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LEAGUE OF CALIFORNIA CITIES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

UNLIMITED JURISDICTION

CITY OF REDONDO BEACH,

Petitioner and Plaintiff,

vs.

STATE OF CALIFORNIA; ALEX PADILLA, Secretary of State of the State of California, in his official capacity; and DOES 1 through 10, inclusive,

Respondents and Defendants.

Case No. BS172218

APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF CITY OF REDONDO BEACH'S PETITION FOR WRIT OF MANDATE

Judge:	Hon. Amy D. Hogue
Dept.:	86
Hearing Date:	Sept. 26, 2018
Time:	9:30 a.m.
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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The League of California Cities (League) is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance.

The Committee has identified this case as having such significance because the exercise of municipal powers to set local election dates is an important prerogative of charter cities. As discussed in the proposed amicus curiae brief, many factors can influence cities' decisions to set municipal election dates, including the cost of holding separate elections, the prospect that voters will focus more on local races when only local elections are on the ballot, the effect on campaign costs of combining local elections with state elections, and other factors. The weighing of these factors in the context of local circumstances and priorities is a quintessential municipal affair that the California Constitution expressly delegates to charter cities.

The League therefore submits this proposed amicus curiae brief in order to describe for this Court the impact on charter cities throughout the State if this Court and others hold that the California Voter Participation Rights Act (VPRA) (Cal. Elec. Code, §§ 14050-14057) applies to charter cities; such an application could change local election dates for millions of Californians whose cities have chosen to hold standalone local elections. The brief further argues that this result is wrong: the VPRA does not unambiguously express the Legislature's intent to supplant charter cities' election schedules. Even if it did, there would be no statewide interest in doing so, because such an interpretation of the VPRA would entirely override the text of the California Constitution arrogating the power to set elections to charter cities, and because the Attorney General's unsubstantiated assertion that electoral integrity must countermand local choice ignores all of the legitimate and integrity-promoting reasons that charter cities may rely on in making their own choices about whether to hold standalone local elections or not.

To protect charter cities' interest in the power to set election dates as an exercise of their charter powers, the League respectfully submits this application to file a brief as amicus curiae in support of the City of Redondo Beach's petition for writ of mandate.

BRIEF OF AMICUS CURIAE THE LEAGUE OF CALIFORNIA CITIES

I. Charter Cities Have a Robust and Legitimate Interest in Determining the Dates of Local Elections Based on Their Individual Circumstances and Priorities.

The California Constitution—the ultimate expression of the people's sovereign power (see *People v. Parks* (1881) 58 Cal. 624, 635)—empowers charter cities to govern themselves with respect to municipal affairs, regardless of conflicting general laws of the State. (See generally *Sonoma County Org. of Pub. Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 315.) While the line between municipal and statewide affairs may sometimes be hazy, the Constitution is clear that charter cities have "plenary authority" to prescribe "the times at which . . . municipal officers . . . shall be elected" (Cal. Const., art. XI, § 5, subd. (b)(4)).

California's charter cities have exercised this plenary power, making determinations of when their local elections should occur based on local circumstances and preferences. Their conclusions have varied. Some charter cities—like Alhambra, Pomona, and Santa Monica—already combine their local elections with statewide elections. (See Cal. Elec. Code §§ 1000, 1001 [statewide election dates are first Tuesday after first Monday in November of even-numbered years]; City of Alhambra Charter, § 104 [general municipal elections to be held on the Tuesday following the first Monday in November of each even-numbered years]; City of Pomona Charter, § 901 [same]; City of Santa Monica Charter, § 1400 [same].) But a significant number of charter cities do not at present, including (but not limited to) Arcadia, Cerritos, Culver City, Glendale, Long Beach, Los Angeles, Pasadena, and San Francisco. (See City of Arcadia Muni. Code, art. I, § 1700(A) [general municipal elections in April of even-numbered years until 2022]; City of Cerritos Muni. Code, § 2.40.010 [general municipal elections in March of even-numbered years]; City of Culver City Charter, § 1500 [general municipal elections in April of even-numbered years]; City of Glendale Charter, art. V, § 1 [general municipal elections in April of odd-numbered years]; City of Long Beach Charter, art. XIX, § 1901 [general municipal

elections in June of even-numbered years]; City of Pasadena Charter, art. XII, § 1205 [general municipal elections in April of odd-numbered years]; City & County of S.F. Charter, art. XVII [defining "general municipal election" as occurring in November of even-numbered years and every fourth year following 2015].)

These different conclusions regarding whether local elections should be standalone affairs or consolidated with statewide elections reflect the many different factors that must be balanced in such a determination. Holding a separate election is costly, and for jurisdictions where economy is paramount, the added cost of standalone elections might prove determinative. But for jurisdictions with particularly dynamic local politics, separate local elections can enable voters to focus more closely on local candidates and concerns without dividing their attention between local and statewide contests. (Declaration of Douglas Johnson (Johnson Dec.), ¶¶ 26-27) Some jurisdictions with a particularly robust tradition of local initiatives, and lengthy ballots, may find that standalone elections suit them better because voters become fatigued when faced with longer ballots. (*Id.* ¶ 25.) The phenomenon of voter roll-off—in which voters simply stop marking choices on the ballot—means that some voters will not vote in local contests when they are combined with statewide contests. (*Id.*) Local jurisdictions can minimize voter fatigue and roll-off with standalone elections. Other jurisdictions may make a policy choice to reduce the role of money and fundraising in local politics by holding local elections separately. In a consolidated election, statewide and national races can compete for advertising space and the services of political consultants, and the cost of political advertising goes up. (*Id.* ¶ 27.) An increase in the cost of running campaigns will naturally advantage those candidates who are best at fundraising. In a purely local election, by contrast, newcomer or nontraditional candidates can be more competitive with less fundraising, reducing the role of money in politics, which in turn serves the integrity of the democratic process.

Local jurisdictions may weigh these factors differently, and reach different conclusions about their priorities. And that is appropriate: there is no single most important factor, and there are strong and legitimate interests here that militate for and against standalone local elections. The fact that charter cities throughout the State have made different choices about election dates demonstrates that

this question is one that is well suited to local self-determination. And, importantly, it also demonstrates that if the courts conclude that the VPRA applies to charter cities, they will override the voter-approved charters of some of California's largest jurisdictions, depriving millions of Californians of the ability to set their own municipal election dates.

Fortunately, this court and others need not override the legislative choices of jurisdictions throughout the State. As the City of Redondo Beach's brief persuasively demonstrates, and as the remainder of this brief argues, application of the traditional four-factor test to determine whether charter cities' home-rule powers are preempted demonstrates conclusively that charter cities' determination of their own election dates is a matter of municipal and not statewide concern.

II. The Four-Part Test For Home-Rule Preemption Demonstrates That Local Election Dates Are a Municipal Affair.

The California Constitution gives charter cities "the sole right to regulate, control, and govern their internal conduct independent of general laws." (*Johnson v. Bradley* (*Johnson*) (1992) 4 Cal.4th 389, 396.) That power extends to ordinances "in respect to municipal affairs." (Cal. Const., art. XI, § 5, subd. (a).) "[S]o far as municipal affairs are concerned, charter cities are supreme and beyond the reach of legislative enactment." (*Cal. Fed. Savings & Loan Assn. v. City of Los Angeles* (*Cal. Fed. Savings*) (1991) 54 Cal.3d 1, 12 [internal quotation marks and citation omitted].) But where a state law addresses a matter of statewide concern that is reasonably related to the State's interest, then "the conflicting charter city measure ceases to be a municipal affair . . . and the Legislature is not prohibited . . . from addressing the statewide dimension by its own tailored enactments." (*Id.* at 17 [internal quotation marks omitted].)

To determine whether a state law appropriately addresses a statewide rather than a municipal interest, and thus preempts charter cities' home-rule authority, courts apply a four-part test:

> First, a court must determine whether the city ordinance at issue regulates an activity that can be characterized as a "municipal affair." ([*Cal. Fed. Savings, supra*, 54 Cal.3d] at p. 16.) Second, the court "must satisfy itself that the case presents an actual conflict between local and state law." (*Ibid.*) Third, the court must decide whether the state law addresses a matter of 'statewide concern.' (*Id.* at p. 17.) Finally, the court must determine whether the law is "reasonably related to . . . resolution of that concern" (*ibid.*) and "narrowly tailored" to avoid unnecessary interference in local governance (*id.* at p. 24).

(*State Bldg. & Const. Trades Council of Cal. etc. v. City of Vista* (*State Bldg. & Const. Trades*) (2012) 54 Cal.4th 547, 556 [parallel citations and some brackets omitted].)

Application of that test to the VPRA demonstrates that it cannot properly be applied to charter cities' standalone local elections.

A. Charter Cities' Determinations Of Their Own Election Dates Regulate Municipal Affairs.

In view of the California Constitution's express statement that charter cities have "plenary authority" to prescribe "the times at which . . . municipal officers . . . shall be elected" (Cal. Const., art. XI, § 5, subd. (b)(4)), there can be no doubt that local ordinances setting the date of municipal elections regulate core internal municipal affairs. Nor does the State apparently argue otherwise; the Attorney General's opinion finding the VPRA applicable to charter cities concedes that charter cities' choice to hold separate local elections is a municipal affair. (See 100 Ops.Cal.Atty.Gen. 4, at *3 (2017) [citing *Johnson, supra*, 4 Cal.4th at p. 398, and *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 796].)

B. There Is No Actual Conflict Between State And Local Law Because The VPRA Does Not Clearly Reach Charter Cities.

Before a court may conclude that the Legislature has preempted a charter city's enactment concerning a municipal affair, it must "satisfy itself that the case presents an actual conflict" between local and state law. (*Cal. Fed. Savings, supra*, 54 Cal.3d at p. 16.)

There is no actual conflict here because the Legislature did not unambiguously provide that the VPRA reaches charter cities. Section 14051 of the Elections Code states that " 'Political subdivision' means a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law." Because the list of terms included within "political subdivision" includes a city but not a charter city, it is not immediately clear that charter cities are included within the definition.

As Redondo Beach points out at page 12 of its opening brief, at about the same time the Legislature adopted this language, it was considering an amendment to the California Voting Rights Act to "[e]xpressly provide[ ] that general law cities, general law counties, charter

counties, and charter cities and counties are 'political subdivisions' that are subject to the [California Voting Rights Act]." (Sen. Rules Com., A.B. 277 Bill Analysis, Third Reading, June 17, 2015 (2015-2016 Reg. Sess.) [Ex. 2 to City of Redondo Beach's Request for Judicial Notice (RJN)].) The Legislature was well aware of how to specify that charter cities are included in general enactments. Far from doing so with the VPRA, as its legislative history acknowledges, the VPRA "does not explicitly address the question of whether it is intended to be applicable to charter cities" and thus it is "unclear whether those cities would be subject to a lawsuit under this bill." (Sen. Com. Rpt., S.B. 415, Third Reading, July 2, 2015 (2015-16 Reg. Sess.), at p. 2 [Ex. 4 to RJN].)

But beyond voting-related legislation, other bills adopted close in time to the VPRA demonstrate that the Legislature specifies "charter cities" where it means to include them. For instance, A.B. 552 amended the Public Contract Code just a few months before enactment of the VPRA to require public works contracts to specify the amount of any delay damages included in the contract. (Stats. 2015, ch. 434, at p. 681.) It specified that it applied to "a city, charter city, county, charter county, . . . and any other political subdivision or public corporation of the state." (*Id.* [enacting Cal. Pub. Cont. Code, § 7203, subd. (c)].) But another statute that was filed with the Secretary of State the same day as A.B. 552 did not: Labor Code § 1720.9 added a new definition to the term "public works" for purposes of prevailing wage laws, and applied its new definition to "any political subdivision of the state," but did not specify that the new definition applied to charter cities. (Stats. 2015, ch. 739, at p. 107 [enacting Cal. Labor Code, § 1720.9, subd. (a)].) And that made sense; the California Supreme Court had already determined that whether to pay prevailing wages on public works contracts is a municipal affair that may not be superseded by state statute. (*State Bldg. & Constr. Trades, supra*, 54 Cal.4th at p. 566.)

The Legislature's conspicuous omission of "charter cities" from its list of illustrative political subdivisions in the VPRA, in contrast to other bills, and the VPRA legislative history's acknowledgment of ambiguity about its applicability to charter cities, demonstrate that the Legislature did not clearly choose to displace charter cities' authority. In such circumstances, "[t]o the extent difficult choices between competing claims of municipal and state governments can be forestalled in

this sensitive area of constitutional law, they ought to be." (*Johnson, supra*, 4 Cal.4th at p. 399 [internal quotation marks omitted].) Thus this Court should "determine first whether it is reasonably possible to construe the statute or the ordinance in a manner that reconciles the two and thereby avoids having to decide which takes precedence." (*Id.* at p. 413 [conc. opn. of Kennard, J.].)

Construing the VPRA in order to avoid a conflict between state and local law where it is not absolutely clear that the Legislature intended a conflict is but an application of the broader principle of statutory interpretation that "when local government regulates in an area over which it traditionally has exercised control, . . . California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is not preempted by state statute." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) That rule, and the related rule of avoiding construing legislation in a manner that would render it unconstitutional, led the Supreme Court in *Ector v. City of Torrance* to hold that a statute applying to "local agencies" including a "county, city, or city and county," did not apply to charter cities where the statute would "contravene [an] explicit constitutional authorization" of charter cities to set their employees' qualifications. (10 Cal.3d 129, 133 [superseded by constitutional amendment as stated in *Wall v. Muni. Ct.* (1990) 223 Cal.App.3d 247, 250].) Indeed, *Ector*'s interpretative holding should control this case: *Ector* construed a statute narrowly to avoid a home-rule conflict where the statute did not expressly state it applied to charter cities (as the VPRA does not) and where the statute would have intruded on charter cities' express constitutional prerogatives (as the VPRA would if construed to apply to charter cities). This Court should follow *Ector* and construe the VPRA not to regulate charter cities.

C. The VPRA Does Not Regulate A Matter Of Statewide Concern.

Even if the Legislature intended the VPRA to apply to charter cities, "[t]he decision as to what areas of governance are municipal concerns and what are statewide concerns is ultimately a legal one" for the courts to make. (*State Bldg. & Constr. Trades, supra*, 54 Cal.4th at p. 558.) A statewide concern will only be found where the Court can identify "a convincing basis for legislative action originating in *extramunicipal* concerns"—something more than merely the Legislature's selection of its preferred set of municipal policies. (*Cal. Fed. Savings, supra*, 54 Cal.3d at p. 18 [emphasis added].)

The League agrees with Redondo Beach's articulation of why the vote-dilution rationale supporting the *Jauregui* decision does not supply a statewide concern here. Vote dilution impacts the ability of minority citizens to cast effective ballots; when a protected class is unable to "elect candidates of its choice or . . . influence the outcome of an election" (Cal. Elec. Code, § 14027), then the constitutional right to vote is impaired. But the State makes no showing that holding local elections separately from statewide elections impairs the ability of any citizen to cast an effective ballot. Indeed, in practical terms, with vote-by-mail and other improvements to elections procedures, the frequency of elections is no more than a negligible obstacle to voting. (See Redondo Beach's Opening Br. at pp. 19-20.)

But more broadly, the State's argument effectively erases the text of the California Constitution that reserves to charter cities their "plenary authority" to prescribe "the times at which . . . municipal officers . . . shall be elected" (Cal. Const., art. XI, § 5, subd. (b)(4)). Where the Constitution expressly enumerates a core area of municipal control, then " 'general laws seeking to accomplish an objective of statewide concern . . . may prevail over conflicting local regulations even if they impinge *to a limited extent* upon some phase of local control.' " (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 287 [quoting *Baggett v. Gates* (1982) 32 Cal.3d 128, 139] [emphasis added by *County of Riverside*].) But where a general law "*contravenes* . . . entirely" a municipal prerogative set out in the Constitution, then it cannot be enforced against a chartered local government. (*County of Riverside*, *supra*, at p. 288 [emphasis in original].) This is not a mere impingement on charter cities' prerogatives. "Here, [if the VPRA applies, a charter city's] governing body does not retain the ultimate power" to set the time of elections; rather, if construed broadly, the VPRA would take away that power entirely from cities whose local elections have low turnout as defined by that act. (*Id.*; see also *Ector v. City of Torrance*, *supra*, 10 Cal.3d at p. 133 [construing state statute not to "contravene [an] explicit constitutional authorization" granting plenary authority to charter cities to prescribe employee qualifications].) Here, as in *County of Riverside* and *Ector*, application of the state statute does not serve a statewide interest because it contravenes entirely a constitutional reservation of powers to cities.

D. The VPRA Is Not Narrowly Tailored or Reasonably Related to Any Statewide Interest in Electoral Integrity.

The final part of the four-part test for when the Legislature may override charter cities' enactments is whether the state law is "reasonably related to . . . resolution" of a statewide concern and is "narrowly tailored" to avoid unnecessary interference in local governance. (*State Bldg. & Const. Trades, supra*, 54 Cal.4th at p. 552.)

The VPRA is not reasonably related to the statewide interest in electoral integrity or preservation of voting rights because the State cannot show that more frequent elections impair electoral integrity or abridge the right to vote. (See *supra* at p. 7.) As Redondo Beach's brief persuasively argues, some voters' choices not to participate in standalone local elections does not demonstrate a lack of integrity or abridgement of the right to vote. Moreover, even if the State could show a reasonable relationship between electoral integrity and stand-alone municipal elections, its remedy—prohibiting stand-alone local elections for some charter jurisdictions—would not be narrowly tailored because it is a one-size-fits-all policy that does not respect any of the countervailing concerns that have led charter cities to select different local election dates. As discussed *supra* at pages 2-3, there are many concerns that factor into whether to hold standalone local elections, and there are many legitimate and integrity-promoting reasons to do so, such as reducing the cost of running successful campaigns and preventing voter fatigue and voter roll-off. Individual jurisdictions are best positioned to balance these factors, and a single statewide solution that forces numerous charter cities across the State to revamp their election calendars is not narrowly tailored to promoting voter turnout.

III. Conclusion

The League of Cities respectfully submits that the Voter Participation Rights Act does not apply to charter cities like the City of Redondo Beach.

Dated: July 5, 2018

DENNIS J. HERRERA
City Attorney
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By: _____
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PROOF OF SERVICE

I, Pamela Cheeseborough, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On July 5, 2018, I served the following document(s):

APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF CITY OF REDONDO BEACH'S PETITION FOR WRIT OF MANDATE

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in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

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

Executed July 5, 2018, at San Francisco, California.

Pamela Cheseborough