6

7
8 45. Thus an “Organization” includes public charities, social welfare
9 organizations, labor unions, and unincorporated associations. Any group of neighbors
10 forming an unincorporated association that spends more than ten hours trying to
11 influence city officials—for example, to support or oppose a zoning application—is a
12 “lobbyist” under the Ordinance.
13

14 46. Under this definition, a nonprofit that rents a school gymnasium to hold
15 an event to express concern about the City’s lack of affordable housing might well be
16 a “lobbyist.” A community theater that puts on a play about policing policy in
17 Cupertino would likely cross the threshold to be a “lobbyist.” Indeed, a protest
18 organizer who has to pay for security or insurance for a parade that addresses
19 municipal policy—say, a group bike ride to protest unsafe street conditions for
20 pedestrians and cyclists—is likely a “lobbyist.” So is a concerned citizen who creates
21 an online newsletter for her community about municipal issues and spends more than
22 \$5,000 on web hosting, web design, and an attorney to file public records requests.
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1 47. The Ordinance contains several exemptions to its definition of
2 “Lobbyist,” but these seem to confirm that the ordinance is intended to capture
3 normal advocacy activity that:
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5 a. Individuals whose communications regarding legislative or
6 administrative actions are “solely limited” to appearing at public City
7 meetings, as long as their communications are available in the public
8 record. This exemption, however, would not apply to an individual
9 who meets with a city employee outside of a public meeting—such
10 as, for example an organization meeting with responsible civic police
11 authorities to discuss concerns about racial profiling.
12

13 b. Board members or employees of 501(c)(3) nonprofit organizations,
14 unless the organization is lobbying for a specific matter which it
15 received compensation to lobby for or against. This exemption,
16 however, does not exempt *the nonprofit itself* from registering as a
17 “lobbyist.” Nor would it apply to nonprofits that are recognized
18 under other provisions of the tax code or to volunteers, officers, or
19 other individuals other than employees or Board members. It would
20 also appear to endanger nonprofits that discuss their mission-related
21 advocacy with their donors, even small-dollar individual donors.
22

23 c. A “Media” exemption “when limiting its action to the ordinary
24 course of news gathering or editorial activity, as carried out by
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1 members of the press.” The reference to “members of the press”
2 appears to be designed to limit this exemption to professional
3 journalists and not independent citizen-journalists writing blogs or
4 email newsletters, especially in combination with councilmembers’
5 comments about email newsletters.
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8 d. “Persons reimbursed for only their reasonable travel, meals or
9 incidental expenses, including, but not limited to, uncompensated
10 members or directors of nonprofit Organizations, such as chambers
11 of commerce.” Again, this exemption does not exempt a nonprofit
12 itself from being required to register as a “lobbyist.”
13

14 48. Several exemptions facially discriminate among speakers. For example,
15 members of neighborhood associations are exempt, but members of a group
16 criticizing the city’s housing policy as exclusionary are not.
17

18 49. The Ordinance requires all “lobbyists,” as defined, to register with the
19 City Clerk within 15 days after qualifying as a “lobbyist” and file amended
20 registrations within 15 days of any change to its registration information, including
21 any legislative or administrative action the “lobbyist” has engaged in. “Lobbyists” are
22 required to renew their registration annually.
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25 50. The Ordinance imposes an annual registration fee for all “lobbyists”
26 subject to the registration requirements. In addition to the annual fee, each “lobbyist”
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1 is required to pay a fee per client for whom any “lobbying” is undertaken.

2 “Lobbyists” are subject to fines for any delinquent fees.

3
4 51. To register, “lobbyists” are required to disclose a long list of information
5 to the City and “lobbyists” must also file quarterly reports.

6 52. The Ordinance requires any Business or Organization lobbyist to
7 disclose, among other things:

- 8
- 9 a. The name, business address, telephone, email addresses, and business
10 license of all persons required to register pursuant to the Ordinance
 - 11 b. The names of the president, secretary, chief financial officer, and
12 agent for service of process
 - 13 c. The names of owners, officers, or employees conducting lobbying
14 activities and the items of legislative or administrative action the
15 lobbyist is attempting to influence
 - 16 d. Contacts made with city officials during the preceding calendar year
17 for the purpose of influencing or attempting to influence legislative
18 or administrative action, including a brief description of the items,
19 the dates of contact, the method of contact, and the number of
20 contacts
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25 53. The Ordinance requires lobbyists to file quarterly reports with the City
26 Clerk regardless of whether any lobbying activities occurred during the prior period.
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1 54. The Ordinance requires any member of a Business or Organization
2 Lobbyist to identify himself/herself and the business or organization he/she
3 represents when appearing in a Lobbying capacity at any meeting with a City
4 Official' or at a public meeting of the City Council or any other City board,
5 commission, or hearing.
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7
8 55. The Ordinance requires those appearing as “lobbyists” when meeting
9 with City officials or at public meetings to identify themselves as such and disclose
10 the client or organization that they represent.
11

12 56. The Ordinance imposes penalties on persons or entities who violate any
13 section of the Ordinance. These penalties include fines and debarment from
14 “lobbying.” The Ordinance also criminalizes failure to comply with the Ordinance as
15 a misdemeanor under Cupertino Municipal Code § 1.12.010, which makes violation
16 of any ordinance a misdemeanor unless explicitly stated otherwise. Thus, a nonprofit
17 organization, either officially or through its members even if not expressly acting on
18 behalf of the nonprofit organization, that meets with a city official for one hour a
19 month about a municipal policy is subject to civil penalties of \$25 a day, debarment
20 from speaking to city officials about city legislative or administrative matters, and
21 criminal penalties that include six months’ jail time with each day being a separate
22 offense.
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25
26 57. The Ordinance specifically requires “lobbyists” to identify themselves as
27 such when dealing with city officials and employees. That is the case even when a
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1 nonprofit organization is involved in pure advocacy work that the Ordinance defines
2 as “lobbying” contrary to ordinary understandings of the term. Organizations thus
3 face city officials and employees discrediting their viewpoints as bought-and-paid-for
4 lobbying when it is not. By contrast, the content- and speaker-based categories that
5 the City exempts from registration as “lobbyists” are not required to falsely label
6 themselves as “lobbyists” to speak to public officials.
7

9 58. The regulations under 501(c)(3) promulgated by the Internal Revenue
10 Service allow nonprofit organizations qualified under 501(c)(3) to engage in limited
11 amounts of lobbying activity, but the activity may not be a substantial part of what
12 the organizations do. Donations to 501(c)(3) corporations are tax-deductible. This
13 allows the League and its members, through activities supported by the Fund, to
14 engage in all of the activities necessary to achieve its nonpartisan educational and
15 informational mission ensuring transparency in local government, of which lobbying
16 is and can only be a small component, using funds from donor contributions.
17

19 59. The Ordinance makes no distinction between the activities funded by a
20 501(c)(3) organization and a 501(c)(4) organization. Under the Ordinance, both
21 LWVCS and its members engaged in activities supported through the Fund must
22 submit to onerous regulations to do what they previously did without constraint.
23 Treating 501(c)(3) organizations as if they were lobbyists also endangers LWVCS’s
24 classification as an organization whose supporters can deduct their financial support
25 to the League.
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1 60. Maintaining this dual structure is crucial to the ability of LWVCS to
2 engage in all of the activities necessary to achieve its mission, pursuing its advocacy
3 activities without tax-deductible contributions and maintaining a clear distinction
4 between the two functions. These distinctions are embodied in the Internal Revenue
5 Code and have withstood the test of time both in California and throughout the
6 United States. Members of LWVCS and LWV contribute separately to the corporate
7 League of Women Voters and to the tax-exempt Fund.
8

9
10 61. The City's departure from these longstanding classifications threatens to
11 chill contributions to LWVCS and to the Fund, and to impair the League and
12 LWVCS's ability to carry out their mission. More important for the citizens of
13 Cupertino, the Ordinance seriously undermines public information and access to the
14 mechanics of government by chilling the activities of the League and its members,
15 materially diminishing the crucial role played by the League and its members to
16 ensure transparency in Cupertino government as a watchdog for all Cupertino
17 residents.
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21 62. Members donated to the Fund because of its status as a 501(c)(3)
22 organization. The Fund is now required by the Ordinance to disclose substantial
23 information about its nonpartisan donors, which has a chilling effect on the donors'
24 choices to contribute. Without donations, LWVCS cannot engage in a substantial
25 amount of the work it seeks to do.
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1 contact information for the City Council and no longer calls on readers to take action.
2 She is concerned that even this may not be enough to escape fines or criminal
3 prosecution under the Ordinance, and has had to spend time discussing the ordinance
4 with LWVCS board members in an attempt to minimize her risk of prosecution
5 instead of covering city events.
6

7
8 65. Other members of LWVCS, including officers of LWVCS, have
9 expressed that they are hesitant to speak up about positions taken by the City
10 government on a number of items and have refrained from expressing concern about
11 municipal transparency and government practices.
12

13 66. The City itself has enforcement power over its own ordinances. Even for
14 criminal prosecutions, the City has the power to charge and prosecute Municipal
15 Code crimes itself through its City Attorney without the concurrence of the District
16 Attorney. For administrative penalties, City employees or even the City Council itself
17 are the decisionmakers, and a wide range of City officials have the power to initiate
18 administrative penalty proceedings.
19
20

21 67. By this action, Plaintiffs now seek the Court's aid in protection of their
22 constitutional rights.
23

24
25 **CLAIMS FOR RELIEF**

26 **FIRST CLAIM FOR RELIEF**
27 **(Injunctive Relief)**

28 **Facial Violation of the Freedom of Speech**
(First and Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. § 1983)

1
2 68. Plaintiffs incorporate the allegations in the foregoing paragraphs as
3
4 though fully set forth herein.

5 69. The First Amendment of the U.S. Constitution, made applicable to the
6
7 states by the Fourteenth Amendment, guarantees Plaintiffs the right to freedom of
8
9 speech.

10 70. The Ordinance violates the Free Speech Clause of the First Amendment
11
12 on its face because it impermissibly curtails Plaintiffs' free-speech rights.

13 71. The Ordinance is a content-based regulation because it restricts certain
14
15 types of expression based on the content thereof, including communication regarding
16
17 matters of local political concern and other municipal matters, that would otherwise
18
19 be permitted without constraint. Content-based laws such as these "are presumptively
20
21 unconstitutional and may be justified only if the government proves that they are
22
23 narrowly tailored to serve compelling state interests." *See Reed v. Town of Gilbert,*
24
25 *Ariz.*, 576 U.S. 155, 163 (2015). The Ordinance is not narrowly tailored to further a
26
27 compelling government interest.
28

 72. The Ordinance is a speaker-based regulation because it allows the
unhindered speech of exempted individuals such as journalists, public officials, and
certain employees of 501(c)(3) corporations, but subjects burdensome registration
and reporting requirements on other members of the public. Speaker-based laws such
as these "demand strict scrutiny when they reflect the Government's preference for

1 the substance of what the favored speakers have to say (or aversion to what the
2 disfavored speakers have to say).” *See Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S.
3 622, 658 (1994). The Ordinance is not narrowly tailored to further a compelling
4 government interest.

6 73. The Ordinance is also facially overbroad. It requires any corporation,
7 regardless of whether it employs a professional lobbyist, whose members or
8 employees communicate about local political or other municipal matters in any way
9 that affects the decision-making of a local official to submit to onerous and expensive
10 registration, reporting, and disclosure requirements. When a law implicates First
11 Amendment rights, it may be invalidated on its face as unconstitutionally overbroad
12 if “its deterrent effect on legitimate expression is both real and substantial” and “it is
13 not readily subject to a narrowing construction by the state courts.” *See Erznoznik v.*
14 *City of Jacksonville*, 422 U.S. 205, 216 (1975).

18 74. The Ordinance also constitutes a prior restraint: organizations that
19 engage in noncommercial advocacy work on municipal matters are subject to fines
20 and even criminal prosecution if they do not pay a fee and complete burdensome
21 requirements before doing so.

24 75. The Ordinance also compels speech. By defining as “lobbying”
25 noncommercial political speech, the Ordinance forces organizations, on pain of civil
26 and criminal penalties, to falsely describe themselves as “lobbyists” in order to
27 engage in advocacy.
28

1 76. The “lobbyist” ordinance has a deterrent effect on legitimate political
2 expression that is both real and substantial. This is evident from, among other things,
3 LWVCS’s member removing any express call to contact councilmembers from
4 *Cupertino Matters* and members of LWVCS expressing hesitancy to object to
5 positions taken by the City on a number of items and reluctance to express concern
6 about a lack of transparency and poor governance practices used by the City.
7

8 77. The City’s regulation of “lobbyists” is not readily susceptible to a
9 narrowing construction. The ordinance applies broadly to professional lobbyists and
10 ordinary citizens and organizations engaging in public petition and participation in
11 the same way. In addition, it restricts educational and other noncommercial discourse
12 in the same way as it limits commercial lobbying activity, making association of like-
13 minded citizens a potential crime. The Ordinance would have to be rewritten to be
14 construed more narrowly; indeed, councilmembers’ public statements suggest that the
15 breadth is fully intentional.
16

17 78. The City has no compelling or significant interest that can justify the
18 Ordinance, and the purported interests listed in the Ordinance are not significant or
19 compelling to justify its treatment of ordinary advocacy, petition, and other public
20 participation as “lobbying.”
21

22 79. Plaintiff and their members have been chilled from engaging in
23 legitimate political expression because of their reasonable aversion to the
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1 burdensome and expensive registration, reporting, and disclosure requirements set
2 forth in the Ordinance.

3
4 80. The City is violating or imminently will violate the First Amendment by
5 enforcing the Ordinance against protected speech.

6
7 81. As a proximate result of the foregoing acts of the City, Plaintiff and their
8 members have suffered and will continue to suffer hardship and damages, which
9 include, but are not limited to, violation of their and their members' constitutional
10 rights.

11
12 82. The City's actions have and will continue to chill, deter, and infringe on
13 Plaintiff and their members' First Amendment free speech rights unless enjoined or
14 restrained by an order of the Court.

15
16 83. To prevent such injury, Plaintiff seeks an injunction pursuant to 42
17 U.S.C. § 1983 to prevent violation of their rights under the First Amendment of the
18 U.S. Constitution.

19
20 84. As a result of the City's conduct as set forth above, Plaintiff has been
21 compelled to retain legal counsel to prosecute this action and has incurred and will
22 continue to incur attorneys' fees and costs. Pursuant to 42 U.S.C. § 1988, Plaintiff is
23 entitled to recover attorneys' fees and costs associated with this action.

24
25 **SECOND CLAIM FOR RELIEF**
26 **(Declaratory Relief)**
27 **Facial Violation of the Freedom of Speech**
28 **(First and Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. § 1983)**

1 85. Plaintiff incorporates the allegations in the foregoing paragraphs as
2 though fully set forth herein.

3
4 86. A dispute and actual controversy has arisen and now exists between the
5 LWVCS and the City regarding the rights, duties, and obligations of the parties to
6 each other as a result of the City's Ordinance.

7
8 87. The LWVCS desires a judicial determination of the respective rights,
9 duties, and obligations of the parties. In particular, Plaintiff desires a declaration that
10 the Ordinance is unconstitutional and constitutes a facial violation of the freedom of
11 speech under the First and Fourteenth Amendments of the U.S. Constitution.

12
13 88. There is an adversary dispute between the parties because they have an
14 adversary interest with respect to the Court's declaration on the issue above.

15
16 89. Such a declaration is necessary and appropriate at this time so that the
17 parties may ascertain their rights, duties, and obligations to each other as a result of
18 the Ordinance.

19
20 90. The LWVCS seeks such declaratory relief pursuant to 42 U.S.C. § 1983
21 and 28 U.S.C. § 2201 (authorizing issuance of declaratory relief in a manner
22 otherwise within the court's jurisdiction).

23
24 **91.** As a result of the City's conduct as set forth above, Plaintiff has been
25 compelled to retain legal counsel to prosecute this action and has incurred and will
26 continue to incur attorneys' fees and costs. Pursuant to 42 U.S.C. § 1988, Plaintiff is
27 entitled to recover attorneys' fees and costs associated with this action.
28

1 97. As under the United States Constitution, the Ordinance constitutes an
2 unconstitutional prior restraint.

3
4 98. As under the United States Constitution, the Ordinance compels
5 organizations and individuals engaged in advocacy to engage in speech by
6 misdescribing themselves as “lobbyists.”

7
8 99. The City of Cupertino has no compelling or significant interest that can
9 justify the Ordinance, and the purported interests listed in the Ordinance are not
10 significant or compelling.

11
12 100. Plaintiff and their members have been chilled from engaging in
13 legitimate political expression because of their reasonable aversion to the
14 burdensome and expensive registration, reporting, and disclosure requirements set
15 forth in the Ordinance.

16
17 101. The City is violating or imminently will violate Article 1, Section § 2(a)
18 of the California Constitution by enforcing the Ordinance against protect speech.

19
20 102. As a proximate result of the foregoing acts by the City, Plaintiff has
21 suffered and will continue to suffer hardship and damages, which include, but are not
22 limited to, violation of their and their members’ constitutional rights.

23
24 103. The City’s actions have and will continue to chill, deter, and infringe on
25 Plaintiff and their members’ free speech rights under the California Constitution
26 unless enjoined or restrained by an order of the Court.
27
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1 110. Such a declaration is necessary and appropriate at this time so that the
2 parties may ascertain their rights, duties, and obligations to each other as a result of
3 the Ordinance.
4

5 111. The LWVCS seeks such declaratory relief pursuant to 42 U.S.C. § 1983
6 and 28 U.S.C. § 2201 and to the California Declaratory Judgment Act (C.C.P. §
7 1060) pursuant to this Court’s supplemental jurisdiction.
8

9 112. As a result of the City’s conduct as set forth above, Plaintiff has been
10 compelled to retain legal counsel to prosecute this action and has incurred and will
11 continue to incur attorneys’ fees and costs. Pursuant to C.C.P. § 1021.5, Plaintiff is
12 entitled to recover attorneys’ fees and costs associated with this action.
13
14

15 **FIFTH CLAIM FOR RELIEF**
16 **(Injunctive Relief)**
17 **Facial Violation of the Right to Petition Government for a Redress of**
18 **Grievances**
19 **(First and Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. § 1983)**

20 113. Plaintiff incorporates the allegations in the foregoing paragraphs as
21 though fully set forth herein.
22

23 114. The First Amendment of the United States Constitution, made applicable
24 to the states by the Fourteenth Amendment, guarantees Plaintiff and their members
25 the right to petition the government for a redress of grievances.
26

27 115. The Ordinance violates the Petition Clause of First Amendment on its
28 face because it impermissibly curtails Plaintiff and their members’ rights to petition.

1 116. As written, the Ordinance applies so broadly to any individual or
2 organization that it eliminates the distinction between advocacy or other civic
3 participation and lobbying regardless of whether a person is, or employs, a
4 professional lobbyist. Thus, under the Ordinance, ordinary people are subject to
5 onerous and expensive requirements, which is not narrowly tailored to further a
6 compelling government interest.
7
8

9 117. The Ordinance is also facially overbroad. It requires any organization,
10 regardless of whether it employs a professional lobbyist, whose members or
11 employees communicate about local political matters in any way that affects the
12 decision-making of a local official to submit to onerous and expensive registration,
13 reporting, and disclosure requirements. When a law implicates First Amendment
14 rights, it may be invalidated on its face as unconstitutionally overbroad if “its
15 deterrent effect on legitimate expression is both real and substantial” and “it is not
16 readily subject to a narrowing construction by the state courts.” See *Erznoznik v. City*
17 *of Jacksonville*, 422 U.S. 205, 216 (1975).
18
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21 118. The lobbyist ordinance has a deterrent effect on petitioning the
22 government for redress of grievances that is both real and substantial.
23

24 119. The City’s regulation of “lobbyists” is not readily susceptible to a
25 narrowing construction. The Ordinance applies broadly to professional lobbyists and
26 ordinary citizens and organizations in the same way, making association by like-
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28

1 minded citizens a potential crime. The Ordinance would have to be rewritten to be
2 construed more narrowly.

3
4 120. The Cupertino has no compelling or significant interest that can justify
5 the Ordinance, and the purported interests listed in the Ordinance are not significant
6 or compelling.

7
8 121. Plaintiff and their members have been chilled from petitioning the
9 government for redress of grievances because of their reasonable aversion to the
10 burdensome and expensive registration, reporting, and disclosure requirements set
11 forth in the Ordinance.

12
13 122. The City is violating or imminently will violate the First Amendment by
14 enforcing the Ordinance against the protected right to petition the government.

15
16 123. As a proximate result of the foregoing acts of the City, Plaintiff has
17 suffered and will continue to suffer hardship and damages, which include, but are not
18 limited to, violation of their and their members' constitutional rights.

19
20 124. The City's actions have and will continue to chill, deter, and infringe on
21 Plaintiff and their members' First Amendment petition rights unless enjoined or
22 restrained by an order of the Court.

23
24 125. To prevent such injury, Plaintiff seeks an injunction pursuant to 42
25 U.S.C. § 1983 to prohibit violation of their rights under the First Amendment of the
26 United States Constitution.
27
28

1 137. The Ordinance is not narrowly tailored to further a compelling
2 government interest.

3
4 138. The Ordinance is overbroad on its face under the California Constitution
5 because it has a substantial and real deterrent effect on the exercise of the right to
6 petition the government and is not subject to a more narrowing construction.

7
8 139. The City of Cupertino has no compelling or significant interest that can
9 justify the Ordinance, and the purported interests listed in the Ordinance are not
10 significant or compelling.

11
12 140. Plaintiff and their members have been chilled from petitioning the
13 government for redress of grievances because of their reasonable aversion to the
14 burdensome and expensive registration, reporting, and disclosure requirements set
15 forth in the Ordinance.

16
17 141. The City is violating or imminently will violate Article 1, Section § 3 of
18 the California Constitution by enforcing the Ordinance against the right to petition
19 the government.

20
21 142. As a proximate result of the foregoing acts of the City, Plaintiff has
22 suffered and will continue to suffer hardship and damages, which include, but are not
23 limited to, violations of their and their members' constitutional rights.

24
25 143. The City's actions have and will continue to chill, deter, and infringe on
26 Plaintiff and their members' rights to petition the government under the California
27 Constitution unless enjoined or restrained by an order of the Court.
28

1 144. To prevent such injury, Plaintiff seeks an injunction pursuant to 42
2 U.S.C. § 1983 and also seeks an injunction pursuant to this Court’s supplemental
3 jurisdiction, to prevent violation of their petition rights under the California
4 Constitution.
5

6 145. As a result of the City’s conduct as set forth above, Plaintiff has been
7 compelled to retain legal counsel to prosecute this action and has incurred and will
8 continue to incur attorneys’ fees and costs. Pursuant to C.C.P. § 1021.5, Plaintiff is
9 entitled to recover attorneys’ fees and costs associated with the action.
10
11

12
13 **EIGHTH CLAIM FOR RELIEF**
14 **(Declaratory Relief)**
15 **Facial Violation of the Right to Petition Government for a Redress of**
16 **Grievances**
17 **(Article 1, Section 3 of the California Constitution)**

18 146. Plaintiff incorporates the allegations in the foregoing paragraphs as
19 though fully set forth herein.

20 147. A dispute and actual controversy has arisen and now exists between
21 Plaintiff and the City regarding the rights, duties, and obligations of the parties to
22 each other as a result of the City’s Ordinance.
23

24 148. Plaintiff is entitled to a judicial determination of the respective rights,
25 duties, and obligations of the parties. In particular, Plaintiff and their members are
26 entitled to a declaration that the Ordinance is unconstitutionally overbroad and
27
28

1 constitutes a facial violation of the right to petition the government for redress of
2 grievances under Article 1, Section § 3 of the California Constitution.

3
4 149. There is an adversary dispute between the parties because they have an
5 adversary interest with respect to the Court’s declaration on the issue above.

6 150. Such a declaration is necessary and appropriate at this time so that the
7 parties may ascertain their rights, duties, and obligations to each other as a result of
8 the Ordinance.

9
10 151. Plaintiff seeks such declaratory relief pursuant to 42 U.S.C. § 1983 and
11 28 U.S.C. § 2201 and the California Declaratory Judgment Act (C.C.P. § 1060).

12
13 152. As a result of the City’s conduct as set forth above, Plaintiff has been
14 compelled to retain legal counsel to prosecute this action and have incurred and will
15 continue to incur attorneys’ fees and costs. Pursuant to C.C.P. § 1021.5, Plaintiff is
16 entitled to recover attorneys’ fees and costs associated with the action.

17
18
19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiff prays for the following relief:

21
22 1. On an expedited basis, pursuant to Fed. R. Civ. P. 57, declaring that the
23 provisions of Cupertino Municipal Code Chapter 2.100 pertaining to “Business or
24 Organization Lobbyists” and “Expenditure Lobbyists,” as it defines those terms, on
25 their face violate the First and Fourteenth Amendments of the United States
26 Constitution;
27
28

1 2. On an expedited basis, pursuant to Fed. R. Civ. P. 57, declaring that the
2 provisions of Cupertino Municipal Code Chapter 2.100 pertaining to “Business or
3 Organization Lobbyists” and “Expenditure Lobbyists,” as it defines those terms, on
4 their face violate Article 1, §§ 2 and 3 of the California Constitution;
5

6 3. For judgment in Plaintiff’s favor and against Defendants on all counts;
7

8 4. For attorneys’ fees pursuant to either 42 U.S.C. § 1988 and/or C.C.P. §
9 1021.5, or as otherwise authorized by law;
10

11 5. For a preliminary and permanent injunction enjoining Defendants from
12 enforcing Cupertino Municipal Code Chapter 2.100 as to “Business or Organization
13 Lobbyists” and “Expenditure Lobbyists,” as it defines those terms;
14

15 6. For Plaintiff’s attorneys’ fees and costs of suit; and
16

17 7. For such other further relief as the Court deems just and proper.
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Date: July 19, 2022

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Attorneys for Plaintiffs
LEAGUE OF WOMEN VOTERS OF
CUPERTINO-SUNNYVALE

VERIFICATION

1
2 I am Co-President of Plaintiff League of Women Voters of Cupertino-
3 Sunnyvale (LWVCS). I have personal knowledge of the conduct and intentions of
4 LWVCS in the above Verified Complaint for Declaratory Relief and Injunctive
5 Relief and could competently testify thereto if called as a witness. As to all other
6 matters, I am informed and believe that the allegations in the above Verified
7 Complaint for Declaratory Relief and Injunctive Relief are true based on my review,
8 or review conducted at my instruction, of, among other things, pertinent provisions of
9 the Cupertino Municipal Code, the records of Cupertino City Council meetings, and
10 information reported to me by members of LWVCS.
11
12
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14
15

16 I declare under penalty of perjury under the laws of the United States of
17 America that the foregoing is true and correct. Executed at Cupertino, California on
18 July 14, 2022.

19 *Tracey Edwards*
20 _____
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